

**Representations on the Local Plan (Examination) Revised Sustainability  
Appraisal**

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## Persimmon Homes North Midlands Representations on the Revised Sustainability Appraisal (December 2014)

Persimmon Homes are promoting a site located to the south of Uttoxeter off Highwood Road (SHLAA Site 67). The Sustainability Appraisal (SA) submitted as part of the East Staffordshire Local Plan Examination makes reference to this site and dismisses it. Page 154 of the Revised SA states:

***“Land South of Demontfort Way (SHLAA site 67)***

***8.24 This is an edge of town greenfield site. There are positive impacts in terms of access to employment and services but several negative or uncertain impacts in terms of impact on the countryside, loss of greenfield land, biodiversity and the historic environment. For these reasons the site was not selected as part of the development strategy.”***

Persimmon Homes believe these are both unfounded and incorrect claims and a way of unduly dismissing the site. The biodiversity related evidence base provided by the Council for examination consists of the “**East Staffordshire Biodiversity Opportunity Mapping (April 2013)**” and does not provide the level of detail necessary to categorically dismiss a site on ecological grounds. The Council’s own words used as part of the SA state that these ecological impacts are “*negative or uncertain*” which indicates a more detailed level of work is required if this site is to be dismissed on a biodiversity basis. The evidence base to which the above claims are derived is lacking in terms of both its clarity and specificity, particularly with regards to the maps provided which are of low visual quality, providing only a generalised overview of the borough as a whole. Persimmon Homes assert that a more detailed site assessment is required by accredited specialists before such claims and decisions are to be taken by the Council. Persimmon Homes have carried out cursory work and site visits which indicate the land to be semi-improved grassland and of a low-moderate ecological value. The topography of the land south of Demontfort Way sits within a vale mitigating visual impacts at this location. Views from the countryside would be visually screened by the land form.

### **2014 SHLAA**

SHLAA site 67, updated 2014, provides a summary of the site. The site is identified as being ‘developable’, ‘achievable’ and ‘suitable’. Additionally the SHLAA states the site can not be identified as ‘deliverable’ because its availability is not known. Persimmon Homes can assure East Staffordshire Borough Council the site is available, and that a planning application could be submitted relatively quickly. It is uncertain exactly when in 2014 the SHLAA was updated, but a pre-application meeting was held with the Council on March 24<sup>th</sup> 2014 which seemed at the time to be positive and Persimmon stated their desire to submit a planning application relatively quickly on the site, or alongside the Local Plan process if preferred. This was also followed up by several emails and phone calls so it is uncertain why this information was not fed back into the SHLAA report. Moreover, the SHLAA does not make reference to any of the uncertain or negative impacts on the biodiversity of the area. Raising fundamental doubts over the conclusions of the SA report.



## **East Staffordshire Borough Council Local Plan Examination Interim Findings by the Inspector (11<sup>th</sup> November 2014)**

Referring to the Inspector's interim findings to the initial hearings held in October 2014, and written representations the Inspector stated the following to ESBC:

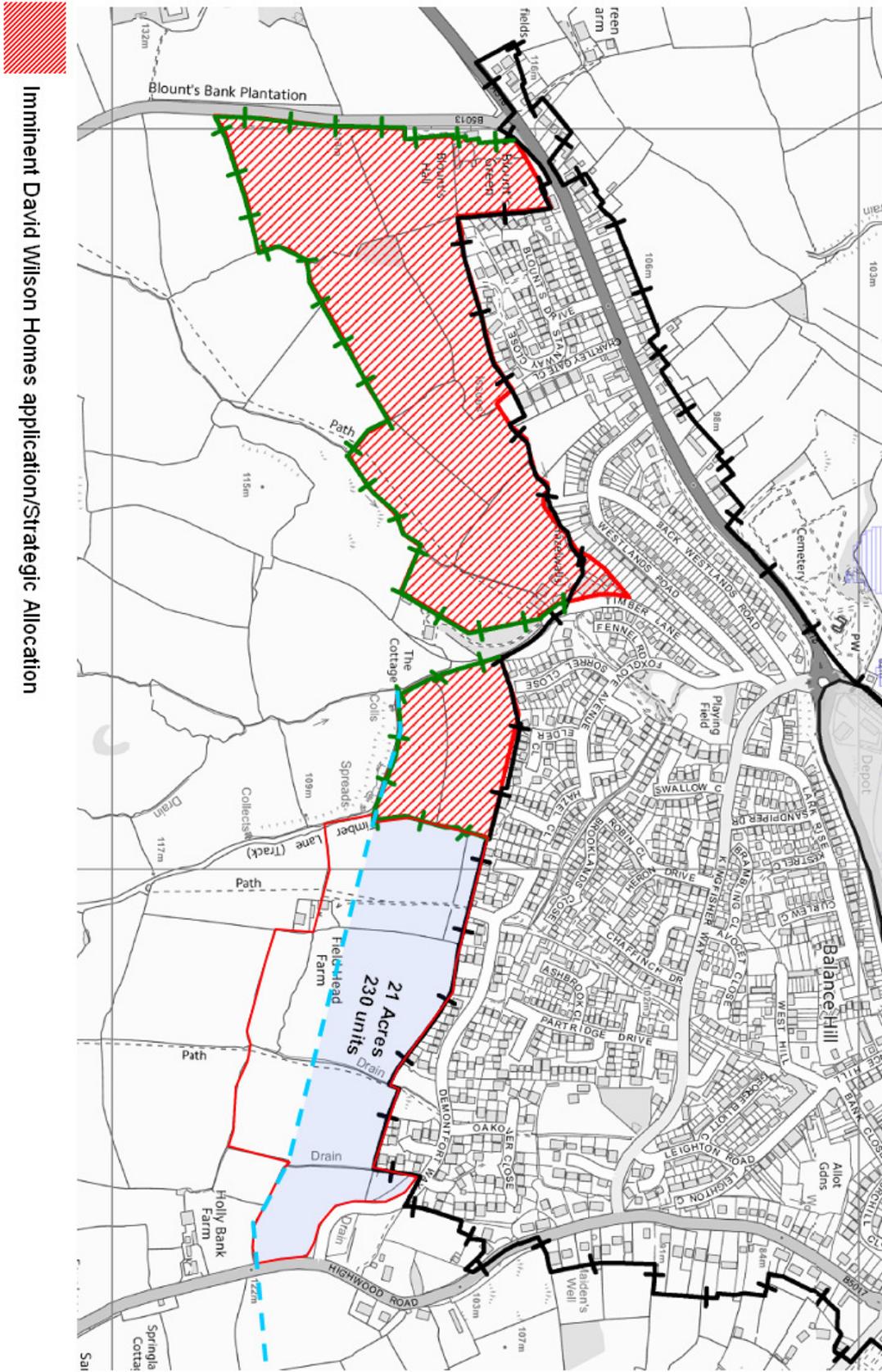
*"In summary, I find that:*

- b. the SA is inadequate as submitted and requires further work,*
- c. the OAHN is insufficient to support a conclusion on the adequacy of the housing land requirement and further justification is required in response to detailed representations.*
- d. the Site Selection Process requires further clarification, and*
- e. consideration should be given to increasing the number and range of type and size of sites allocated and to adjusting the Housing Trajectory in the interest of the delivery of five year and overall housing land supply."*

In light of the above Inspector's concerns and with regards to the revised SA, Persimmon Homes feel that due consideration has not been given to key strategic sites, specifically SHLAA site 67. By allocating the site in Appendix A, which comprises SHLAA site 67, this would contribute to the "offset an apparent reliance upon a relatively small number of large strategic sites" (Inspector – Interim Findings). Additionally, this would address concerns over 5 year land supply in the early stages of the plan period and restore the five year supply to the necessary level such that the policies of the ESLP once adopted would have full effect under NPPF para 49 meaning ESBC would not be adopting a Local Plan that was technically out of date from its inception. Persimmon Homes believe the site could deliver up to 150 houses over the first 5 years, rectifying a fragile land supply position.

Appendix A – Strategic Site Proposal

Land off Highwood Road – Uttoxeter



**From:** [Lei Dodman](#)  
**To:** [LPConsultation](#)  
**Date:** 17 January 2015 15:37:46

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Dear Sir/ madam,

With reference to the "Revised Sustainability Appraisal Report" I would like to comment as follows:-  
Where small brown field sites exist, whether urban or rural, they should be given priority for small scale housing development if they are in a derelict condition, unused for decades and a blight on the immediate surrounds.

Submitted by Lei Grass - private contributor.

# JMW Planning Limited

Response to the revised Sustainability Appraisal dated December 2014 (Examination document F41) on behalf of Mr T. Campbell, the owner of 10ha west of Derby Road Uttoxeter. (SHLAA site 372).

## Paragraphs in F41

*1.45. This Revised SA Report (December 2014) has been prepared as a direct response to issues raised during the first week of examination hearings in October 2014. The changes clarify a number of elements of the SA process.*

The matter of this 10ha site being more appropriate for a mixed employment/residential use incorporating improvements to the highway network in Uttoxeter was raised during the hearings but does not appear to have been assessed in the revised Sustainability Assessment (SA).

It was clear during the hearings that more housing sites needed to be found in the Borough and this has subsequently been confirmed by Mr Sims in document E.19 at 5e where he says “consideration should be given to increasing the number and range of type and sizes of sites allocated...”

*1.46 The revisions do not appraise any main modifications proposed to date. These will be subject to SA following completion of the examination hearings. Nor do the revisions revisit the specific appraisal of sites already subject to SA or appraise any further sites. Revisions have been made to provide clarity, auditing and further information setting out the Councils approach through the plan making process.*

As Mr Sims makes clear in paragraph 7 of E19 “legislation and case law governing the preparation of SA...is clear that it must be conducted at each stage of plan evolution at the earliest possible opportunity. That is to provide a clear audit trail of the consideration and assessment of strategic options, and of the selection of sites for development in particular...”

In the case of Mr Campbell’s land the opportunity should have been taken to revisit the appraisal of this site through the SHLAA process where it scores well in respect of housing. Comments such as “site could deliver a large quantity of housing which would require a mix of types and tenures”; “good access to the A50 and Uttoxeter town centre”; “development of this scale could create its own sense of identity” and “development of this scale could provide some highway improvements to this part of the town.” would suggest the site would be as good as, if not better than, other sites allocated for housing. It should have been re-appraised and its importance as a potential employment site re-examined in the light of the new employment allocation west of the town.

2.2 and 2.3 See comments for 1.46.

*3.18 It was also the case that the refined location specific options were informed by land supply and so the Strategic Housing Land Availability Assessment (SHLAA) was a key document in determining what sites were assessed. The Council did not want to select a strategy where the availability of sites meant it could not be delivered.*

Representations made during the various stages of plan preparation will have made it clear that this site was available for housing.

*3.23 The Interim SA identified Option 2 and a further refined option 2d as the most sustainable strategy with the following sites the most sustainable configuration of sites:*

These did not include Mr Campbell's land despite it being in close proximity to the town centre and already within the development envelope.

*3.25 At the time a reduced percentage of housing growth at Burton reflected the re-direction of growth to Uttoxeter to meet local needs and assist with 32 regeneration, at their request and to the villages in accordance with the Sustainability Appraisal.*

Despite the increased emphasis on Uttoxeter the Borough Council still did not re-assess the contribution this site could make to the regeneration of the town either as a housing site in its own right or for a mixed use where some housing could be used to bring on the infrastructure needed to make a start on the allocated employment use.

Figure 4.2 A key would be helpful in understanding this plan.

*5.16 to 5.23 These sections show why the criteria used were changed as the Plan progressed.*

What is not shown is why Mr Campbell's land was not regarded as a strategic site and shown with the others in Figure 5.7 and listed in table 5.3 despite meeting all of the relevant criteria listed in 5.17 and table 5.1. Professional judgement is mentioned in paragraph 5.19 and it is difficult to escape the conclusion that somewhere along the line the view was taken that this site should be retained as an employment site and therefore should not be considered as a potential housing site despite being eminently suitable for that use.

That is at odds with the Sustainability Appraisal process and these paragraphs do not demonstrate a clear audit trail explaining why Mr Campbell's land was not considered for housing when the emerging Local Plan itself was being prepared.

Table 6.4 *This lists the Sites Sustainability Appraisal Framework against which other potential housing sites but not Mr Campbell's land were assessed.*

At the risk of being repetitive, Mr Campbell's land scores highly against the list of site objectives and the decision making criteria listed. Taking the first three, for example:-

### 1. Housing:

Objective- To provide a suitable mix of decent housing available and affordable to everyone.

Decision making criteria-Size of site, the larger the site the more opportunities available to deliver different housing choices.

At 10ha Mr Campbell's land is larger than other sites being promoted in the Local Plan process in Uttoxeter and would give the opportunities sought. Even half the site would give those opportunities.

### 2. Economic Opportunities:

Objective- To provide access to economic opportunities for local residents.

Decision making criteria- Provision of employment on site and access to existing employment sites

A mixed use scheme on the site would comply with the first of these and housing would help fund the provision of infrastructure for employment uses. Even if the whole site were to be used for housing it is still so well related to the town centre and the A50 that the second criterion would be complied with.

### 3. Transportation:

Objective- To reduce the need to travel, encourage more sustainable modes of transport and make best use of existing transport infrastructure.

Decision making criteria- Location of site, proximity to key routes and connectivity to town Centre.

This site is close enough to the town centre and the services and transportation links it offers to make walking to those a practical proposition. It would, therefore, comply with the criteria and be an excellent housing site in locational terms. The recent cycle link along Derby Road, constructed with Mr Campbell's assistance, also provides an alternative sustainable means of getting into the town centre.

Derby Road, with which the site has a long frontage, is an existing link between the town and the A50. The latter provides an effective link to employment opportunities further afield as well as the JCB works nearer to the town.

At the hearings the matter of the improvements to the A50 were mentioned. It now appears that scheme A at the western edge of the town will be proceeding shortly and that will give the opportunity for access to be created to the 10ha employment allocation in the SUE to the west of the town.

Discussions are still taking place about the detailed design of scheme B which will affect the two existing roundabouts on the A50. It is likely, however, that as part of the improvement of the A50 the Borough Council's idea of a road linking The Dove Way with Derby Road across Mr Campbell's land amongst other ownerships will come to fruition. That would be of benefit to the local transportation network and make this site an even more desirable development site that could assist with the regeneration of the town.

### Conclusion.

Notwithstanding this criticism of the Borough Council's approach so far to the development of this site, Mr Campbell remains committed to seeing it developed.

He would ask, however, for the Local Plan process to "start from scratch" rather than relying on the historic view that this was an employment site and should remain solely as such. Had the SA process not evolved in the way that it has he considers that the potential of his land to contribute to the regeneration of Uttoxeter would have been recognised by the Borough Council by now and he remains prepared to work with the Borough and County Councils to bring that about.

What is needed now, before the hearings resume, is for the relevant officers at the Borough Council to accept the invitations that have been made to them to talk about the potential of this site.

John Wren. Ba (Hons) MCD FRGS MRTPI.

14<sup>th</sup> January 2015.

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Planning Policy  
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The Maltsters  
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Date: 27 January 2015  
Our ref.: BSDC1

Dear Sir/Madam

### **Local Plan (Examination) Revised Sustainability Appraisal – Representations by Burton and South Derbyshire College**

On behalf of our client, Burton and South Derbyshire College, we write in response to East Staffordshire Borough Council's Revised Sustainability Appraisal (SA), which was published for consultation in December 2014. The Council has prepared a revised SA in order to address issues highlighted by the Local Plan Inspector over the adequacy of the submitted SA.

As the Council is aware, the College's interest in this matter relates to its land at Rolleston-on-Dove, known as the former College Sports Field site.

#### **Revised Sustainability Appraisal (SA)**

We note that the Revised SA includes a new Chapter 3, which describes the key stages in the preparation of the Local Plan and explains how the SA has informed the selected spatial strategy. Further information on why the spatial strategy and site allocations set out in the Pre-Submission Local Plan was chosen is provided in Chapter 8, which also includes an assessment of the reasonable alternatives.

It is clear from the additional detail provided in the Revised SA that from the early stages of the Local Plan process Option 2 – urban extensions to Burton and Uttoxeter plus development in the strategic villages – was identified as the most sustainable strategic option. We agree with the SA's conclusion that Option 2 provides a balanced approach to growth, addressing rural needs whilst placing the majority of growth in the main urban centres and areas of need.

As outlined in the Revised SA a number of sub-options were assessed through the SA process promoting different distributions and locations of development in Burton, Uttoxeter and the strategic villages. Each of the four sub-options included development at Rolleston-on-Dove. We consider that the Revised SA helpfully clarifies that the chosen strategy is a 'hybrid' option which takes account of the outcomes of the SA process (i.e. Option 2d being the most sustainable sub-option) whilst also responding to changes in terms of policy, the Council's evidence base and new planning applications and permissions.

Through the SA process sites have been assessed and selected for inclusion as strategic allocations in the Pre-Submission Local Plan. Sites were initially appraised in the Interim SA published in 2012. The conclusions of the Interim SA site appraisals are replicated at Chapter 7 of the Revised SA.

With regard to the former College Sports Field site in Rolleston, the Revised SA states at Paragraph 7.143 that:

*“Representing a greenfield site on the southern edge of the village the site is capable for delivering a mix of housing types. The village is located just beyond the Burton upon Trent urban area which provides opportunities for villages to access employment opportunities, services and facilities in Burton town centre, by bus, as well as those in the village itself. Burton opportunities however are not on the doorstep unlike those in the village. There is considered to be no impact on the countryside owing to the enclosure experienced by the site due to existing residential development to the north and east, existing trees and the flatness of the topography.”*

We note that additional reasoning has been included in the Revised SA to clarify why the site was selected as a strategic allocation. It states that:

*“At the time of assessing sites, few reasonable alternatives above the site threshold at Rolleston were identified through the site screening process. For these reasons the site was selected as part of the development strategy”.*

We agree with the site appraisal set out in the Revised SA and consider that the site supports the Council's chosen spatial strategy and performs well against the SA objectives.

We would further like to note that the site's sustainability credentials have been thoroughly considered through a planning application and at appeal. As the Council is aware, an application for a development of the site for housing was submitted in May 2013. Although the application was refused by the Council's Planning Committee in November 2013, the only refusal reason given related to prematurity of the proposals in relation to the Rolleston Neighbourhood Plan. With regard to the principle of development on the site the committee report (dated 25 November 2013) concluded Paragraph 11.1:

*“As the proposal, subject to conditions and consideration of details at reserved matters stage, should deliver high quality development on the edge of an existing village with access to local services, and would make provision to safeguard residential amenity and the natural environment, the application is considered to meet the requirements of the NPPF in terms of sustainable development.”*

At the subsequent appeal and consideration of the proposal by the Secretary of State it was accepted that the proposal constitutes sustainable development. The Inspector concluded at Paragraph 212 of his Report:

*“Having regard to the economic, social and environmental dimensions of sustainable development referred to in paragraph 7 of the Framework, and all of its policies in paragraphs 18 to 219 taken as a whole, the proposal can be regarded as sustainable development. This description was agreed by all main parties at the*

*inquiry. The presumption in favour of sustainable development set out in the Framework therefore applies.”*

The Secretary of State in turn also concluded that the proposal constitutes sustainable development. Paragraph 18 of the Secretary of State’s decision states:

*“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”*

Although the Secretary of State then refused the application on grounds of prematurity to the Neighbourhood Plan, it is clear that he concluded that the development of the site would constitute sustainable development. In any event, the College has submitted a Legal Challenge in the High Court seeking to overturn the Secretary of State’s decision, which is ongoing.

It is clear that the SA’s conclusions in respect of the College Sports Fields site have been subsequently ratified by the planning application committee report, the planning committee’s decision, the Inspector’s Report and the Secretary of State. In essence, the site represents the most sustainable growth option for Rolleston, which can deliver housing in the short term.

Should you wish to further discuss Burton and South Derbyshire College’s representations, please do not hesitate to contact me or my colleague David Green.

Yours faithfully,

**Karin Hartley**  
**Senior Planner**

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cc D. Brammer, SGH Martineau LLP  
K. Procter, Burton and South Derbyshire College

28<sup>th</sup> January 2015

**Post and email**

Anna Miller, Planning Policy Manager,  
East Staffordshire BC  
The Maltsters, Wetmore Road,  
BURTON ON TRENT  
Staffs DE14 1LS

Dear Anna,

**EAST STAFFORDSHIRE LOCAL PLAN: Revised Sustainability Appraisal.**

We are acting on behalf of Gleeson Developments Ltd who have land interests in Uttoxeter.

You will recall we were involved at the East Staffordshire EIP during October/November 2014 and commented during the hearing on the Sustainability Appraisal. We therefore welcome the opportunity to respond to the amendments made by the Borough Council to the revised East Staffordshire BC Local Plan Sustainability Appraisal (December 2014) following the Inspector's Interim Findings.

1. We welcome the decision to make additions to the SA to explain the revisions which were made between the Preferred Options stage and the Submission stage and also the outcome of consultations at Pre-submission stage. This is very helpful.
2. We acknowledge the point made in paragraph 1.12 that the SA is simply the means to reaching a decision rather than the decision itself. However, it is self-evident that the outcome of the SA ought to guide the decision-making process. With respect to Uttoxeter, it was noted at the EIP that the decisions made by members in relation to certain sites appear to depart completely from the results of the SA.
3. We note the additional sites which have been included in the revised SA including those which have emerged thorough appeal decisions. Are these all above the 100 dwelling threshold? I notice that the Stone Road, Uttoxeter site is still included on the Uttoxeter map (Figure 1.2 and also in Figure 4.2 – which seems to be identical). Should this have been deleted since it was not ultimately chosen as an allocation?
4. The explanation behind the Revised December 2014 SA in the new Chapter 3 is helpful and it is noted that the SA does not re-appraise any sites which were assessed in the previous version of the SA – it simply provides clarification. However, the section which explains the shift in policy away from Option 2D to a combination of 2D and 2B in paragraphs 3.27-3.29 seems to comprise a *post hoc* political justification which is seemingly not borne out by any clear evidence. The change in approach in Uttoxeter was not (as is stated in para 3.28) due to permissions being granted, but a decision by the Borough Council (presumably due to pressure from the Town Council) to support the Hazelwalls site to the SW of the town which appears in Option 2B, and to drop the Stone Road site, on the western edge of the town. There is no clear and genuine explanation therefore for the decision to go for a 'hybrid' option in Uttoxeter, rather than choosing the Option 2D alternative which emerged as the most sustainable alternative. I worry therefore that the revised SA somewhat re-writes history.

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5. Para 3.16. Point 5: 'bran' should read 'brand'.

6. The Sustainability Framework in Table 1 suggests that '*the larger the site the more opportunities are available to deliver different housing choices*'. This statement seems counter-intuitive in that a broader range of smaller sites gives much more choice of housing – not to mention more flexibility in terms of delivery. This point is drawn out in the Inspector's Interim report which concludes that a wider range of smaller sites is required to meet the Borough's housing supply shortfall.

7. Thank you for correcting the error in Table 5.3 to replace Ryecroft with Roycroft.

8. The additional statements at the end of each site description explaining why sites were selected (or not as the case may be) at the Preferred Options stage are helpful. We note however in para 7.132 that the Hazelwalls site was firmly rejected at Preferred Options stage for reasons which have not changed, yet the site was subsequently allocated, whilst in paragraph 7.136 the Stone Road site was firmly supported, but has subsequently been rejected, despite the circumstances remaining the same. In paragraph 7.133, the Roycroft Farm site was rejected despite development being feasible on the bulk of the land unaffected by flood risk.

9. The explanation in Chapter 8 (paragraphs 8.1 – 8.4) is helpful in alluding to why certain decisions took place in the change from the Preferred Options to the Pre-allocation stage, although in relation to Uttoxeter the comment '*Initial meetings by Uttoxeter Town Council on the Uttoxeter Neighbourhood Plan*', in no way explains why Hazelwalls was added (against the earlier recommendation), Stone Road was deleted (also against the recommendation) and Roycroft Farm was ignored. This could not have been linked to the Neighbourhood Plan which has not even reached draft stage. A more candid explanation is needed here.

10. The summary of the appraisal of alternative sites in Chapter 8 includes an explanation in paragraph 8.26 of why the Derby Road site has been retained as an employment site. However, although the paragraph explains why developing the whole of the site for residential development might conflict with the balance of housing and employment in Uttoxeter, it does not consider whether a mix of housing and employment development might not be suitable. Bearing in mind the forthcoming changes to the A50 involving the closure of the Derby Road junction and also the significant increase in employment land now being delivered through the JCB proposals at Beamhurst (and elsewhere) this now looks more logical.

11. In assessing the sites within the Pre-submission plan it is puzzling that paragraph 9.18 highlights the Hazelwalls site as having such serious shortcomings (and it performs so poorly in Table 9.6 which compares the strategic housing allocations), and yet it has been selected by the Borough Council. The justification for its inclusion that '*there was a need to allocate additional sites to meet objectively assessed housing needs*' doesn't explain why one of the poorest performing sites, should have been chosen. In contrast, paragraph 9.19 shows that the Stone Road site performs well and was recommended for allocation (and yet was subsequently rejected). These decisions need to be properly explained.

I hope these comments are helpful in shaping the emerging Revised East Staffs LP SA.

Yours sincerely

John Acres

**Consultant to Turley** (on behalf of Gleeson Developments Ltd)



**From:** [Amanda Skidmore](#)  
**To:** [LPConsultation](#)  
**Subject:** Sustainability Appraisal Comments  
**Date:** 28 January 2015 16:30:04

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Dear Sir/Madam,

Uttoxeter Rural Parish Council have met to discuss the Sustainability Appraisal and would like to make the following comments:

The Parish Council is keen to ensure that Bramshall and Stramshall/Spath maintain their own individual identities apart from Uttoxeter town. We therefore consider that land between Uttoxeter and the neighbouring villages of Bramshall and Stramshall/Spath should not be developed upon, thereby ensuring that green space is preserved and maintained.

Kind Regards

Amanda Skidmore  
Clerk to Uttoxeter Rural Parish Council

**East Staffordshire Borough Council  
Revised Sustainability Appraisal Consultation January 2015**

**On behalf of David Wilson Mercia**

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RPS Planning & Development (RPS) is retained by David Wilson Mercia (DWM) to submit representations to the revised Sustainability Appraisal (SA) consultation in respect of land under their control at Hazelwalls Farm and Blount's Green, Uttoxeter. Representations have been made to previous stages of the East Staffordshire Local Plan, Site Allocations DPD, and the Strategic Housing Land Availability Assessment (SHLAA) in relation to the site.

The site lies at Hazelwalls Farm and extends to approximately 27.5 hectares over two parcels of land. The site was included in the Local Plan Pre-Submission consultation document under Strategic Policy 4 as a strategic allocation for 350 dwellings to provide a proportion of the 1,557 dwellings proposed for Uttoxeter to meet the overall requirement of 11,648 new homes to 2031 within the Borough.

The SA October 2013 assessed the site satisfactorily. The SA has now been updated due to interim findings from the Local Plan Examination Inspector, and is subject to this consultation. The SA updated site assessment for Land at Hazelwalls Farm is set out below (Para. 7.132). The only addition to the site assessment is an explanation as to the reasons for originally rejecting the site through the Preferred Options as highlighted:

***"This is a large greenfield site located on the southern edge of Uttoxeter capable of delivering a mix of housing types. There are concerns over the capacity of the local road network in accommodating proposals. There is an impact on the countryside due to the large size of the site and the way in which it extends into the countryside. The prominent position that the site occupies is likely to detract from the sense of place in this part of Uttoxeter. There is a significant impact on biodiversity due to a number of habitats and species on the site. There is an unknown impact on historic assets. For these reasons the site was rejected as part of the development strategy at preferred options stage."***

DWM are to submit a planning application for 338 residential dwellings on the site at the end of January/beginning of February. The proposed development is to be appropriately designed to include a mix of different types, sizes, tenures and densities of housing including family housing, public open space and appropriate infrastructure and access. The development is to come forward with development of the adjacent parcel of land off Sorrell Lane. RPS considers this location to the south of Uttoxeter to be the most sustainable location for an urban extension at the town. Hazelwalls Farm is a location where the infrastructure requirements for the development are limited and are not a threat to early delivery.

The issues set out in the original SA have been fully addressed through pre-application discussions with the Council and the site can therefore be sustainably developed. RPS on behalf of DWM wishes to emphasise the site's suitability for development which is set out in further detail below.

A Concept Masterplan at has been submitted to the Council with previous representations in relation to the Hazelwalls Farm site which demonstrates how the site can be effectively designed to achieve a sustainable and integrated development. The Masterplan is being refined for the planning application.

### ***Transportation***

There are references in the SA regarding the local road capacity in accommodating the proposals. A Transport Assessment and Travel Plan have been undertaken for the planning application which demonstrate that there is sufficient capacity to accommodate the proposed development and that no harm would be caused to the existing traffic flow and highway safety.

RPS has assessed the transport network and has liaised with Staffordshire Highway Authority, and it has been concluded that the local road network can accommodate the traffic from the site. Uttoxeter Town Council has noted the site has good access to major roads, and the proposal can contribute to the delivery of enhanced public transport in the south of the town.

In relation to access, it is proposed that the main vehicular access to the western parcel of land will be from the B5013 to the west via a new roundabout, with public transport, pedestrian and cycle links provided through to the existing residential area to the north. The smaller eastern parcel can be accessed off Sorrel Close which was designed for this purpose when the estate was constructed to allow for further development in the area.

The site is in within walking distance to bus stops and rail links. There are a number of bus stops along the A518 and nearby Westlands Road, and Uttoxeter Railway Station is approximately 1.7km from the site. Therefore it is considered that the allocation is fully justified on highway matters.

### ***Countryside and Landscape Quality***

The identified a potential impact of the proposed development on the countryside, and the prominent position of the site in detracting from the sense of place of this part of Uttoxeter.

The site is undulating, rising to a steep ridgeline which runs from the south-west to the north-east of the western parcel of land. The eastern parcel of land rises to higher ground to the east. A Landscape Visual Impact Assessment (LVIA) and Ecological Appraisal have been undertaken for the planning application to establish any existing and potential constraints to the site's development. The Masterplan is to be landscape and ecology led and the level of information provided demonstrates that the site is sustainable.

The LVIA concluded that due to existing wooded areas, vegetation along the stream, the visually obstructing ridgeline to the west running through the site, and buildings associated with Blount's Hall to the north-west and properties along the Stafford Road to the north, the site is well contained and visual impact of any development on the public realm would be minimal.

The majority of the site is largely visible from properties at the southernmost development edge of the town. Views of the site are mainly from rear-facing properties, and these houses block the views to the countryside from other dwellings within the estates. Therefore there

are very few adverse visual impacts which would be caused from the proposed development, only properties directly adjacent to the site would be affected. The design of proposals have ensured that residential properties will be kept to the lower parts of the site to reduce the visual impact of the development, and to land which adjoins existing residential areas built on land of a similar character.

In addition, significant areas of green space will be delivered as part of the development. Therefore, it can be demonstrated from the LVIA that impact on the landscape will be minimal and it is considered that the proposed development would not detract from the sense of place of this part of Uttoxeter. The allocation is therefore sound.

### ***Biodiversity and Geodiversity***

The SA states that development of the site would significantly impact biodiversity due to a number of habitats and species on the site. The ecology of the site is well understood with appropriate surveys undertaken, including an Ecological Appraisal and detailed bat and badger surveys which have been undertaken for the planning application. Features of importance which have been identified are to be retained and impacts appropriately mitigated against.

A number of species and habitats of conservation importance have been identified on the site and these can be integrated effectively within the proposed development, and through appropriate landscaping additional habitats can be created. The loss of vegetation through the development will be mitigated through new planting and the areas of woodland within the site are to be protected. Therefore, impacts on biodiversity have been appropriately addressed.

### ***Historic Environment***

In relation to the SA's uncertainty regarding the impact of the Hazelwalls Farm development on heritage assets, a Desk Based Heritage Assessment has been undertaken for the planning application. The assessment indicates that there are no scheduled ancient monuments, listed buildings or other designated sites within the proposed development area. There is a Conservation Area 670m north-east of the site. However, the development would not cause any impact on the Conservation Area or its significance. There is no evidence that any other important assets and the historic environment would be adversely affected by the site's development.

The existing view of the church spire in the Town Centre can be integrated within the development to enhance the sense of place rather than detract from the character of the area. Similarly, the extensive Green Infrastructure proposals will enhance the sense of place and create an attractive and sustainable residential environment. Therefore, the allocation remains sound.

### ***Conclusion***

Through the technical reports undertaken for the planning application on the site, concerns within the SA regarding the site's development have been addressed. It can be demonstrated that the issues identified can be overcome and appropriate mitigation measures included through the design of the scheme to ensure that minimal harm is caused from the development.



Therefore, while RPS considers that the additional text in the SA document is helpful clarification, the modification should also reflect the most recent position in respect of the matters raised. RPS proposed the following additional text:

***“However, in preparing the Submission Core Strategy further evidence has demonstrated that all the issues discounting the site in the Preferred Option can be satisfactorily overcome and that the allocation as proposed is sound.”***

Our Ref: : 5040  
Your ref:

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B16 8PE

Tel: 0121 456 7444  
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30<sup>th</sup> January 2015

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East Staffordshire Borough Council  
Planning Policy  
The Maltsters  
Wetmore Road  
Burton-upon-Trent  
Staffordshire  
DE14 1LS

Dear Sirs

### **Local Plan (Examination) Revised Sustainability Report – December 2014**

Alliance Planning act on behalf of Barwood Strategic Land II LLP and Mr and Mrs G Skipper in respect of their land interests at Red House Farm, Burton-upon-Trent, to make representations to the Council's Local Plan (Examination) Revised Sustainability Appraisal Report (December 2014).

Detailed comments and representations have been made at all stages of the East Staffordshire Borough Council Local Plan process. This has included:

- Strategic Options Paper – August 2011
- Preferred Options Paper – July 2012
- Pre-Submission Local Plan – October 2013
- Local Plan Pre-Submission revised Sustainability Appraisal Report – March 2014
- Hearing Statements submitted for the Local Plan Examination Hearings in October 2014

A copy of all previous representations made in reference to the Council's Sustainability Appraisal work are attached at Appendix 1. These representations do not repeat wholesale those previously made but reiterate and update where necessary, as well as set out comments on the current consultation document.

Following submission of the emerging Local Plan by East Staffordshire Borough Council for consideration, the Local Plan Hearings took place in October 2014. The Inspector's Interim Findings in respect of the East Staffordshire Local Plan dated 11<sup>th</sup> November 2014 came to a number of conclusions in respect of the Council's Revised Sustainability Appraisal.

Para 9 concluded that the Sustainability Appraisal undertaken by the Council which supported the submission of the Local Plan was *"deficient as a source of evidence in support of the ESLP, both in respect of its technical adequacy and legal compliance. It will therefore require significant further work well beyond the scope of the established procedure for SA and public consultation upon MMs prior to the completion of my Report."* (my emphasis)

A number of inadequacies were highlighted by the Inspector in his Interim Findings and the Council's revised Sustainability Appraisal has sought to undertake further work to address some of the failings. As set out at paras 2.1-2.3 the revised Sustainability Appraisal has sought to address:

- The sustainability criteria applied to the Strategic Options and the reformulation of some criteria
- The appraisal of the chosen 'hybrid' version of Options against the assessment criteria
- The selection of sites from the SHLAA for further appraisal
- Site Assessments.

The SA does not appraise any main modifications, which will be subject to further appraisal following the completion of the Local Plan Hearings.

Para 2.1 of the revised Sustainability Appraisal indicates that the document, in responding to the Inspector's conclusions, sets out "*further explanation*". This suggests that no 'significant further work' has been undertaken, rather the Council are seeking to justify the choices they have already made, and have not undertaken the necessary comparison of all reasonable alternatives including the preferred approach, assessing all at the same level of detail. It therefore appears that the Council persist with the "bolt on" approach to a strategy that was originally devised to meet a much lower housing requirement, and to which my client has previously objected.

#### Sustainability Appraisals – Legislation and Guidance

Under S19(5) of the Town and Country Planning Act and the SEA Regulations which came into force in England and Wales in July 2004, the undertaking of a Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) are mandatory for all Local Plans and SPDs. S19 of the Act requires Local Plans/SPDs to be prepared with a view to contributing to the achievement of sustainable development. SA is one way of helping fulfil this duty through a structured appraisal of the economic, social and environmental sustainability of the plan. The production of a SA is one of the "*tests of soundness*" on a Local Plan/SPD.

The requirement to undertake SEA is established in the EU by the European Directive 2001/42/EC, '*the Assessment of the Effects of Certain Plans and Programmes on the Environment*' (commonly known as the SEA Directive). The SEA Directive is transposed into English law by the SEA Regulations. Although the requirement to undertake both SA and SEA is mandatory, it is possible to satisfy the requirements of both parts of the legislation, through a single appraisal process, as confirmed at paragraph 165 of the Framework.

A Sustainability Appraisal (SA) should meet all of the requirements of the Strategic Environmental Assessment (SEA) Directive and the Environmental Assessment of Plans and Programmes Regulations 2004, including that any likely significant effects of each policy/proposal, plus alterations have been assessed.

Further guidance on the preparation of the SA in relation to the stages of Local Plan production together with the information to be covered within the SA Report is set out in the Planning Policy Guidance (PPG) dated March 2014. The PPG states at paragraph 11-009 that the Sustainability Appraisal should "*focus on the environmental, economic and social impacts that are likely to be significant.*"

The guidance goes on to state at paragraph 11-018 "*The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach)*".

The PPG states at para 11-021 and 11-023 that if draft Local Plans are modified either following consultation or through independent examination, the local planning authority should decide if the

Sustainability Appraisal also needs to be updated. Para 11-021 states that *“further assessment may be required if the changes have not previously been assessed and are likely to give rise to significant effects.”*

There were five options addressed in the original Sustainability Appraisal and re-identified in the Interim Sustainability Appraisal, with Option 2 (urban extensions plus villages) being further subdivided into four subsections 2a, 2b, 2c and 2d, each of which included a strategically different number of dwellings at Burton on Trent. The Authority had previously chosen to promote option 2d however, as indicated at para 8.4 of the revised Sustainability Appraisal (December 2014), following a number of events which affected the housing and development scenario in the Borough, Options 2a-2d were revisited and as *“none of the options on their own could accommodate the growth and therefore a ‘hybrid’ was necessary.”* The revised Sustainability Appraisal (December 2014) states that the ‘hybrid’ option comprises a mix of options 2b, 2c and 2d. This differs from the Inspector’s understanding (para 8d of the Interim Findings) that the hybrid’ option emerging is a mix of Options 2c and 2d.

Notwithstanding the mix of options which is proposed by the Council, whilst they have taken into account a number of factors affecting housing location and distribution there is a failure within the revised Sustainability Appraisal to update any Assessment of Sites that had been considered unsustainable by the Council but sustainable at planning appeal by an Inspector or indeed, the Secretary of State.

Para 50 of the Inspector’s report on the Birmingham Development Plan states that *“In order to maintain the integrity of the SA process ... undertake this additional SA work approach it with an open mind, and not on the basis of seeking to justify decisions previously taken.” (my emphasis).* In refusing to acknowledge the contribution or status of other sites within the revised Sustainability Appraisal process, for example, the previously undertaken Sustainability Appraisal for Red House Farm has not been updated since the Inspector’s appeal decision (ref: APP/B3410/A/13/2197299) as part of the further work undertaken on the Sustainability Appraisal by the Council. This is not just an academic exercise following the grant of consent for Phase I Red House Farm development. The absence of an accurate site assessment has wider implications, as the Local Plan promoted interest extends to land beyond the Secretary of State Decision letter, and as set out below, this unamended and inaccurate Sustainability Appraisal assessment is now being relied upon by Neighbourhood Plan groups as a basis for their own work. In failing to update the Sustainability Appraisal properly, the Council are prejudicing sound Neighbourhood Plan preparation by establishing a flawed evidence base.

In commenting on Birmingham’s Development Plan the Inspector has requested further work be undertaken, to *“review the material previously prepared by the promoters of the alternative sites alongside material previously prepared on the Council’s behalf, as part of the preparations for carrying out the further SA work outlined below.”* (copy attached at Appendix 2). The Inspector for the Birmingham Plan suggested that all reasonable alternatives should be assessed at the same level of detail as the option taken forward. In East Staffordshire, the Council should be taking into account information available in relation to other sites that have been promoted or approved and so on, for example the appeal decision granting permission at Red House Farm. At present the Option taken forward, particularly the number of dwellings it seeks to provide for, has not taken into account the sustainability conclusions of all sites with planning permission which in turn means that not all

reasonable alternatives can have either been a) identified or b) assessed, as the Council has based its considerations on incomplete and thus flawed information.

It is of concern that the Council's preferred strategy, set out in the Local Plan Pre-Submission Revised Sustainability Appraisal Report incorrectly sought to classify the Red House Farm site as not an appropriate location for development. Those concerns have already been raised by the landowner and subsequently been proved to be well founded given the support for the site through the Secretary of State's appeal decision. Moreover, those concerns were not addressed in Appendix G to the current (December 2014) Sustainability Appraisal. The Council's refusal to update the Sustainability Appraisal in this regard seems dogmatic.

In adopting this strategy, which does not include the identification of my client's site at Red House Farm that has the benefit of planning permission, reference is made to paragraph 15 of the recent appeal decision for part of the Red House Farm Site, in which the Inspector concluded that "*the appeal site is in a sustainable location for housing development*". The failure of the Sustainability Appraisal to update the Red House Farm site assessment is flawed.

There is concern, therefore, that on a site found by the Secretary of State to be sustainably located for housing development, and capable of meeting the Borough Council's needs, the emerging plan strategy does not seek to identify this with a revised settlement boundary or a strategy which allocates the site for development, because it adopts a different view on sustainability than the Secretary of State. By implication the strategy, and thus the alternatives considered in the revised Sustainability Appraisal, are clearly still flawed. Given the opportunity afforded by the amended Sustainability Appraisal it is disappointing that this legitimate concern has been ignored.

Overall, the SA does not appraise the growth of Burton as it is now proposed. As we have previously identified, planning permission now exists at Outwoods for 950 dwellings, at Red House Farm for some 250 dwellings (with a phase 2 application currently the subject of a planning application for up to 150 dwellings, ref: P/2014/01530), at Forest Road for 300 dwellings, and Lawns Farm for some 2500 dwellings. This growth scenario was never modelled in the SA and still has not been modelled. The Council may have identified other events which have led to a revision of the SA but have not included fundamentally, planning permissions which already shape the location of development in the Borough and the sustainability merits of areas are flawed. This is not adopting the "open mind" approach encouraged by the Birmingham Inspector.

In addition, the revised Sustainability Appraisal still does not seek to revisit the options tested with specific regard to the 6,473 dwellings that are now being promoted for Burton, despite this figure being 2,573 dwellings more than has previously been tested within the Sustainability Appraisal process. As has been noted in all the representations made to the Council's SA documents, this scale of development has clearly not been assessed through any of the preceding strategic papers. Indeed, it has been a criticism of the process since the Preferred Options stage that the Authority had not, in accordance with the relevant legislation and clear guidance of the Framework, started from a position of having identified the objectively assessed need and then working back to an appropriate strategy. Rather, the Authority at that time was promoting a constraint led development strategy, for which the development target was established by the constraints rather than the need.

The revised Sustainability Appraisal remains absent of any explanation as to how the impacts of an additional 2,573 dwellings in the emerging Local Plan have been accommodated. The original analysis of Options 2a-2d in the Sustainability Appraisal related to a substantially lower housing requirement and any revisiting of those options has not identified that the additional dwellings were considered as part of those proposals. The revised Sustainability Appraisal identifies that the housing requirement was substantially increased and additional sites were examined for allocation. However it still does not explain how this strategy has emerged, the testing or visioning which underlay it. It remains difficult to view the revised Sustainability Appraisal as anything other than a reaction to the identification of a significantly increased housing requirement without any coherent underlying vision or approach but with some additional text to seek to further justify the Council's proposed approach to development. In our opinion the legislative requirements of the SEA process have not been met by this revision and the SA is a flawed part of the Local Plan's evidence base.

In effect, these additional dwellings have been identified as a "bolt on" to a strategy that was devised to meet a much lower housing requirement. It is not clear that in approaching this new strategy that the Authority have started with a wholly fresh review of their approach, they have certainly not taken into account all relevant information available that could affect the proposed development strategy Sustainability Appraisal testing of the proposed option, to reflect whether this strategy, related to the development requirements and settlement boundaries is the most appropriate, when assessed against the alternatives. On this basis, the Council's revised Sustainability Appraisal is considered to fail the relevant tests and is not legally compliant.

#### Effects on Neighbourhood Plan Preparation

In failing in their duty to undertake a Sustainability Appraisal that is legally compliant, emerging Neighbourhood Plans which rely on this SA to justify their own strategies, will inevitably follow suit. For example, the Outwoods Neighbourhood Plan is currently out to consultation until 18<sup>th</sup> February 2015. Its Sustainability Appraisal states that it has drawn upon the Borough Council's Local Plan Sustainability Appraisal to steer the Neighbourhood Plan Sustainability Appraisal. However, if the Local Plan has failed in its duty to properly assess the potential effects of the distribution of development and strategy for growth, including the proper site and sustainability considerations of my Client's site at Red House Farm, then this failure can only be compounded in the emerging Outwoods Neighbourhood Plan. It is burdening the Neighbourhood Plan process with an unsound evidence base.

#### Summary

The Cogent Land judgement (copy attached at Appendix 3) does make it clear that defects in an Environmental Report may be resolved by a later document and the same principle applies to the SA process. In the Cogent case the Honourable Justice Mr Singh indicated that whilst any Sustainability Appraisal must set out adequately the reasons for preferring the alternatives selected, it was also acceptable that an Addendum or review of the process and independent review could be acceptable to cure any defects in the earlier stages of the process provided it is not undertaken solely to justify an earlier decision/strategy and takes into account all relevant alternatives and potential impacts. Whilst this position is accepted, the Council's failure to revisit matters fully and choose the proposed 'hybrid' growth strategy from a clear assessment of alternatives, all based on the incorrect level of housing growth proposed, means it should not be considered legally compliant, and as a result the Local Plan still cannot be considered to be soundly based.

For the Local Plan to proceed in the absence of a proper assessment of the implications of the actual growth strategy, or a proper reflection of the merits of alternative sites being promoted through those strategies, including those granted permission at appeal, the conclusion must be that this is a flawed basis on which to progress the emerging Local Plan.

It is also disappointing that with the opportunity of the revised Sustainability Appraisal report published in March 2014 and further revised in December 2014 to reflect upon recent appeal decisions and to more accurately reflect the merits of Red House Farm site (and for that matter the Forest Road, Burton-on-Trent site), the opportunity has not been taken. This can only reinforce the conclusion reached above that the Sustainability Appraisal review is flawed and not legally compliant.

I would be grateful if you could please keep me advised of the Council's timetable for Local Plan progression.

Yours faithfully

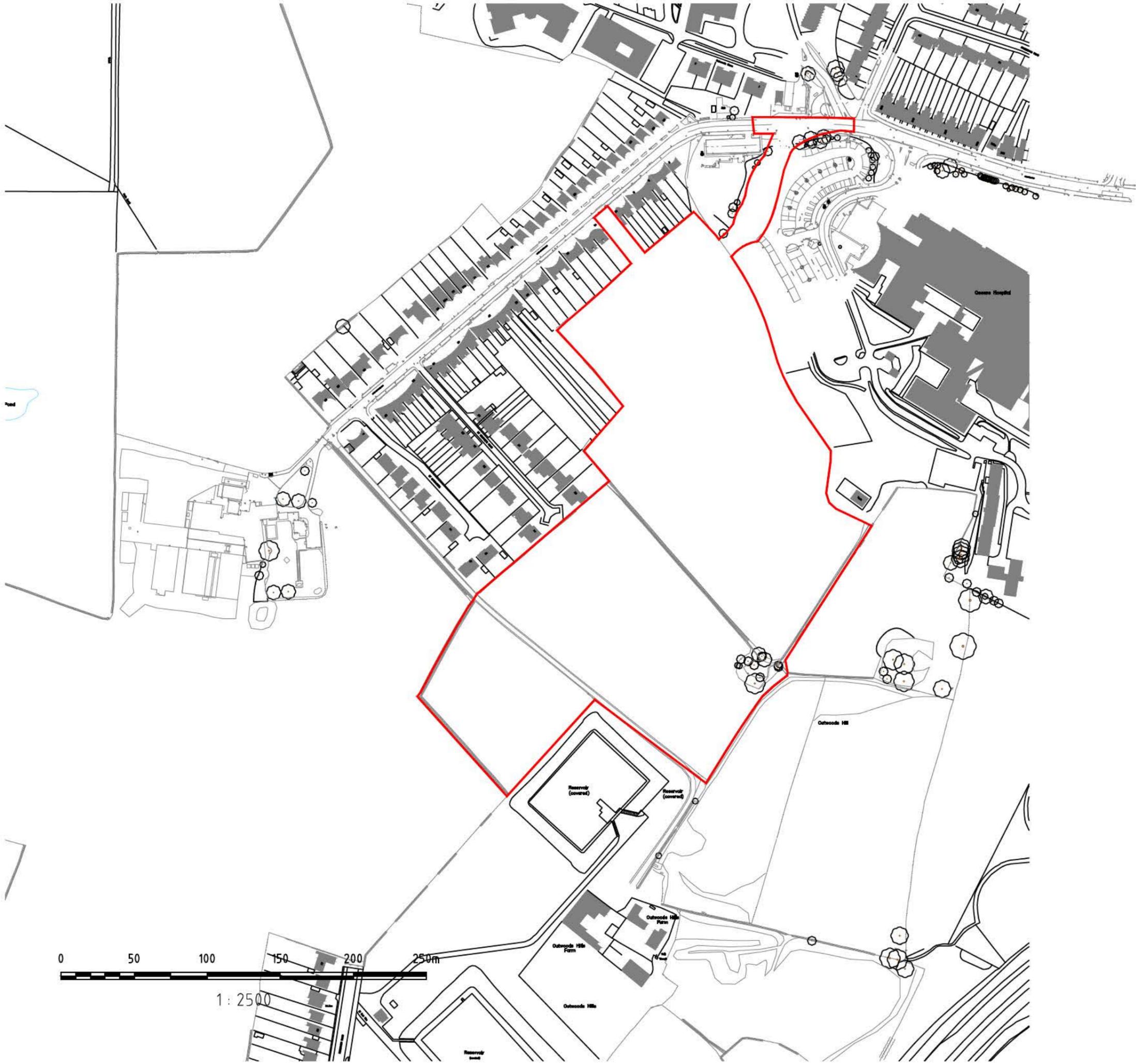
**Keith Fenwick**  
Director

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Do not scale off drawings.  
All dimensions to be checked on site.

Revision	Drawn	Comments	Date
A	CT	Redline boundary amended to suit road access	22.07.14
B	CT	Redline boundary amended to suit road access	23.07.14
C	CT	Minor amendments to Redline boundary	25.07.14



STATUS **PLANNING**



landscape architecture - urban design - environmental planning

<b>Midlands Office</b> Healy's Wharf, Huddlestons Wharf, Millgate, Newark, NG24 4UL t 01636 702152	<b>London Office</b> Juxon House, 100 St. Pauls Churchyard, London, EC4M 8BU, t 0203 1027770	<b>Southern Office</b> Furzehall Farm, Wickham Road, Fareham, PO16 7JH t 01329 550145
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**PROJECT**  
**Red House, Outwoods**  
**Burton on Trent**

**CLIENT**  
**Barwood Strategic Land II LLP**

**TITLE**  
**Land Transfer Plan**  
**Phase 2**

<b>SCALE</b> 1:2500	<b>DATE</b> 31.07.14
<b>DRAWN</b> CT	<b>CHECKED</b> SH

<b>JOB NO:</b> N0239	<b>DWG NO:</b> (08)003	<b>REV NO:</b> C	<b>ORIGINAL SIZE</b> A3
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Department for  
Communities and  
Local Government

Mrs Elizabeth Marjoram  
Bird Wilford & Sale Solicitors  
19-20 Church Gate  
Loughborough  
Leicestershire  
LE11 1UD

Our Ref: APP/B3410/A/13/2197299  
Your Ref: EHM/RHF

12 November 2013

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BARWOOD STRATEGIC LAND II LLP AND MR& MRS SKIPPER  
LAND AT RED HOUSE FARM, LOWER OUTWOODS ROAD, BURTON-UPON-TRENT,  
STAFFORDSHIRE, DE13 0QX  
APPLICATION REF: P/2012/01215**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Martin Whitehead LLB BSc(Hons) CEng MICE, who held a public local inquiry on 4 days between 21 and 28 August 2013 into your clients' appeal against the refusal of East Staffordshire Borough Council ("the Council") to grant outline planning permission for the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all buildings at land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire, DE13 0QX in accordance with application Ref: P/2012/01215.
2. On 20 May 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

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

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

Jean Nowak, Decision Officer  
Planning Casework Division  
Department for Communities and Local Government  
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Tel 0303 444 1626  
Email [pcc@communities.gsi.gov.uk](mailto:pcc@communities.gsi.gov.uk)

## **Procedural matters**

4. The application for costs (IR1.4) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

## **Policy considerations**

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved East Staffordshire Local Plan 2006 (LP). However, as the Inspector notes (IR3.1), this was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and so can be given only limited weight.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

## **Main issues**

7. The Secretary of State agrees with the Inspector that the main issues in this case are those under which he structured his conclusions in section 9 of the IR and which are replicated below.

### Policy and housing supply

8. For the reasons given at IR9.1-9.6, the Secretary of State agrees with the Inspector's conclusions at IR9.7. Hence, he agrees that, in accordance with paragraph 49 of the Framework, as the Council cannot demonstrate a 5 year supply of deliverable housing sites their relevant policies for the supply of housing are not to be considered up-to-date and a presumption in favour of sustainable development should apply.

### Character and appearance

9. The Secretary of State agrees with the Inspector at IR 9.17 that, for the reasons given at IR9.8-9.16, the appeal scheme would have an adverse effect on the character and appearance of the area by introducing new development into the countryside. However, he also agrees that the quality of the landscape has been identified for enhancement; and that the proposal would recognise the intrinsic character and beauty of that part of the countryside and would mitigate the effect of the proposed buildings by the provision of areas of open space and new planting and landscaping. The Secretary of State also agrees with the Inspector that any adverse impact needs to be balanced against the benefits of the proposed development.

## Benefits

10. The Secretary of State agrees with the Inspector (IR9.18) that the proposal would provide the benefits which he lists, and notes that these have not been contested by the Council.

## Other matters

11. For the reasons given at IR9.19, the Secretary of State, like the Inspector, is satisfied that the measures that would be secured through the planning obligations and conditions would adequately address the residual transport and highway safety impacts to ensure that they would not be so severe as to be sufficient to refuse planning permission.

12. Similarly, the Secretary of State agrees with the Inspector (IR9.20) that the concerns expressed about drainage and flooding and about wildlife including great crested newts would be addressed by the proposed planning conditions.

## **Conditions and obligations**

13. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed conditions (IR11.1-11.8), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.

14. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Planning Obligations as set out at IR10.1-10.5. He is satisfied that, with the exception of the obligation to provide an *additional* 15% contribution towards affordable housing (IR10.5), the provisions set out in the executed Unilateral Undertaking dated 23 August 2013 can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework. He therefore agrees with the Inspector that the Unilateral Undertaking should take effect with a planning obligation for 15% on-site affordable housing; but he gives no weight to any further contributions towards affordable housing.

## **Overall Conclusions**

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

## **Formal Decision**

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants outline planning permission for the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access,

drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all buildings at land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire, DE13 0QX in accordance with application Ref: P/2012/01215.

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

**Right to challenge the decision**

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

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

**CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the principles of the Design and Access Statement and the following approved plans: INCLA\_N131.101 1:1000 Illustrative Master Plan, INCLA\_N131.102 1:2000 Land Ownership Plan and INCLA\_N131.106 1:2500 Location Plan, subject to compliance with other conditions of this permission.
- 5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No phase of the development hereby permitted shall take place until samples and details of all external materials and finishes for that phase (including those for any walls, roofs, windows, doors, parapets and chimneys) have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried in accordance with the approved materials and details.
- 7) No phase of the development hereby permitted shall take place until details of boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) for that phase have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates.
- 8) No phase of the development hereby permitted shall take place until a scheme for the disposal of foul and surface waters and an assessment of the hydrological and hydrogeological impacts for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how surface water run-off shall not exceed run-off from an undeveloped site, Sustainable Urban Drainage systems for storm water management, compensatory flood storage on site, and details of how the scheme shall be managed and maintained after completion. The development shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 9) No phase of the development hereby permitted shall take place until details of an open space strategy in accordance with any approved phasing scheme has been submitted to and approved in writing by the local planning authority. The open space strategy shall include details of equipment for children's play areas;

woodland planting and a trail to the western boundary; a short term maintenance management plan for all areas of open space; all materials to be used in hard landscaping and all fencing and walling. The open space strategy shall be implemented in full in accordance with the approved phasing scheme and shall thereafter not be used for any purpose other than as stated.

- 10) No phase of the development hereby permitted shall take place until a 'Site Waste Management Plan' for that phase has been submitted to and approved in writing by the local planning authority. The Site Waste Management Plan shall include an implementation programme and shall be implemented as approved.
- 11) No phase of the development hereby permitted shall take place and no site works related to that phase shall be carried out until details of all slab levels and any regrading of the site have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried out in accordance with the approved details.
- 12) No phase of the development hereby permitted shall take place until a contaminated land assessment, to include the investigation of gas migration, and associated remedial strategy for that phase together with an implementation programme have been submitted to and approved in writing by the local planning authority. The contaminated land assessment shall include a desk study that shall detail the history of the site uses and a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the local planning authority prior to investigations commencing on site. Any site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a remediation strategy shall be submitted to and approved in writing by the local planning authority prior to any remediation works commencing on the site. Remediation works shall be carried out in accordance with the approved strategy and under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and a remediation scheme and implementation programme shall be submitted to and approved in writing by the local planning authority. Remediation works shall thereafter be carried out in accordance with the approved scheme. Upon completion of the works, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology; details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria; and details of what waste materials have been removed from the site.
- 13) No phase of the development hereby permitted shall take place until a Landscape Management Plan, indicating a scheme for the long-term management of open space, green infrastructure and planting within the public realm and details of biodiversity management has been submitted to and approved in writing by the local planning authority. The open space, green infrastructure and planting shall

thereafter be managed in accordance with the approved Landscape Management Plan.

- 14) No phase of the development hereby permitted shall take place until a scheme for the protection of trees and hedges to be retained in the details of landscaping approved at reserved matters stage has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 15) No phase of the development hereby permitted shall take place, including any works of demolition, until a Construction Method Statement for that phase of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase of the development. The Statement shall provide for the control of construction noise; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; wheel washing facilities; measures to control the emission of dust and dirt during construction; the times of working and deliveries during construction and an implementation programme.
- 16) No phase of the development hereby permitted shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and an implementation programme, for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details.
- 17) No phase of the development hereby permitted shall take place until a Noise Impact Assessment, together with details of any noise mitigation measures and an implementation programme, for that phase has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and retained for the life of the development.
- 18) No phase of the development hereby permitted shall take place until a detailed mitigation and monitoring strategy for great crested newts within the site has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved strategy and retained for the life of the development.
- 19) No phase of the development hereby permitted shall take place until details of a scheme to provide 3 grit bins on Reservoir Road and improve the skid resistance to a minimum PSV of 68 along the section of Reservoir Road where the gradient exceeds 1 in 12, as indicated on PJA Drawing No 844-03, have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first occupied.
- 20) No phase of the development hereby permitted shall take place until details of a scheme to provide vehicular access to the development have been submitted to and approved in writing by the local planning authority at reserved matters stage. The scheme shall prevent vehicular access to the development from Lower Outwoods Road apart from by public service and emergency vehicles. The scheme shall be implemented in accordance with the approved details before the development is first occupied and retained for the life of the development.

- 21) Prior to the first occupation of the dwelling to which it relates, accesses, parking and turning areas for that dwelling shall be provided in a bound material in accordance with details that shall first have been submitted to and approved in writing by the local planning authority at reserved matters stage. The bound material shall have a high degree of porosity to reduce the amount of surface run-off. The accesses, parking and turning areas shall thereafter be made available at all times for these purposes.
- 22) The development hereby permitted shall only be carried out in accordance with the recommendations of the Flood Risk Assessment by M-EC Report Ref: 20200/PH/09-12/3251, dated September 2012, or any subsequent Flood Risk Assessment that has first been submitted to and approved in writing by the local planning authority.
- 23) All planting, seeding or turfing comprised in the details of landscaping approved at reserved matters stage shall be carried out in accordance with a programme of works that shall have been submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
- 24) The reserved matters shall include a Transport Master Plan that shall be submitted to and approved in writing by the local planning authority. The Transport Master Plan shall include details of a movement framework; connections to the surrounding areas for all modes of transport; public transport route strategy, including a timetable for implementation and the infrastructure; street layout, including measures to restrain the speed of vehicles to 20mph; and a parking strategy, including the provision of secure cycle parking facilities for each dwelling. Development shall be carried out in accordance with the approved Transport Master Plan.

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

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

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

**Date: 15 October 2013**

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**Town and Country Planning Act 1990**

**Appeal by**

**Barwood Strategic Land II LLP and Mr and Mrs G Skipper**

**Land at Red House Farm, Lower Outwoods Road, Burton-  
upon-Trent, Staffordshire DE13 0QX**

Inquiry opened on 21 August 2013

Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire DE13 0QX

File Ref: APP/B3410/A/13/2197299

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**File Ref: APP/B3410/A/13/2197299**

**Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire DE13 0QX**

- 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 Barwood Strategic Land II LLP and Mr and Mrs G Skipper against the decision of East Staffordshire Borough Council.
- The application Ref P/2012/01215, dated 25 September 2012, was refused by notice dated 20 March 2013.
- The development proposed is erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all existing buildings.

**Summary of Recommendation: That the appeal is allowed and that outline planning permission be granted.**

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## 1 Procedural Matters

- 1.1 The Inquiry opened on 21 August 2013 and sat for 4 days on 21, 22, 23 and 28 August and was closed on 28 August 2013.
- 1.2 On the afternoon of 23 August 2013, I made an accompanied visit to the site and the surrounding area.
- 1.3 The application was submitted in outline form with all matters of detail reserved for subsequent approval. The application documents and plans are listed in Appendices B<sup>1</sup> and C<sup>2</sup> respectively.
- 1.4 At the Inquiry an application for a full award of costs was made by the appellants against East Staffordshire Borough Council. This application is the subject of a separate Report.
- 1.5 A unilateral undertaking, dated 23 August 2013<sup>3</sup>, has been executed under section 106 of the above Act. It makes provision for contributions towards waste, education, affordable housing, open space, landscaping and sustainable drainage, highway and traffic calming works, and a Travel Plan. Areas of open space, landscaping and sustainable drainage have been identified on the Illustrative Masterplan Drawing Number INCLA\_N131.101<sup>4</sup>. The appellants have contested the Council's position regarding affordable housing provision and have consequently left a range of options in the unilateral undertaking. The obligations are the subject of further consideration in this Report.
- 1.6 As the appeal involves a proposal for residential development of over 150 units and is on a site of over 5 hectares, it was recovered for the Secretary of State's (SofS's) own determination by letter dated 20 May 2013. On 25 July 2013 Janet Hodson, JVH Town Planning Consultants Ltd applied for Rule 6 status in order to ask questions regarding the Council's housing land supply, on the basis of the adjournment of Appeal Ref APP/B3410/A/13/2193657 regarding development on land at Forest Road, in which she is the agent for that appellant. She was granted Rule 6 status in a letter dated 29 July 2013 and was legally represented at the Inquiry.
- 1.7 A Statement of Common Ground<sup>5</sup> (SOCG) has been prepared by the appellants and agreed by East Staffordshire Borough Council (the Council). The statement records the description of the site, including agreed dimensions, and the area, planning history of the site, the development plan and any draft development plan, relevant guidance and other matters agreed. The matters of disagreement that it records include affordable housing provision, whether the Council has a 5 year housing land supply, the weight to be attributed to the saved policies of the East Staffordshire Local Plan 2006 (ESLP), whether the current development boundaries should be observed, and whether the landscape and visual impact of the proposal requires the appeal to be dismissed.

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<sup>1</sup> Documents SD5d to SD5s and SD7

<sup>2</sup> Plans SD4, SD5a and SD5b

<sup>3</sup> Document INQA13

<sup>4</sup> Plan SD5a

<sup>5</sup> Document SOCG

## **2 The Site and Surroundings**

- 2.1 The appeal site is about 13.4 hectares and includes a group of large warehouse and office buildings, agricultural land, much of which is being used for turf growing, and a single dwelling. It is on a level plateau and includes some of the slope up to it that has tree and hedgerow planting. Access to the land is from Lower Outwoods Road and Reservoir Road up relatively steep gradients. These roads have residential properties fronting them and residential streets off them.
- 2.2 The site is located to the west of Burton-upon-Trent town centre, outside the limits of development shown on the Proposals Map but adjacent to the settlement boundary, lying between the neighbourhood areas of Shobnall, Horninglow, Branston and Outwoods. Outwoods reservoir is to the south east of the site and there is open countryside with some National Forest planting to the west. A public footpath runs from a 'Pleasure Ground' adjacent to the A38 trunk road up a steep incline past the reservoir and along the north east boundary of the site, heading in a north westerly direction over stiles in hedgerows and across open fields.

## **3 Planning Policy**

- 3.1 The West Midlands Regional Spatial Strategy (RSS), together with the saved policies of the Staffordshire and Stoke on Trent Structure Plan 1996-2011 (SSSP), were revoked on 20 May 2013. Consequently, at the time of the Inquiry, the Development Plan comprised the saved policies of the ESLP<sup>6</sup>. The ESLP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004.
- 3.2 ESLP Policy H2 seeks to manage the release of housing sites by ensuring that urban sites on previously developed land are released for development before greenfield sites. ESLP Policy NE1 establishes criteria for considering new development outside settlement boundaries shown on the Inset Plans. ESLP Policy BE1 seeks to ensure that new development responds positively to the context of the surrounding area and is a high quality design. Amongst the factors that shall be considered are (b) how elements of open spaces in the development relate to each other, the proposed buildings, the characteristics of the site and the landscape's character and appearance; and (e) how the height of the development relates to the height of the surrounding development and any vistas, views or skylines.
- 3.3 Supplementary Planning Guidance (SPG): *Planning for Landscape Change*<sup>7</sup> identifies the appeal site as being of 'Settled Plateau Farmland Slopes' Landscape Character Type within the 'Needwood Claylands Regional Character Area 68'<sup>8</sup>. The SPG consists of 3 volumes and indicates that it is guidance to the SSSP.
- 3.4 The National Planning Policy Framework (Framework) was published on 27 March 2012 and sets out the Government's policies and its aim to achieve

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<sup>6</sup> Document SD6

<sup>7</sup> Document SD8

<sup>8</sup> Document SD8 Volume 3 appendix 1 Maps 2 and 3

sustainable development. Paragraph 7 gives the three dimensions to sustainable development: economic, social and environmental and paragraph 8 states that these roles should not be taken in isolation because they are mutually dependent. Paragraph 14 establishes the importance of a presumption in favour of sustainable development. With regard to the implementation, Annex 1 paragraph 215 requires due weight to be given to relevant policies in existing plans according to their degree of consistency with the Framework, following 12 months from the day of its publication.

#### **4 The Proposal**

- 4.1 The appeal proposal is an outline submission, with all matters reserved, for the erection of up to 250 dwellings, including affordable housing. The development would also include landscaping, woodland planting, public open space and land for an attenuation pond as part of a Sustainable Urban Drainage System (SUDS).
- 4.2 The Illustrative Masterplan<sup>9</sup> identifies a layout for the scheme that shows the proposed dwellings occupying about 9.6 hectares on the east side of the site and the open space, landscaping, woodland planting and attenuation pond occupying the west side of the site. The main access would be from Reservoir Road, making use of an existing gated access, with access onto Lower Outwoods Road being only available for ambulances and buses through the introduction of control measures. This would provide a through route for these vehicles.

#### **5 The Case for Barwood Strategic Land II LLP and Mr and Mrs G Skipper**

*I have reported the case on the basis of the closing submissions<sup>10</sup> with additional references to the evidence submitted prior to and during the Inquiry. The material points are:*

- 5.1 At the close of this Inquiry the Council's case is now that it formally accepts that it has no 5 year housing land supply; its landscape consultant requested that on the site visit the Inspector should concentrate on the green corridor from Burton to the appeal site and to consider the view from just one of the viewpoints identified in the Landscape and Visual Impact Assessment (LVIA)<sup>11</sup> and agreed in the SOCG; paragraph 14 of the Framework is in play in this case by reason of the fact that the ESLP was only ever intended to make housing provision until 2011 and boundaries drawn pursuant to Policy NE1 reflected those past needs up to 2011 (and not housing needs in 2013); paragraph 14 of the Framework also applies by reason of the absence of a 5 year housing land supply; paragraph 14 of the Framework requires that the benefits of development must be weighed against the disadvantages; and the balance required by paragraph 14 had not been undertaken in the Committee Report and the Council witnesses' evidence.
- 5.2 The Council's case is therefore one which completely fails to address the issues that the Framework requires that it should and is therefore fundamentally

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<sup>9</sup> Plan SD5a

<sup>10</sup> Document INQA14

<sup>11</sup> Document INQA2

flawed on the basis of the above admissions at the Inquiry. The balancing exercise that will need to be undertaken before reaching a conclusion should be done against the background of a Council which has failed to carry out its responsibilities to maintain a 5 year housing land supply and to consider this appeal application in accordance with the presumption in favour of the grant of planning permission where the housing land supply policies are out-of-date, where there is no 5 year housing land supply and the development boundary policy identified in the reasons for refusal is agreed to be out-of-date.

#### *Five Year Housing Land Supply*

- 5.3 With regard to the available housing land supply, the Council's June 2013 calculation uses the housing requirement figure of 11,648 dwellings to be delivered between 2012 and 2031 at 613 dwellings per year. The housing supply consists of 1470 dwellings from sites with planning permissions, reduced by a 10% lapse rate, 1435 dwellings on deliverable sites and 450 dwellings from windfalls. This gives a housing supply figure of 4.60 years<sup>12</sup>.
- 5.4 It is the Council's own case that its Annual Monitoring Report (AMR) figures are not accurate. The Table below<sup>13</sup> shows that the AMRs have been amended frequently.

Period Covered	Council's Figures <sup>14</sup>	AMR 2007	AMR 2008	AMR 2009	AMR 2010	AMR 2011
2006/07	615	218	218	550	550	550
2007/08	739		482	618	618	627
2008/09	588			429	429	465
2009/10	415				207	255
2010/11	419					313
2011/12	524					
2012/13	270					

- 5.5 There has been no definitive audit trail produced by the Council to the Inquiry to demonstrate that the latest figures are correct and reliable. There is no audit trail based on relevant documents and verified by site visits to show that the latest iteration of the figures is correct. The latest figures are therefore the Council's latest estimate but must have a strong health warning attached to them.
- 5.6 The Council's annual target figure of 613 has not been objectively assessed or tested. Another untested annual figure of 470 has recently been promoted by the Council. The RSS Panel Report's figure of 650 is the appropriate yardstick as the Honeybourne<sup>15</sup> and Winchcombe<sup>16</sup> appeal decisions make clear. The Council<sup>17</sup> was unable to give one example of the SofS relying on a figure set in an emerging Local Plan.

<sup>12</sup> Document EA5 appendix 4

<sup>13</sup> Document INQA1 page 2 Table in paragraph 3

<sup>14</sup> Document EC4 page 16 Table in paragraph 5.14

<sup>15</sup> Document EA5 appendix 26 paragraph 20

<sup>16</sup> Document EA5 appendix 25 paragraph 7

<sup>17</sup> Oral evidence given by Anna Miller

- 5.7 With regard to whether a 20% buffer should be applied for persistent under-delivery, even if the 613 target figure is used, the Council has not reached its target figure in any one of the last 5 years<sup>18</sup>. The Moira Road<sup>19</sup> appeal decision demonstrates the wisdom of looking back a 5 year period. The moratorium does not justify this level of underperformance over the last 5 year period where it was no longer in place. This is clearly a 20% authority.
- 5.8 In considering whether past shortfalls should be addressed in the next 5 years (Sedgefield approach) or over the next 18 years to the end of the plan period (Liverpool approach), the development plan process has not established that the shortfall should be dealt with in any particular way. Therefore, appeal decisions should provide a useful pointer and those decisions made that follow the Liverpool approach are under challenge. The Sedgefield approach is favoured because that is consistent with the Government's commitment to boost housing growth and boost the economy. The Council should be required to set about clearing its backlog now.
- 5.9 In terms of housing supply, the case on the smaller supply sites, delivery from them and windfalls is set out fully in the evidence<sup>20</sup>. The Council has failed to produce 'compelling evidence' to support its inclusion of windfall sites in its supply, as required by paragraph 48 of the Framework<sup>21</sup>. The 310 dwellings on the Lawns Farm site<sup>22</sup>, 120 dwellings on the JCB Pinfold site<sup>23</sup> and 120 dwellings on the Pirelli site<sup>24</sup> should not be included as being deliverable. However, the big issues relate to the correct target figure, whether this is a 5% or 20% authority and how to deal with shortfalls.
- 5.10 Not only does the Council not have a 5 year housing land supply but, correctly calculated, its supply is more like 2.37 years<sup>25</sup>. The Council cannot afford to await adoption of its emerging Local Plan, which will not be tested until next year and the Council agrees can be given little weight. If additional housing land is found to be required in the local plan process, the areas which were considered in 3 out of the 4 preferred options<sup>26</sup> included the appeal site location. Release of the appeal site now is essential if the Council is to make inroads into its unsatisfactory 5 year supply position. Should the SofS grant planning permission, the schedule of expected completion for the development and rates of delivery would ensure that all the proposed houses would be delivered in 5 years<sup>27</sup>.

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<sup>18</sup> Document EA5 Tables on pages 43-44

<sup>19</sup> Document EA5 appendix 30 paragraph 20

<sup>20</sup> Documents EA5 and EA7

<sup>21</sup> Document EA7 paragraphs 2 and 3

<sup>22</sup> Document EA5 paragraph 5.65, page 51

<sup>23</sup> Document EA7 paragraph 4

<sup>24</sup> Document EA7 paragraph 5

<sup>25</sup> Document EA7 page 2

<sup>26</sup> Document EA5 appendix 13

<sup>27</sup> Oral evidence given by Mr Fenwick at the Inquiry

### *Landscape*

- 5.11 With regard to landscape impact, of all the development sites shown on the appellants' housing location plan<sup>28</sup>, only the appeal site and Forest Road have been subjected to landscape analysis by Mr McKenna, on behalf of the Council. If the Council had wanted a fair assessment of the sites it should have examined all of them. Factors which prompt Mr McKenna to object to the appeal project, including development of Burton westwards into the open countryside, apply also to Outwoods Farm (Hallam) and Lawns Farm. In the case of development on land South of Branston (St. Modwen) the expansion of Burton involves substantial extension of the town to the south. These developments are all regarded by the Council as having acceptable landscape effects even though their encroachment into the countryside would be very much more expansive than the current appeal proposal.
- 5.12 Mr McKenna's engagement and his company's request to know whether the Council favoured the appeal site calls into question the 'independent expert assessment'. The February 2013 Review<sup>29</sup> does not suggest (as Mr McKenna does in his July 2013 assessment) that the site has 'high sensitivity'. The other criticism in the February 2013 Review is that insufficient weight is given to visual receptors. However, the site is not even visible from some of the viewpoints, as Mr McKenna subsequently confirmed<sup>30</sup>.
- 5.13 Mr McKenna's July 2013 assessment upgrades the site to 'High Landscape Sensitivity'. No one else has assessed the landscape as being of this standard. This is hard to square with the sensitivity that would be ascribed to an AONB or with the SPG<sup>31</sup> which regards the area as a candidate for 'enhancement'.
- 5.14 Mr McKenna<sup>32</sup> accepted that the specific locations he identified in his proof of evidence as being of concern (the canal etc) had no view of the site. Even where there is visibility, the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA3)<sup>33</sup> makes clear it is necessary to judge the susceptibility of the receptor to change and judge the value attached to that view. In that context, the view along the 'green corridor' has already got visibility of built development travelling west and this is more apparent on the journey east. There would be change but that is inevitable with any peripheral development and wider planning considerations dictate that peripheral development of towns is likely to be the most sustainable form of additional housing provision<sup>34</sup>. This is the approach taken in the emerging Local Plan which allocates (insufficient) urban extensions. The reasons given for rejecting the appeal site in the Preferred Options document<sup>35</sup> do not include a landscape reason.

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<sup>28</sup> Plan INQA

<sup>29</sup> Document EC2 appendix 1

<sup>30</sup> Oral evidence of Mr McKenna given in cross examination at the Inquiry

<sup>31</sup> Document SD8

<sup>32</sup> Oral evidence of Mr McKenna given in cross examination at the Inquiry

<sup>33</sup> Document INQA4 page 99

<sup>34</sup> Agreed by Mr McKenna and Anna Miller under cross examination at the Inquiry

<sup>35</sup> Document INQA9 pages 68 and 69

- 5.15 The land is an unremarkable bit of countryside on the edge of Burton. Mr McKenna stated how surprised he was to see what little visibility there was of the site when he carried out his site visit<sup>36</sup>. The local Councillor<sup>37</sup> did not say one word about landscape when voicing local people's concerns until it was drawn to his attention. The Council has complained about the development joining up Horninglow and Shobnall<sup>38</sup>, but this formed no part of its case at the Rule 6 stage. Similarly, the Council has put a case forward based on loss of hedgerows<sup>39</sup> which also has not been raised in its statement of case.
- 5.16 In conclusion, the landscape impacts of this development are remarkably limited and local in terms of their impact. There exists the opportunity to soften the edge of development through careful landscaping treatment and a large area of the site to the west would be devoted to a public open space area accompanied by woodland planting. Any resulting harm to the landscape must be balanced against the benefit associated with the development.

*The Balance*

- 5.17 The scheme's benefits would include the provision of much needed market housing and affordable housing, with some 38 units on site, against the Council's own identified requirement of 169 affordable dwellings per year<sup>40</sup>. It would also help to promote healthy communities by providing a direct link between Reservoir Road and Lower Outwoods Road which would be available for use by both buses and emergency vehicles to and from the hospital complex at the bottom of Lower Outwoods Road<sup>41</sup>. This is supported by the Burton Hospitals NHS Foundation Trust and the West Midlands Ambulance Service NHS Foundation Trust<sup>42</sup>.
- 5.18 Additional benefits would be from improvements to public transport by a new route through the site serving the hospital which at the moment is a 'turn around' destination. The appellant would fund a 30 minute headway service from the hours of 0700 to 1900 Mondays to Fridays, secured through a planning obligation<sup>43</sup>. The proposal would address local concerns about its effect on safety at Shobnall Road Primary School through highway improvements to Reservoir Road/Shobnall Road, including the rationalisation of parking<sup>44</sup>. The Council would receive a New Homes Bonus of about £1.56 million, the house building would provide a boost to economic growth by employment during construction and, when completed, the new residents of the development would provide economic benefits through expenditure into the local economy and Council tax revenues<sup>45</sup>.

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<sup>36</sup> Oral evidence of Mr McKenna given at the Inquiry

<sup>37</sup> Oral evidence of William Ganley given at the Inquiry

<sup>38</sup> Oral evidence given by the Council's witnesses at the Inquiry

<sup>39</sup> Cross examination of Dai Lewis

<sup>40</sup> Document EA5 paragraphs 4.2 to 4.7, pages 31 and 32

<sup>41</sup> Document EA5 paragraphs 4.8 to 4.14, pages 32 to 34

<sup>42</sup> Document EA5 appendix 21

<sup>43</sup> Document EA5 paragraphs 4.15 to 4.16, page 34

<sup>44</sup> Document EA5 paragraph 4.17, page 34 and appendix 22 page 12 and Transport

Assessment Document SD5q appendix H

<sup>45</sup> Document EA5 paragraphs 4.18 and 4.19, pages 34 and 35

- 5.19 If the above benefits had been weighed against landscape impacts, as they should have been, the benefits far outweigh the disadvantages and planning permission should have been granted.

*Highway Issues*

- 5.20 Criticism has been made of Staffordshire County Council (SCC) as Highway Authority. There is no evidence that by not objecting to the scheme it has acted inappropriately or wrong headedly<sup>46</sup>. Phil Jones Associates have produced a Transport Assessment<sup>47</sup> and a Highways Appeal Statement<sup>48</sup> which address the highway and transportation issues<sup>49</sup>. Reservoir Road is indeed steep but this does not represent an insuperable barrier to its present residents and the through route for the bus would ensure better road surface treatment in winter<sup>50</sup>. There is no evidence that any 'severe' transportation problems within the meaning of paragraph 32 of the Framework exist.

*Other Issues*

- 5.21 With regard to drainage, the Environment Agency has raised no objection and a full Flood Risk Assessment was submitted with the application. Severn Trent has not raised any objection regarding foul or surface water drainage, subject to the imposition of a planning condition<sup>51</sup>.

*Planning Obligations and Affordable Housing*

- 5.22 The only issue with the planning obligations in the S106 unilateral undertaking is whether the Council's claim for greater than 15% of affordable housing is justified. The Council agree that Appendix 1 to the Supplementary Planning Document (SPD)<sup>52</sup> should determine what percentage of affordable housing should be provided. The unilateral undertaking covers both the Council's case (22.5%) and the appellants' case (15%). The SPD Appendix 1<sup>53</sup> has only three categories of site: Urban Brownfield- 10%, Urban Extension- 15% and Rural Sites- 30% and states that '*...these are the affordable housing contributions currently being sought*'. Both urban brownfield sites and urban extension sites are defined: '*Urban brownfield sites means brownfield sites within the development boundaries of Burton and Uttoxeter*' and '*Urban extension sites means large greenfield sites adjacent to the development boundaries of Burton and Uttoxeter*'. There is no definition of a rural site. The definition section simply says: '*The Affordable Housing Viability Study indicates that viability on other sites is likely to be the same as on rural sites*'.
- 5.23 The reference to 'other sites' in the context of the Affordable Housing Viability Study (AHVS) does not include the appeal site for the following two reasons:

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<sup>46</sup> Oral evidence given by Philip Jones at the Inquiry

<sup>47</sup> Document SD5q

<sup>48</sup> Document EA5 appendix 22

<sup>49</sup> Document EA5 paragraphs 8.5 to 8.7

<sup>50</sup> Oral evidence given by Philip Jones at the Inquiry

<sup>51</sup> Document EA5 paragraphs 8.4, 8.10(f) and (g)

<sup>52</sup> Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

<sup>53</sup> Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

- (i) The AHVS forms part of the evidence base which led to formulation of the policy. The theoretical urban extension it looked at was a site of 2,000 dwellings, which is larger than the Outwoods Farm development (950) and the South of Branston Development (650). On a sensible pragmatic basis, all large urban extension sites should be treated the same way ie 15% affordable housing without the need for site owners to disprove that they could 'afford' more. At both of the latter sites the Council has accepted 15% affordable housing. There is no justification by reference to the AHVS for 30% to be applied to the appeal site as a starting point.
- (ii) The appeal site is obviously an 'urban extension site' which is 'large'. For the purposes of the Preferred Option document 'Strategic Sites' are defined as '100 units and over'<sup>54</sup>. This means that 15% is the appropriate amount. This assessment of the site as a large greenfield site is also consistent with the approach taken by the Council in 'Greenfield Land Release' where 50 units was regarded as likely to be the largest size unit of greenfield release<sup>55</sup>.

5.24 The Council has received the AHVS and translated that into policy in Appendix 1 of the SPD<sup>56</sup>. It has not drawn a distinction in policy between categories of large urban extensions. There is no policy justification for using 30% as the starting point for debate on affordable housing in this case where the appeal site is very obviously a large urban extension within the meaning of policy. Neither Land south of Branston nor Outwoods Farm were obliged to demonstrate a viability justification for less than 30%. Whether they could afford more was a question never put to them and it would be irrelevant in terms of policy if it had been. If the SofS regards the appeal site as a 'large urban extension' then 15% would be the appropriate amount of affordable housing<sup>57</sup>. On any sensible analysis the site is a large urban extension and the Community Infrastructure Levy (CIL) Regulation 122 compliant figure is 15%.

#### *Overall Conclusions*

- 5.25 The proposal enjoys the presumption in favour of sustainable development. There are inevitable landscape changes associated with it but greenfield development has been recognised as essential to accommodate necessary housing development by the Council. In terms of the environmental role of sustainable development, it is agreed in the SOCG that the proposal would result in net gains for biodiversity<sup>58</sup>.
- 5.26 The Inspector is requested to recommend grant of planning permission and the SofS is requested to follow that recommendation.

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<sup>54</sup> Document INQA9 paragraph 5.124, pages 71 and 72 and orally accepted by Mr Payne at the Inquiry

<sup>55</sup> Document EA5 appendix 18 paragraph (5) page 6

<sup>56</sup> Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

<sup>57</sup> Orally agreed by Mr Payne at the Inquiry

<sup>58</sup> Document SOCG paragraph 6, 5th point

## 6 The Case for East Staffordshire Borough Council

*I have reported the case on the basis of the closing submissions<sup>59</sup> with additional references to the evidence submitted prior to and during the Inquiry. The material points are:*

### *Housing Supply and Policy*

- 6.1 The Preferred Option plan, published in 2012, consolidated the work of the 2011 Strategic Options consultation and an evidence based framework within which a Preferred Option spatial strategy was determined. The basis of the spatial strategy was housing evidence prepared by GVA which set out the Council's objectively assessed need. The Local Plan also revised the plan period to 2012-2031 to align with published housing and population information. Housing need was identified as 8935 dwellings over the plan period which equates to 470 dwellings per year<sup>60</sup>. At the time the appeal application was refused, the Council used this housing requirement to demonstrate a 5 year supply at 6.02 years<sup>61</sup>.
- 6.2 The Council published in July 2013 evidence supporting a new housing land requirement<sup>62</sup> in which it was increased to 11,648 houses over the plan period. This equates to an annual housing requirement of 613 units<sup>63</sup>. It is acknowledged that this housing requirement figure has not been tested through examination but independent verification has been undertaken to arrive at the set of assumptions that underpin the housing modelling.
- 6.3 The spatial strategy in the pre-submission plan will comprise a mix of both brownfield and greenfield sites to meet the housing requirement of 613 dwellings per year. The appeal site will not form part of the new spatial strategy and there are other more sustainable sites to meet the housing requirement<sup>64</sup>.
- 6.4 The Council's methodology includes a 5% buffer, as it does not consider that it has a record of persistent under-delivery to justify a 20% buffer. Its recent housing deficit is caused by a dearth of completions on account of the recession rather than a lack of planning permissions. This approach is supported by the Local Government Association guidance<sup>65</sup>. Technically the only adopted target that has been in place since 2006 is that set in the now revoked Regional Plan of 433 dwellings per year for East Staffordshire. The revised target of 12,900 houses was included in the preferred option Phase 2 RSS revision and endorsed through the publication of the Panel Report in September 2009, which recommended 13,000 (650 dwellings per year). No work has been undertaken on the RSS Phase 2 Review since the announcement in 2010 of the intention to revoke regional strategies. Against the uncertainty of the housing target and a severe economic downturn, the

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<sup>59</sup> Document INOC13

<sup>60</sup> Document EC4 paragraph 4.13

<sup>61</sup> Document EC4 paragraph 5.4

<sup>62</sup> Document EC4 appendix 5

<sup>63</sup> Document EC4 paragraph 5.3

<sup>64</sup> Document EC4 paragraph 4.17

<sup>65</sup> Document INQR1 page 15 second paragraph

Council has continued to supply housing at a significant rate and for the most part ahead of the RSS target of 433 dwellings per year<sup>66</sup>.

- 6.5 The Council has spread the under delivery since 2006 over the plan period (Liverpool approach) to cross economic cycles. There is no guidance as to how to deal with under delivery. The level of growth coming forward in the emerging Local Plan will deliver the Council's housing requirement supplemented by windfall development which historically has come forward unabated. Previous under delivery has also been a consequence of a moratorium<sup>67</sup>.
- 6.6 The housing supply includes a windfall supply figure of 90 dwellings per year. Mr Fenwick has agreed that the Council's methodology was sound and that the provision was correct but should not be applied in years 1 and 2 of the period<sup>68</sup>. He changed his position and stated in his Addendum Proof<sup>69</sup> that the Council's windfall allowance was unconvincing.
- 6.7 Of the deliverable sites that the Council has included in its housing supply, the JCB Pinfold Road site (120 dwellings) gained planning permission following the signing of a S106 agreement and planning permission for the Pirelli site (120 dwellings) is awaiting a signature from SCC on a S106 agreement. The supply also includes a contribution of 310 dwellings from the Lawns Farm site, which is due for determination at the September Committee with an officer recommendation for approval<sup>70</sup>. The delivery rates for this development are based on those confirmed by the potential developer<sup>71</sup>. The Council's assessment is not over optimistic and has been vindicated by events.
- 6.8 In identifying that it has a 5 year housing supply the Council has used its July 2013 calculation, which adjusted its June 2013 calculation to include an additional supply of dwellings on deliverable sites to give a housing supply figure of 5.35 years<sup>72</sup>. At the Inquiry, the Council has accepted that its July 2013 calculation does not comply with the recognised procedure for calculating the 5 year housing supply given in paragraph 47 of the Framework, which requires local planning authorities to identify and update annually a supply of specific deliverable sites<sup>73</sup>. It has issued a statement that confirms this and that it cannot demonstrate a 5 year housing land supply<sup>74</sup>.
- 6.9 At the Inquiry the Council has accepted that ESLP Policy NE1 is out-of-date, since it is based upon old data, and it cannot demonstrate a 5 year housing land supply. As a consequence, it follows that saved policies of the ESLP are out-of-date. In these circumstances, to dismiss the appeal, the SofS must be satisfied that the proposal is likely to cause significant and demonstrable harm to the landscape which outweighs the undoubted benefits of the scheme.

<sup>66</sup> Document EC4 paragraphs 5.9 to 5.19

<sup>67</sup> Document EC4 paragraphs 5.20 to 5.22, page 18

<sup>68</sup> Document EA5 paragraphs 5.39 and 5.40

<sup>69</sup> Document EA7 paragraphs 1 and 2

<sup>70</sup> Oral evidence given by ANNA Miller at the Inquiry

<sup>71</sup> Document EC4 paragraph 5.29 and oral evidence given by Anna Miller at Inquiry

<sup>72</sup> Document EC4 appendix 7

<sup>73</sup> Oral evidence given by Anna Miller in cross examination by the Rule 6 Party at the Inquiry

<sup>74</sup> Document INQC4

### *Landscape and Visual Amenity*

- 6.10 The Council's Planning for Landscape Change SPG<sup>75</sup> gives the relevant Landscape Character Type that includes the appeal site as 'Settled Plateau Farmland Slopes'. It observes that the 'deterioration of landscape quality is greatest at the immediate urban fringe'. The appeal site can be seen to occupy such a sensitive location. Further, the SPG states '*this landscape character type is locally sensitive to the impacts of development and land use change*'<sup>76</sup>. Therefore, the appeal site occupies a particularly sensitive portion of the wider Landscape Character Type area.
- 6.11 The site enjoys high sensitivity on account of the following specific characteristics.
- (i) The area comprising the appeal site provides a piece of open countryside in close proximity to the western side of Burton. It functions as a green corridor which connects Burton with its rural hinterland<sup>77</sup>. Heading westward out of the town and having crossed the canal, one enters a green space out into the countryside<sup>78</sup>.
  - (ii) The site has high amenity value due to its close proximity to the town centre and the fact that easy public access is enjoyed by not only a formal public right of way, which is well used, but also a number of informal footpaths. The sensitivity of the users of the public right of way along the perimeter of the appeal site should be characterised as 'high', as it is used by members of the public for recreation (to walk the dog etc)<sup>79</sup> and for people who live in the town to walk out from it and enjoy the countryside on their doorstep. Therefore, the attention or interest of people who use this public right of way is likely to be focused on the landscape and on particular views, which is the test applied in GLVIA3 to determine the visual receptors most susceptible to change<sup>80</sup>.
  - (iii) The topography means that it is inevitably more visually prominent and clearly visible from Burton.
- 6.12 The Council's Planning for Landscape Change SPG confirms that the site enjoys moderate landscape quality on account of the fact that it requires landscape enhancement<sup>81</sup>. It continues to have a rural appearance and members of the public who use the public footpaths continue to perceive it as a well-mown meadow<sup>82</sup>. Further, about 83% of the perimeter of the appeal site comprises green fields<sup>83</sup>. The use of GLVIA2 rather than GLVIA3 by Mr McKenna in his

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<sup>75</sup> Document SD8

<sup>76</sup> Document SD8 Volume 3 page 134 second paragraph

<sup>77</sup> Oral evidence given by Dai Lewis in cross examination at the Inquiry

<sup>78</sup> Oral evidence given by Mr McKenna in cross examination at the Inquiry

<sup>79</sup> Document EC2 appendix 2 paragraph 3.5 page 8

<sup>80</sup> Document INQA4 paragraph 6.33, page 113

<sup>81</sup> Document SD8 Volume 2 Map 1, page 4

<sup>82</sup> Oral evidence given by Mr McKenna at the Inquiry

<sup>83</sup> Oral evidence given by Mr McKenna at the Inquiry

appraisal makes no difference to the findings<sup>84</sup>. The appraisal ascribes a high sensitivity to the landscape and the magnitude of change as medium<sup>85</sup>.

- 6.13 The proposal would cause major to moderate significant adverse harm<sup>86</sup> for the following reasons.
- (i) Coalescence would take place between Horninglow and Reservoir Road. Currently, there is an important well-used and valuable green corridor. This would be replaced by housing which would have the effect of joining the 2 existing urban forms. It would extend Horninglow southward into the countryside and reduce the identity of the 2 areas<sup>87</sup>.
  - (ii) The proposed built development would enclose the escarpment woodlands and the green fields to the east<sup>88</sup>. This would have the effect of divorcing the north west quadrant of Burton from its rural hinterland.
  - (iii) The integrity of the landscape would be harmed. The Landscape Character Type notes that a characteristic landscape feature is an '*irregular hedged field pattern*'. This important landscape feature would be lost by the proposed development of up to 250 houses, even if the hedgerow in question would be largely maintained<sup>89</sup>.
  - (iv) Views of Burton would end in the roof lines of housing rather than fields and woodland because of the site's location on a plateau<sup>90</sup>.
  - (v) The proposed development would effectively push the urban edge of Burton from the A38 to Red House Farm, the escarpment woodlands becoming part of the urban area rather than the start of the countryside<sup>91</sup>.
- 6.14 The appeal site has been considered by previous Inspectors over the years. The suitability of the land including the appeal site for residential development has been consistently rejected on account of the unacceptable impact it would have on the landscape. In a 1987 decision letter, the SofS held '*the northern site presently forms an extremely prominent and attractive sloping hillside, enclosing the valley. Any development on this slope and on the high plateau would, in my opinion, be very conspicuous from the valley and would create an obtrusive skyline development. These elements would in my view significantly diminish the open, attractive quality of this western approach to Burton-upon-Trent*'<sup>92</sup>. The high plateau referred to in this decision includes the current appeal site. Part of the site was assessed in 2004 during the examination of the ESLP. The suitability of the site for residential development was tested at the Inquiry into the 1995 Borough Wide Local Plan where the Inspector concluded that it was not suitable for an allocation due to its elevated position

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<sup>84</sup> Oral evidence given by Mr McKenna at the Inquiry

<sup>85</sup> Document EC2 paragraphs 5.8 and 5.9

<sup>86</sup> Document EC2 paragraph 5.9

<sup>87</sup> Oral evidence given by Mr McKenna at the Inquiry

<sup>88</sup> Document EC2 appendix 2 paragraph 3.3 page 8

<sup>89</sup> Cross examination of Dai Lewis

<sup>90</sup> Document EC2 appendix 2 paragraph 3.4 page 8

<sup>91</sup> Document EC2 appendix 2 paragraph 3.5 page 9

<sup>92</sup> Document EC4 appendix 1 paragraph 2, pages 1 and 2

and the fact that it makes 'a visual contribution' by integrating with the open countryside to the west<sup>93</sup>.

- 6.15 The first time that the appellants' witnesses became aware of the above important planning history of the site was when they had sight of the Council's evidence. This must call into question the completeness of their understanding of the planning history of the site. The appellants' case that no material harm is likely to be caused to the landscape post mitigation represents an underestimate. The Council's assessment of harm is likely to be far more accurate.
- 6.16 Local Plan Policy BE1 would be offended<sup>94</sup>. In accordance with paragraph 215 of the Framework, due weight should be given to relevant policies in the development plan according to their degree of consistency with the Framework. Therefore, full weight should be afforded to this Policy given that there is no material conflict with the Framework. Further, the appeal proposal would contravene one of the Government's core planning principles given in the 5th bullet point of paragraph 17 of the Framework that planning should recognise the '*intrinsic character and beauty of the countryside*'.
- 6.17 The users of public rights of way and the occupants of dwellings in the immediate vicinity of the appeal site should be characterised as highly sensitive receptors. The adverse change of outlook would not be so harmful so as to constitute harm to residential amenity, but the harm to visual amenity weighs against the appeal in the final planning balance.

#### *Other Matters*

- 6.18 The appeal site was included in the Council's sustainability appraisal<sup>95</sup>, as all sites in the Council's SHLAA<sup>96</sup> were included. This assessment did not accord with PPS12<sup>97</sup> given that it was not accompanied by a full sustainability assessment or a habitats assessment. As a result, this part of the evidence base would not have met the test of soundness at a Local Plan examination<sup>98</sup>. Therefore, it would be unwise to attach much weight to it now. It has been superseded by subsequent work. The later Preferred Options paper identified Option '2d'<sup>99</sup>, which excludes the appeal site. Accordingly, it can be seen that, following a fuller evaluation, other sites on the periphery of Burton were found by the Council to have been more sustainable than the appeal site.

#### *Affordable Housing*

- 6.19 In respect of the unilateral undertaking, the higher 22.5% affordable housing requirement is compliant with CIL Regulation 122. The 22.5% affordable housing requirement accords with the Council's SPD<sup>100</sup>. The SPD states in

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<sup>93</sup> Document EC4 appendix 3 paragraphs 10.83 and 10.84

<sup>94</sup> Oral evidence of Mr Fenwick in cross examination at the Inquiry

<sup>95</sup> Document EA5 appendix 12

<sup>96</sup> Strategic Housing Land Availability Assessment

<sup>97</sup> Planning Policy Statement 12: Local Spatial Planning which has been superseded by the Framework

<sup>98</sup> Oral evidence given by Anna Miller at the Inquiry

<sup>99</sup> Document EA5 appendix 13

<sup>100</sup> Document EA5 appendix 39

paragraph 4.12 that the need for affordable housing is 30% of the dwellings. The appeal scheme is not an urban extension site on which 15% of dwellings are sought to be affordable in accordance with Appendix 1 of the SPD, as the scheme modelled by the viability assessment was for 2,000 dwellings, and it was the size and resulting complexity of such a scheme which introduced additional costs that reduced viability. The scheme should be treated as an 'other site' in Appendix 1 and start with 30% affordable housing. The contribution sought has been reduced in recognition of the scale of other obligations and the proposed density of the scheme<sup>101</sup>.

- 6.20 If it is concluded that the SPD's 15% affordable housing requirement is more consistent with the site, the scheme remains viable when applying the higher 22.5% figure. In these circumstances, the 22.5% figure remains compliant with CIL Regulation 122. In light of the Government's intention to boost significantly the supply of affordable housing given in paragraph 47 of the Framework, there are very good public policy reasons to select the higher figure.

#### *Conclusions*

- 6.21 There are a number of important benefits of the appeal proposal. However, the significant and demonstrable harm caused to the landscape and visual amenity outweighs these undoubted and significant benefits. The appeal proposal is unacceptable for the reasons given. The proposed development contravenes the thrust of the development plan and an important core principle of the Framework. Therefore, the SofS is invited to dismiss the appeal.

## **7 The Case for the Rule 6 Party: Janet Hodson, JVH Town Planning**

*I have reported the case on the basis of the proof of evidence of Janet Hodson<sup>102</sup> with additional references to the evidence presented at the Inquiry. The material points are:*

#### *Five Year Housing Land Supply*

- 7.1 The housing requirement for the Council should be the RSS requirement of 650 dwellings per year over the period of 2006 to 2026. These figures were examined and tested at an examination by the Panel and are the only tested figures available. The figure of 613 dwellings per year that the Council has used from a new report by GVA in June 2013 for a new plan period of 2012 to 2031 is completely untested and has not as yet been the subject of any consultation.
- 7.2 With regard to the Council's existing planning permissions, the detailed investigations that JVH has carried out on larger sites of over 10 dwellings concludes that the supply from this source comprises some 860 dwellings<sup>103</sup> compared to the Council's 1,323 dwellings, allowing for a 10% lapse rate. This element of the Council's land supply is flawed in that it is reliant upon sites which will not deliver homes in the 5 year period.

<sup>101</sup> Document INQC2

<sup>102</sup> Document ER1

<sup>103</sup> Document ER1 appendix 2

- 7.3 In terms of other deliverable sites, JVH has investigated the Council's 17 sites that it has considered in its July 2013 calculation to deliver 1,965 dwellings in the 5 year period and has considered that the likely delivery is some 594 dwellings in that period<sup>104</sup>. The Council's approach to the delivery of these sites is not robust and the number of dwellings that will actually be delivered is far short of the number used, particularly as it has included 3 sites that were resolved to be approved at its 8 July Planning Committee, one of which (Land South of Branston<sup>105</sup>) had been the subject of an Inquiry and another (Outwoods Farm<sup>106</sup>) may be the subject of a Judicial Review.
- 7.4 The Council should not have taken account of 90 dwellings per year from windfall sites in its 5 year housing land supply, as the assumptions made by the Council do not pass the test in paragraph 48 of the Framework. This is due to a skew in the historic windfall rate as a result of a moratorium from 2005, the future larger sites being identified in the SHLAA and therefore becoming allocations, and the unreliability of past completion rates.
- 7.5 The Council should have applied a 20% buffer for persistent under-delivery, as in the last 5 years the Council has not met on the AMR figures either the 650 or 613 dwellings per year targets<sup>107</sup>.
- 7.6 Based on the deliverable planning permissions and other deliverable sites, the Council has a 1.75 year supply of housing land or, based on deliverable planning permissions and new permissions recently granted, it has a 1.51 year supply.
- 7.7 The Council has accepted at the Inquiry that its July 2013 calculations of its housing land supply that counts sites consented on 8 July 2013 is not correct in accordance with the Framework and that its June 2013 calculations have carried out this exercise correctly. On this basis, the Council has stated that it cannot demonstrate a 5 year housing land supply in accordance with the Framework<sup>108</sup>.

## 8 The Cases for Other Interested Parties

*Oral representations were made at the Inquiry by one party (Councillor W Ganley) in addition to those of the main parties. These are summarised below and are supported by a written statement<sup>109</sup>. The material points are:*

### ***Councillor W Ganley***

- 8.1 As Councillor for Shobnall Ward in which the development is proposed he is reflecting the concerns of the residents within that Ward.
- 8.2 The only access to and from the site would be via Reservoir Road, which has a very steep gradient and a school at its narrow junction with Shobnall Road.

<sup>104</sup> Document ER1 appendix 3

<sup>105</sup> Oral evidence given in cross examination of Anna Miller at the Inquiry

<sup>106</sup> Oral evidence given in cross examination of Anna Miller at the Inquiry

<sup>107</sup> Document ER1 appendix 4

<sup>108</sup> Oral evidence given in cross examination of Anna Miller at the Inquiry and Document INQC4

<sup>109</sup> Document INQO1

Also, the entrance and egress for the Lawns Farm development with 2,500 houses proposed would be almost directly opposite this junction. There are safety concerns regarding the use of the steep hill, on which winter gritters have had problems, and the additional traffic that would be generated on the road past a nursery and a school, which is very busy when parents drop off and pick up their children.

### ***Written representations***

*Written representations were made at the appeal stage by 7 parties<sup>110</sup> in addition to those of the main parties. The material points were given in the representations made by Red House Farm Action Group which are summarised below:*

#### *Red House Farm Action Group (RHFAG)<sup>111</sup>*

- 8.3 RHFAG represent local residents who came together in 2012 to object to the proposed development. It has canvassed residents in Reservoir Road, Shobnall Road, Highcroft Drive and adjacent roads, produced a letter which was signed by nearly 750 local residents and kept all of the petitioners up to date with developments. It has the following concerns about the proposal.
- 8.4 The site is outside the published Preferred Options document and so the proposed development will not have been included in the financial and demographic planning for education, health and social services.
- 8.5 There have been no significant changes to alter previous decisions made against development on the site, including decisions in appeals to the SofS. A 5 year supply of housing land has been identified and the proposed development would exceed the requirements.
- 8.6 The development would not meet sustainability criteria, including improving health and safety, improving wellbeing and respecting the environment. It would not contribute to protecting the Borough's assets for future generations, as the long term environmental impact would not be effectively mitigated. It would also not fulfil the requirements of the Framework, and in particular it would not address the cause and potential impact of climate change and not contribute to improved social and economic environmental objectives.
- 8.7 With regard to landscape, RHFAG are in agreement with the Council's Landscape Report's comment on its sensitivity. The development would have a significant landscape and visual impact and would erode the character of the rural edge, as it would be sited on an elevated plateau, as indicated in the Report. The Report also indicates that the site is agricultural greenfield land, as it is growing grass for selling as turf, and the buildings on it are agricultural and not industrial. It recognises that no amount of landscaping would hide the development and that there would be a detrimental aspect to the wider setting. Development of the appeal site could lead to development on a much larger site, as indicated in a public presentation given by the developers, with greater detrimental effect on Burton-upon-Trent's rural edge.

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<sup>110</sup> Documents EO1 to EO7

<sup>111</sup> Document EO1

- 8.8 In terms of highways and traffic, the anticipated increase in traffic on Reservoir Road is a concern to users of the Oaks Wood public footpath and local residents. There would be about a 500% increase in housing accessed from Reservoir Road which would be likely to lead to over a 500% increase in traffic. This would produce a significant increase in noise, pollution and disturbance and a decrease in safety. The proposed anti-skid treatment on the steep hill would be unlikely to be effective and would greatly increase noise. Gritting lorries have found it impossible to traverse it and vehicles have been abandoned during periods of snow and ice. The increase in traffic would make it a more dangerous manoeuvre to access the driveways of properties on the steep incline up Reservoir Road and large service vehicles could impede this access.
- 8.9 Lower Outwoods Road's steepness, narrowness and the amount of on-street parking and the gradients on Reservoir Road make it impractical to sustain the proposed circular bus route. The proposed operator of the service, Arriva, has confirmed that it would require it to be financially supported, which the appellants would only be likely to continue for a limited time. The steepness of the hills would mean that walking and cycling would not be the preferred mode of transport. Therefore, the development cannot be described as sustainable and would encourage the use of private vehicles.
- 8.10 The appellants' traffic reports were carried out during the school holidays and therefore are not representative of the true traffic movements. During school times traffic can experience lengthy delays at the Reservoir Road/B5017 Shobnall Road junction, due to the drop off and pick up of children attending Shobnall Primary School and the nursery school at the corner of this junction. The proposed double yellow lines would not alleviate this problem, but would add to concerns for the safety of school and nursery children. The survey of traffic on the B5017 does not consider on-street parking and not enough consideration has been given to the suitability of Reservoir Road or the B5017 to cater for the proposed increase in traffic movements.
- 8.11 There has not been a robust strategic traffic management plan for the appeal development and other proposed development in the Burton area. There are 3 other major developments under consideration for Shobnall, Outwoods and Henhurst Hill locations which would be dependent upon the B5017. Allowing the proposed development would have a substantial impact on localised traffic movements and increase the risk of accidents, injury and loss of life.
- 8.12 In relation to flooding and drainage, the Environment Agency (EA) has highlighted locations in the vicinity of Shobnall Brook at the junction of Reservoir Road and Shobnall Road as being in a flood risk area. Any additional water flow from the proposed development would exacerbate the drainage problems that have been encountered at times of heavy rain. Additional use of the existing sewerage would exacerbate the problems that have been encountered through leakage.

*Written representations were made at the application stage which reflect the above mentioned points<sup>112</sup>. An additional relevant point is summarised below.*

- 8.13 The appeal site provides a habitat for a large number of animals, particularly protected bats and great crested newts, which would be destroyed by the development.

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<sup>112</sup> Document SD2

## 9 Inspector's Conclusions

*The numbers in square brackets [ ] refer back to earlier paragraph numbers which are relevant to my conclusions.*

### **Policy and Housing Supply**

- 9.1 The Council has referred to saved policies in the ESLP and policies in the SSSP in its reasons for refusal. The policies in the SSSP have since been revoked and the Council accepted at the Inquiry that ESLP Policy NE1, which has been referred to in its first reason for refusal, is out-of-date. I find that this policy is out-of-date, as the settlement boundaries on the Inset Plan are those for the plan period up to 2011 which no longer reflects the current housing needs. **[3.1, 3.2, 3.4, 5.1, 6.9]**
- 9.2 The Council also agreed at the Inquiry that it cannot demonstrate a 5 year housing land supply in accordance with the Framework. It has based this acceptance on its July 2013 housing calculations not being in accordance with paragraph 47 of the Framework, due to the inclusion of sites consented in July 2013. However, the following other aspects of its calculations have been questioned by the appellants and Rule 6 Party. **[5.1, 5.3, 6.8, 6.9, 7.7]**
- 9.3 The Council's latest 5 year housing supply calculations use an annual target figure of 613 dwellings, based on the results of an independent consultant's report, which it suggests has been independently verified. It acknowledges that this figure has not been tested through examination. The report would be used as part of the evidence base for the emerging Local Plan. However, conscious of the recent judgment in *Hunston v Secretary of State for Communities and Local Government*, it has not yet been sufficiently progressed through consultation and examination to replace the RSS Panel Report requirement of 650 dwellings per year, which is the most up-to-date figure that has been examined and tested. Therefore, I find that the Council has provided insufficient justification for currently using any other housing target than 650 dwellings per year. **[5.6, 6.1, 6.2, 6.3, 6.4, 7.1]**
- 9.4 With regard to the level of the buffer that should be applied to the housing requirements in accordance with paragraph 47 of the Framework, the Council has applied a 5% buffer. Its delivery over the past 5 years has been consistently below the 650 dwellings per year in the Panel Report. However, that report was published in September 2009 and so this target should not apply to figures prior to that date. From 2006, the Regional Plan set a target of 433 dwellings per year. The housing delivery given in the Council's AMR for 2009/10 and 2010/11 are below this lower figure. Therefore, given the Council's acceptance of the inaccuracies in its AMRs over the past years, I find that it has not provided sufficient evidence to show that it has not had a record of persistent under-delivery. The Council's claim that the economic downturn has affected its housing delivery over recent years is not given as a reason in the Framework for not applying a 20% buffer in this case. **[5.4, 5.7, 6.4, 7.5]**
- 9.5 In terms of the past shortfall in housing supply, the Council has spread the under-delivery since 2006 over the remaining 18 years of the plan period between 2012 and 2031 (Liverpool approach). I find very little support for this approach, given that the Framework seeks in paragraph 47 to boost

significantly the supply of housing. Whilst there is limited guidance on how to deal with under delivery, a more effective way of significantly boosting the supply of housing would be to spread the shortfall over the next 5 year period (Sedgefield approach). The need exists now and the Council's approach could result in some of this need being met up to 18 years into the future. In this respect the Council has failed to justify the approach that it has taken to address the shortfall. **[5.8, 6.5]**

- 9.6 The evidence indicates that there is some uncertainty about the housing delivery from sites included in the Council's 5 year housing supply and the figure included for windfall sites. The Council has failed to demonstrate that it has compelling evidence that 90 dwellings per year will consistently become available from windfall sites and will continue to provide a reliable source of supply, as required in paragraph 48 of the Framework. Based on the above, I find that the Council's supply of deliverable housing is likely to be significantly below its figure of 4.60 years, calculated in June 2013. The figures given by the appellants of 2.37 years and by the Rule 6 Party of 1.51 or 1.75 years are likely to be an under estimate, given the recent planning permissions that have been granted. However, the supply of deliverable housing sites is more likely to be in the region of 3 years, based on a 650 dwellings per year target, taking account of a 20% buffer for persistent under-delivery and spreading the past shortfall over the 5 year period. **[5.3, 5.9, 5.10, 6.6, 6.7, 7.2, 7.3, 7.4, 7.6]**
- 9.7 As the Council cannot demonstrate a 5 year supply of deliverable housing sites, relevant policies for the supply of housing are not to be considered up-to-date, including ESLP Policy H2, in accordance with paragraph 49 of the Framework. A presumption in favour of sustainable development should apply to the proposed development in accordance with paragraph 14 of the Framework. In the context of the relevant policies being out-of-date, the test in this appeal is therefore whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, as no specific policies in the Framework would indicate development should be prevented here. **[3.1, 3.4, 5.1, 5.2, 6.9, 8.5]**

### ***Character and Appearance***

- 9.8 The Council's second reason for refusal is based on the effect of the proposal on the character and appearance of the area. I am satisfied that ESLP Policy BE1 referred to in this reason is consistent with the Framework and therefore significant weight should be attached to it. With regard to the SPG that has been referred to, although it indicates that the Landscape Character Type of the area that includes the appeal site is locally sensitive to the impacts of development, it also notes that it is an area for enhancement. **[3.2, 3.3, 3.4, 5.13, 6.10, 6.12]**
- 9.9 The current use of much of the site is for turf growing and the commercial activities in the warehouse and other buildings give it a less rural character than the surrounding fields. The proposed housing would replace the existing commercial buildings and dwelling that are sited near to the highest point of the plateau. The wooded part of the site on the western slope to the plateau would be retained as part of the proposal, which would include the use of this area of land for open space, additional woodland planting and sustainable

drainage. As such, the proposal would not result in the loss of countryside that has any more than a moderate landscape quality. **[2.1, 4.1, 4.2, 5.13, 5.16, 6.12, 8.7]**

- 9.10 In terms of the visual impact of the proposed development, at my site visit, I observed the appeal site from some of the most sensitive vantage points. Although it is located on a plateau, the main public views of the site are from Reservoir Road to the south, Lower Outwoods Road and parts of Denton Road to the north, and the public footpath to the north east. The mounding around the reservoir hides the site from views from Oaks Wood, the A38 and the edge of Burton, including the canal, to the south east. Other views of the site from the surrounding roads, villages and countryside are more distant and are screened by existing hedges and trees. **[2.2, 6.11]**
- 9.11 Views of the proposed development from the areas around Lower Outwoods Road, Denton Road and Reservoir Road would be in the context of the existing built development. The proposal would result in additional built development alongside the public footpath that provides access into the countryside from Burton. However, landscaping would be able to be provided along the boundaries of the site, secured by planning conditions, to ensure that the proposed buildings would not be significantly more intrusive when viewed from this footpath than the existing built development along roads off Lower Outwoods Road and the existing buildings on the site. **[5.14, 6.11]**
- 9.12 Buildings in Lower Outwoods Road and the roads off it, within Horninglow, together with buildings in Reservoir Road, within Shobnall, are already visible near to the top of the plateau. The joining of these two areas of built development by developing the appeal site, which is land adjacent to a reservoir that is used for commercial purposes and includes large buildings, would represent a natural extension to the existing boundaries of built development in these areas. The escarpment woodland and green fields to the east would remain as such and are already separated from the surrounding countryside by the reservoir. **[2.2, 5.15, 6.13]**
- 9.13 With regard to the integrity of the landscape, I observed that there are few hedgerows of any particular merit on the appeal site, other than on its boundaries. As the boundary planting would be most likely to be retained, together with that on the westerly part of the site, I am satisfied that the integrity of the landscape would not be significantly harmed due to the Council's suggested '*loss of an irregular hedged field pattern*'. Views of Burton from the adjacent countryside to the west would not be significantly harmed by the development, as they would be screened due to the existing and proposed planting and they already include views of existing buildings on the site and on nearby roads. **[2.2, 5.15, 6.13]**
- 9.14 I have considered the findings of the Review of the appellants' LVIA carried out for the Council in February 2013, and the Landscape Appraisal carried out for the Council in July 2013, which used GLVIA2. I do not agree that the landscape would fall into the high classification of landscape sensitivity, as its character is assessed as being for enhancement and there are limited views of it from public vantage points or receptors. Also, GLVIA3 indicates that to judge the sensitivity of the visual receptor, it is necessary to judge the susceptibility of the receptor to change and the value attached to the view,

which already includes built development. Therefore, although I accept that the proposal would have a medium magnitude of impact, due to the resulting increase in built development in a rural setting, I find that, at worst, it would have a moderate adverse visual impact. **[5.14, 6.11, 6.12, 8.7]**

- 9.15 The Council has referred to previous decisions by Inspectors with regard to the suitability of development on the appeal site. These decisions were made a significant time ago and the circumstances have changed since then, particularly with regard to the housing need and current shortfall. Furthermore, the 1987 appeal involves a significantly larger site than the current appeal. Therefore, no direct comparisons can be made. There is no substantive evidence to show that the proposal would lead to development on a much larger site, as suggested by some of the objectors. Furthermore, each case should be determined on its own individual planning merits in the light of prevailing policies and guidance. **[6.1, 6.14, 6.15, 8.5, 8.7]**
- 9.16 With regard to future housing land allocations, although the appeal site has not been included in the Preferred Option 2d, it has been included in 3 of the 4 options that were considered. Also, other development has recently been approved on sites to the west of Burton at Outwoods Farm (Hallam) and Lawns Farm, indicating that the principle of the extension of the settlement boundaries in this direction has been accepted by the Council. Therefore, taking account of the identified housing supply, the proposal would represent an acceptable development when compared to this other development and is needed to address the significant shortfall in housing. **[5.10, 5.11, 6.18, 8.4]**
- 9.17 In conclusion on this main issue, the proposal would inevitably have an adverse effect on the character and appearance of the area, as it would introduce new built development into the countryside. As such, it would fail to accord with ESNP Policy BE1. However, given that the quality of the landscape is one that has been identified for enhancement, I am satisfied that the proposal would recognise the intrinsic character and beauty of that part of the countryside, as required in paragraph 17 of the Framework, by the provision of areas of open space and new woodland planting and landscaping to mitigate the effect of the proposed buildings. Furthermore, any adverse impact needs to be balanced against the benefits of the proposed development. **[4.1, 4.2, 5.16, 6.16, 6.17]**

### ***Benefits***

- 9.18 The benefits of the proposal that the appellants have suggested have not been contested by the Council. These include the provision of up to 250 new dwellings, including some 38 affordable homes, on the site that would help to address the shortfall in the Borough. Other benefits would be the additional access that it would provide for emergency vehicles and a bus service and the net gains for biodiversity. The benefits would be both social and economic. **[5.17, 5.18, 5.25, 6.21]**

### ***Other Matters***

- 9.19 The main other concern expressed at the Inquiry was regarding highway safety on Reservoir Road and at its junction with Shobnall Road, where there is a school and nursery. In this respect, SCC as the Highway Authority has not objected, subject to planning conditions. Whilst there has been criticism of the

stance taken by SCC, insufficient substantive evidence has been provided to demonstrate that the findings and conclusions of the Transport Assessment and Highways Appeal Statement by Phil Jones Associates are incorrect. I am therefore satisfied that measures that would be secured through the planning obligations and conditions would adequately address the cumulative residual transport and highway safety impacts to ensure that they would not be so severe as to be sufficient to refuse planning permission. **[5.20, 8.2, 8.8, 8.9, 8.10, 8.11]**

- 9.20 The concerns about drainage and flooding would be addressed by planning conditions, based on the Flood Risk Assessment, as would those about the wildlife, including great crested newts. There are no objections from the EA, Severn Trent or Natural England with respect to any of these issues. **[5.21, 8.12, 8.13]**

### ***Overall Conclusions***

- 9.21 For the reasons given above, I find that the adverse impacts of the proposal, including the harm to the character and appearance of the area and non-compliance with ESLP Policy BE1, would not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should be allowed.

## **10 Planning Obligations**

*The numbers in square brackets [ ] refer back to earlier paragraph numbers which are relevant to my conclusions on the planning obligations.*

- 10.1 I have examined the planning obligations in the unilateral undertaking that has been submitted by the appellants to determine whether they meet the tests in CIL Regulation 122. These are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.
- 10.2 The appellants have accepted the level of contributions required by the Council and SCC, except for the affordable housing. I have based my examination on the evidence submitted by the Council and SCC in support of the planning obligations<sup>113</sup>. **[5.22]**
- 10.3 The waste contribution would be used for the provision of recycling containers for use by occupants of the new dwellings, which is supported by the Council's Waste Storage and Collection Guidance for New Developments. The education provisions would be towards additional primary, secondary and sixth form places, which SCC has demonstrated would be needed as a result of the proposed development due to there being insufficient places available in the catchment area. The open space, landscaping and sustainable drainage contributions would be required for the future upkeep and maintenance of those areas that would be provided as part of the development. The contributions towards highway and traffic calming works and the monitoring and review of the Travel Plans would be necessary to address the highway and

<sup>113</sup> Documents INQC6, INQC7, INQC8, INQC9, INQC10, INQC11, INQC12 and ES1

traffic impact of the development and to encourage the use of sustainable transport to reduce the impact of the development on transport and the highway network.

- 10.4 With regard to affordable housing, both parties agree that Appendix 1 to the SPD is the relevant document to determine the level of contributions towards affordable housing. In terms of the definitions of the different sites, the most relevant one to the appeal site is an 'Urban Extension', as it consists of a large greenfield site adjacent to the development boundaries of Burton. Although the Council's Officer has argued that the site should be classified as one of the 'other sites' in Appendix 1, as the development would be viable at a higher affordable housing provision than 15%, there is no guidance or Policy that gives this as a criterion for assessing the affordable housing contributions. As such, I am satisfied that a 15% affordable housing contribution would be the appropriate level for the appeal proposal, particularly as the Council has been unable to provide any policy support, or other valid planning grounds, for its requested 22.5% provision. **[5.22, 5.23, 5.24, 6.19, 6.20]**
- 10.5 Based on the above, I am satisfied that all the planning obligations in the unilateral undertaking, with the exception of the obligation to provide an *additional* 15% contribution towards affordable housing, would meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Therefore, should the SofS be minded to grant planning permission, I recommend that the unilateral undertaking<sup>114</sup> should take effect but with a planning obligation for 15% on-site affordable housing and no further contributions towards affordable housing.

## 11 Conditions

- 11.1 Should the SofS be minded to grant planning permission, I recommend that the conditions set out in Appendix E of this report be imposed. They are based on the conditions suggested by the Council should the appeal be allowed that have been discussed and subsequently amended at the Inquiry<sup>115</sup>.
- 11.2 Conditions regarding reserved matters approval and the standard timescales, together with conditions referring to the plans and Design and Access Statement<sup>116</sup> details and any phasing of the development are necessary for the avoidance of doubt and in the interests of proper planning. Conditions regarding materials, landscaping, the retention of trees and landscape management are necessary in the interests of visual amenity. Conditions regarding boundary treatment and ground and floor slab levels are necessary to safeguard visual and residential amenity.
- 11.4 Conditions regarding drainage and the implementation of measures recommended in a Flood Risk Assessment<sup>117</sup> are necessary to prevent an increase in the risk of flooding and would help to address the concerns about flooding and drainage expressed by local residents. A condition requiring an

<sup>114</sup> Document INQA13

<sup>115</sup> Document INQC15

<sup>116</sup> Document SD7

<sup>117</sup> Document SD5j

open space strategy is in the interests of providing an acceptable level of amenities for future residents of the proposed development.

- 11.5 A condition requiring a Site Waste Management Plan is necessary to facilitate the sustainable management of waste in accordance with Section 11 of the Framework. A condition regarding the identification and treatment of contamination, including gas migration, is necessary for health and safety reasons, given the previous uses of the area and the site. A condition to ensure the implementation of a Construction Management Plan, including the suppression of dust and times of working and deliveries during construction, is necessary in the interests of highway safety and the living conditions of local residents.
- 11.6 Conditions regarding the road construction, including lighting and drainage, skid resistance and gritting facilities on Reservoir Road, and vehicular access, including restrictions on the use of Lower Outwoods Road, are necessary in the interests of the safe and efficient use of the highway network. A condition requiring a Noise Impact Assessment and the implementation of any mitigation measures is necessary to ensure that future residents have acceptable living conditions, based on the findings of the Noise Assessment<sup>118</sup>. A condition to secure measures for great crested newts is necessary to safeguard protected wildlife species, given the findings of the Ecological Appraisal<sup>119</sup>.
- 11.7 A condition regarding the provision of accesses, turning and parking areas, including the type of materials to be used, is necessary for highway safety, drainage and residential amenity reasons. A condition requiring a Transport Master Plan is necessary to promote highway safety, reduce vehicular traffic and promote sustainable transport.
- 11.8 I am satisfied that all the above mentioned conditions are reasonable and necessary. I have combined some of the suggested conditions and worded them to reflect the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.

## **12 Recommendation**

- 12.1 I recommend that the appeal be allowed, and planning permission be granted subject to the conditions set out in Appendix E. If the SofS is minded to agree, I also recommend that the S106 unilateral undertaking take effect as indicated at paragraph 10.5 above.

*M J Whitehead*

INSPECTOR

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<sup>118</sup> Document SD5m

<sup>119</sup> Document SD5g

## **APPENDIX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth	Of Counsel, instructed by Sherrie Grant, Solicitor for East Staffordshire Borough Council.
He called	
David McKenna MA	Senior Studio Associate Landscape Architect, IBI
BEng(Hons) CMLI	Taylor Young
Anna Miller MSc	Interim Planning Manager, East Staffordshire
BSc(Hons) DipTP MRTPI	Borough Council
Mike Brown BSc(Hons)	Planner, East Staffordshire Borough Council
Steve Payne DipTP	Housing Strategy Manager, East Staffordshire
	Borough Council

### FOR THE APPELLANT:

Jeremy Cahill	QC, instructed by Mrs Lizzie Marjoram of Bird, Wilford & Sale
He called	
Philip Jones MICE CIHT	Principal, Phil Jones Associates
Dai Lewis BSc(Hons)	EDP
PGDipLA CMLI	
Keith Fenwick BA(Hons)	Director, Alliance Planning
MRTPI	

### FOR THE RULE 6 PARTY:

Ian Dove	QC, instructed by Janet Hodson, JVH Town Planning
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### OBJECTOR:

William Ganley	Ward Councillor, Shobnall Ward
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## **APPENDIX B: DOCUMENTS**

### **Supporting Documents**

- SD1 Copy of the original planning application including site ownership certificate and agricultural holdings certificate.
- SD2 Copies of correspondence in response to the application
- SD3 Copy of the decision notice
- SD5d Arboricultural Assessment
- SD5e Archaeology Report
- SD5f Coal Authority Report
- SD5g Ecological Appraisal
- SD5h Energy Statement
- SD5i Environmental Risk Assessment
- SD5j Flood Risk Assessment
- SD5k Landscape And Visual Impact Assessment
- SD5l Legal Correspondence and Registered Title
- SD5m Noise Report
- SD5n Planning Statement
- SD5o Services Report
- SD5p Statement Of Community Involvement
- SD5q Transport Assessment
- SD5r Travel Plan
- SD5s Waste Audit
- SD6 Extract from East Staffordshire Local Plan July 2006
- SD7 Design and Access Statement
- SD8 Supplementary Planning Guidance: Planning for Landscape Change Volumes 1, 2 and 3
- SD9 Relevant correspondence between the appellant and the Council and email correspondence post submission submitting letters of support for the planning application

### **Evidence submitted prior to the Inquiry opening**

#### **East Staffordshire Borough Council**

- EC1 Statement of Case on Behalf of East Staffordshire Borough Council
- EC2 Proof of Evidence by David McKenna and Appendices 1 and 2
- EC3 Proof of Evidence by Mike Brown and Appendices 1 to 3
- EC4 Proof of Evidence by Anna Miller and Appendices 1 to 17

#### **Appellants**

- EA1 Statement of Case of the Appellants
- EA2 Proof of Evidence of Dai Lewis Volume I: Main Text
- EA3 Proof of Evidence of Dai Lewis Volume II: Landscape Plans/Appendices
- EA4 Proof of Evidence of Dai Lewis Volume III: Summary of Evidence
- EA5 Planning Proof of Evidence of Keith Fenwick and Appendices 1 to 40
- EA6 Summary Planning Proof of Evidence of Keith Fenwick
- EA7 Addendum to Proof of Evidence of Keith Fenwick
- EA8 Draft copy of Section 106 unilateral undertaking

#### **Rule 6 Party: Janet Hodson, JVH Town Planning**

- ER1 Proof of Evidence of Janet Hodson

ER2 Appendices 1 to 5 to Proof of Evidence of Janet Hodson

**Objectors**

EO1 Letter from Red House Farm Action Group  
EO2 Letter from 70 Forest Road  
EO3 Letter from 14 St Margarets  
EO4 Letter from 18 St Margarets  
EO5 Letter from 10 St Margarets  
EO6 Letter from 8 St Margarets  
EO7 Letter from 16 St Margarets

**Other Parties**

ES1 Statement of Case, Evidence and Appendices from Staffordshire County Council as the Local Education Authority

**Statement of Common Ground**

SOCG Statement of Common Ground between the Appellants and Local Planning Authority

**Documents submitted at the Inquiry**

**General**

INQ1 Attendance Sheets for days 1 to 4

**Appellants**

INQA1 Opening Statement on behalf of the Appellants  
INQA2 Landscape and Visual Impact Assessment (LVIA) – Final, submitted on Day 1  
INQA3 Copy of Landscape Institute Clarification Note relating to GLVIA3, submitted on Day 1  
INQA4 Extracts from GLVIA3, submitted on Day 1  
INQA5 Copy of planning permission for 'Hallam Land', submitted on Day 1  
INQA6 Letter, dated 21 December 2007, regarding the West Midlands Regional Spatial Strategy: Phase Two Revision Draft, submitted on Day 1  
INQA7 Extract from West Midlands Regional Spatial Strategy Panel Report giving Table 1 - Housing Proposals 2006 – 2026, submitted on Day 1  
INQA8 Extracts from West Midlands Regional Spatial Strategy Phase Two Revision Report of the Panel, submitted on Day 1  
INQA9 Extracts from East Staffordshire Local Plan Preferred Option July 2012, submitted on Day 2  
INQA10 Committee Report for development on land north of Guinevere Avenue, Stretton, submitted on Day 3  
INQA11 Committee Report for development on land at Upper Outwoods Farm (Hallam land), submitted on Day 3  
INQA12 Committee Report for development on land south of Lichfield Road (St Modwen land), submitted on Day 3  
INQA13 Signed and dated Section 106 unilateral undertaking, submitted on Day 3  
INQA14 Closing submissions on behalf of the appellants, submitted on Day 4  
INQA15 Full Costs Application by the Appellants, submitted on Day 4

**East Staffordshire Borough Council**

INQC1 Opening Submissions on behalf of the Council, submitted on Day 1

- INQC2 Note explaining the Council's affordable housing requirement, submitted on Day 1
- INQC3 GVA Report: East Staffordshire SHMA The Future Housing Market, submitted on Day 2
- INQC4 Statement by East Staffordshire Borough Council, dated 22 August 2013 accepting that it cannot demonstrate a 5 year housing land supply, submitted on Day 2
- INQC5 Suggested conditions with comments from the appellant, submitted on Day 2
- INQC6 Information to support the obligations: Waste and Public Open Space, submitted on Day 2
- INQC7 Copy of evidence of Andrew Marsden, County Commissioner for Access for Learning, Staffordshire County Council, submitted on Day 2
- INQC8 Explanatory Note Relating to the Highway Sum in Schedule 7- Highway Contribution in the Unilateral Undertaking Section 106 Agreement, submitted on Day 2
- INQC9 Signed agreed statement regarding the Obligations and Conditions with attached suggested list of conditions, submitted on Day 3
- INQC10 Copy of East Staffordshire Borough Council Waste Storage and Collection Guidance for New Developments, submitted on Day 3
- INQC11 Copy of East Staffordshire Borough Council Open Space Supplementary Planning Document, submitted on Day 3
- INQC12 Full evidence and appendices of Andrew Marsden, County Commissioner for Access for Learning, Staffordshire County Council, submitted on Day 3
- INQC13 Closing submissions on behalf of the Council, submitted on Day 4
- INQC14 Response to the Costs Application on behalf of the Council, submitted on Day 4
- INQC15 Amended conditions with comments from the appellants, submitted following the close of the Inquiry

**Rule 6 Party: Janet Hodson, JVH Town Planning**

- INQR1 Local Government Association PAS Document: Ten key principles for owning your housing number- finding your objectively assessed needs, submitted on Day 1
- INQR2 Statement of Grounds for High Court challenge to Barwell Appeal Decision, submitted on Day 1
- INQR3 Copy of Appeal Decision Ref APP/Y3425/A/12/2172968, Stafford, submitted on Day 1
- INQR4 Extract from Friends of Outwoods Web site, submitted on Day 1
- INQR5 Copy of Committee Report for The Dove Way development, submitted on Day 2
- INQR6 Copy of planning permission for development at the JCB site, submitted on Day 2

**Objector**

- INQO1 Statement of Councillor W Ganley, referred to at the Inquiry, submitted on Day 3

## **APPENDIX C: PLANS**

### **Supporting Plans**

- SD4 Site Plan Drawing Number INCLA\_131.106: Location Plan
- SD5a Drawing Number INCLA\_N131.101: Illustrative Masterplan
- SD5b Drawing Number INCLA\_N131.102: Land Ownership Plan
- SD5c Drawing Number INCLA\_N131.104: Parameter Plan

### **Plans Submitted at the Inquiry**

- INQA Plan of Burton-upon-Trent: Applications for Housing, submitted by the appellants on Day 1
- INQB Plan of suggested walking route and viewpoints, submitted by the appellants on Day 1
- INQC Plan of 1987 Appeal site and current appeal site, submitted by the appellants on Day 1
- INQD Amended plan of suggested walking route and viewpoints, submitted by the appellants on Day 3

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**APPENDIX D: ABBREVIATIONS**

AHVS	Affordable Housing Viability Study
AMR	Annual Monitoring Report
AONB	Area of Outstanding Natural Beauty
CIL	Community Infrastructure Levy (Regulations)
(The) Council	East Staffordshire Borough Council
EA	Environment Agency
ESLP	East Staffordshire Local Plan 2006
(The) Framework	(The) National Planning Policy Framework
GLVIA2	Guidelines for Landscape and Visual Impact Assessment 2nd Edition
GLVIA3	Guidance for Landscape and Visual Impact Assessment 3rd Edition
LVIA	Landscape and Visual Impact Assessment
NHS	National Health Service
PPS12	Planning Policy Statement 12: Local Spatial Planning
RHFAG	Red House Farm Action Group
RSS	Regional Spatial Strategy
SCC	Staffordshire County Council
SHLAA	Strategic Housing Land Availability Assessment
SOCG	Statement of Common Ground
SofS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SSSP	Staffordshire and Stoke-on-Trent Structure Plan 1996-2011
SUDS	Sustainable Urban Drainage System
S106	Section 106 of the Town and Country Planning Act 1990

## **APPENDIX E: RECOMMENDED CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the principles of the Design and Access Statement and the following approved plans: INCLA\_N131.101 1:1000 Illustrative Master Plan, INCLA\_N131.102 1:2000 Land Ownership Plan and INCLA\_N131.106 1:2500 Location Plan, subject to compliance with other conditions of this permission.
- 5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No phase of the development hereby permitted shall take place until samples and details of all external materials and finishes for that phase (including those for any walls, roofs, windows, doors, parapets and chimneys) have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried in accordance with the approved materials and details.
- 7) No phase of the development hereby permitted shall take place until details of boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) for that phase have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates.
- 8) No phase of the development hereby permitted shall take place until a scheme for the disposal of foul and surface waters and an assessment of the hydrological and hydrogeological impacts for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how surface water run-off shall not exceed run-off from an undeveloped site, Sustainable Urban Drainage systems for storm water management, compensatory flood storage on site, and details of how the scheme shall be managed and maintained after completion. The development shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 9) No phase of the development hereby permitted shall take place until details of an open space strategy in accordance with any approved phasing scheme has been submitted to and approved in writing by the local planning authority. The open space strategy shall include details of equipment for children's play areas; woodland planting and a trail to the western boundary; a short term maintenance management plan for all areas of open space; all materials to be used in hard landscaping and all fencing and walling. The open space strategy

- shall be implemented in full in accordance with the approved phasing scheme and shall thereafter not be used for any purpose other than as stated.
- 10) No phase of the development hereby permitted shall take place until a 'Site Waste Management Plan' for that phase has been submitted to and approved in writing by the local planning authority. The Site Waste Management Plan shall include an implementation programme and shall be implemented as approved.
  - 11) No phase of the development hereby permitted shall take place and no site works related to that phase shall be carried out until details of all slab levels and any regrading of the site have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried out in accordance with the approved details.
  - 12) No phase of the development hereby permitted shall take place until a contaminated land assessment, to include the investigation of gas migration, and associated remedial strategy for that phase together with an implementation programme have been submitted to and approved in writing by the local planning authority. The contaminated land assessment shall include a desk study that shall detail the history of the site uses and a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the local planning authority prior to investigations commencing on site. Any site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a remediation strategy shall be submitted to and approved in writing by the local planning authority prior to any remediation works commencing on the site. Remediation works shall be carried out in accordance with the approved strategy and under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and a remediation scheme and implementation programme shall be submitted to and approved in writing by the local planning authority. Remediation works shall thereafter be carried out in accordance with the approved scheme. Upon completion of the works, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology; details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria; and details of what waste materials have been removed from the site.
  - 13) No phase of the development hereby permitted shall take place until a Landscape Management Plan, indicating a scheme for the long-term management of open space, green infrastructure and planting within the public realm and details of biodiversity management has been submitted to and approved in writing by the local planning authority. The open space, green infrastructure and planting shall thereafter be managed in accordance with the approved Landscape Management Plan.

- 14) No phase of the development hereby permitted shall take place until a scheme for the protection of trees and hedges to be retained in the details of landscaping approved at reserved matters stage has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 15) No phase of the development hereby permitted shall take place, including any works of demolition, until a Construction Method Statement for that phase of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase of the development. The Statement shall provide for the control of construction noise; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; wheel washing facilities; measures to control the emission of dust and dirt during construction; the times of working and deliveries during construction and an implementation programme.
- 16) No phase of the development hereby permitted shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and an implementation programme, for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details.
- 17) No phase of the development hereby permitted shall take place until a Noise Impact Assessment, together with details of any noise mitigation measures and an implementation programme, for that phase has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and retained for the life of the development.
- 18) No phase of the development hereby permitted shall take place until a detailed mitigation and monitoring strategy for great crested newts within the site has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved strategy and retained for the life of the development.
- 19) No phase of the development hereby permitted shall take place until details of a scheme to provide 3 grit bins on Reservoir Road and improve the skid resistance to a minimum PSV of 68 along the section of Reservoir Road where the gradient exceeds 1 in 12, as indicated on PJA Drawing No 844-03, have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first occupied.
- 20) No phase of the development hereby permitted shall take place until details of a scheme to provide vehicular access to the development have been submitted to and approved in writing by the local planning authority at reserved matters stage. The scheme shall prevent vehicular access to the development from Lower Outwoods Road apart from by public service and emergency vehicles. The scheme shall be implemented in accordance with the approved details before the development is first occupied and retained for the life of the development.
- 21) Prior to the first occupation of the dwelling to which it relates, accesses, parking and turning areas for that dwelling shall be provided in a bound material in accordance with details that shall first have been submitted to and

approved in writing by the local planning authority at reserved matters stage. The bound material shall have a high degree of porosity to reduce the amount of surface run-off. The accesses, parking and turning areas shall thereafter be made available at all times for these purposes.

- 22) The development hereby permitted shall only be carried out in accordance with the recommendations of the Flood Risk Assessment by M-EC Report Ref: 20200/PH/09-12/3251, dated September 2012, or any subsequent Flood Risk Assessment that has first been submitted to and approved in writing by the local planning authority.
- 23) All planting, seeding or turfing comprised in the details of landscaping approved at reserved matters stage shall be carried out in accordance with a programme of works that shall have been submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
- 24) The reserved matters shall include a Transport Master Plan that shall be submitted to and approved in writing by the local planning authority. The Transport Master Plan shall include details of a movement framework; connections to the surrounding areas for all modes of transport; public transport route strategy, including a timetable for implementation and the infrastructure; street layout, including measures to restrain the speed of vehicles to 20mph; and a parking strategy, including the provision of secure cycle parking facilities for each dwelling. Development shall be carried out in accordance with the approved Transport Master Plan.



## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

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

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

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

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

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

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

NOTES:

1. This drawing is to be read in conjunction with all relevant contract drawings and specifications with any conflicting information to be brought to the attention of Influence-DA before works commence on site.

2. Do not scale from this drawing, always work to noted dimensions.

3. All given dimensions in mm.

KEY

Application site boundary  
13.38 Hectares / 33 Acres



DATE: DRAWN: CHECKED/REVISED BY: REVISION LETTER: CHECKED BY:

FOR PLANNING

Influence Landscape Architects

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Tel: 01636 702152 M: 07717 10 11 15  
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Copyright Influence-da 2011

PROJECT TITLE:  
Red House, Outwoods  
Burton on Trent

PROJECT NUMBER: N131  
PROJECT DATE: 12.08.2012

DRAWING SCALE: 1:1000  
APPROVED BY: PD  
DRAWN BY: ID

DRAWING TITLE:  
Illustrative Masterplan

DRAWING NUMBER: INCL\_A\_N131\_101  
REVISION LETTER:

# Proposal to Deliver New Homes at Red House Farm, Burton upon Trent

On behalf of Barwood Strategic Land II LLP and  
Mr and Mrs G Skipper

September 2012  
INCLA\_N131R02

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# Delivering High Quality Housing

The land at Red House Farm provides an opportunity to integrate new residential development with the adjacent modern housing around Lower Outwoods and Reservoir Road.

It represents a logical extension to the settlement boundary with the aim being to deliver a scheme of up to 500 homes.

The following pages describe the context of the site, the matters that have been taken into consideration and the vision for delivering a high quality sustainable residential scheme.

## Key



Phase 1  
- 250 Units in years 1 to 5



Phase 2  
- 250 Units in years 6 to 10



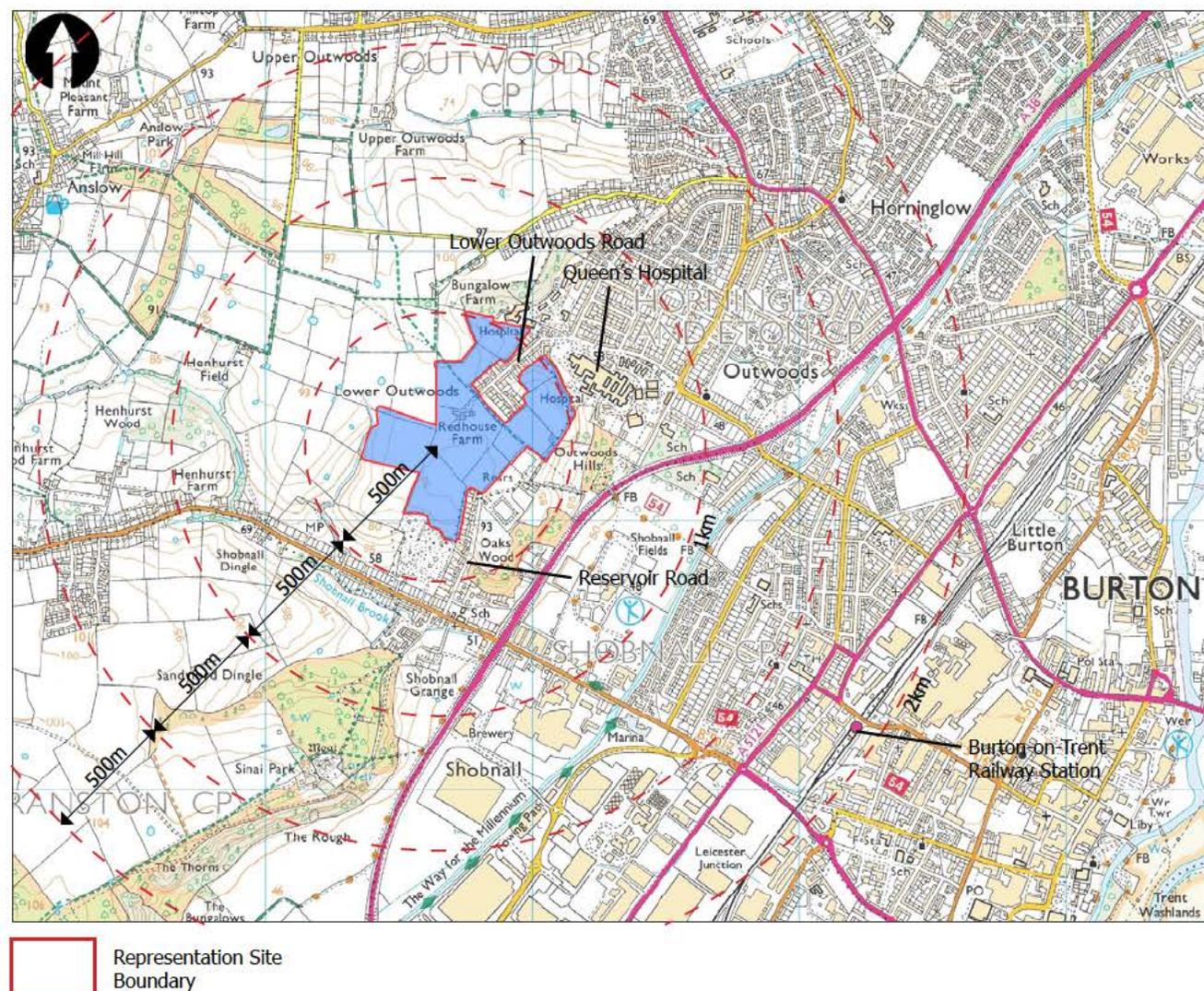
## Site Location

The site is located at Red House Farm and is set between the two residential areas of Outwoods to the north and Shobnall to the south.

The site is approximately 2km from the town centre of Burton upon Trent to the east of the site within East Staffordshire Borough Council planning boundary. Derby is located 17km north east.

The representation site is located within close proximity to existing public transport links, which provide direct access to Burton upon Trent town centre and the surrounding settlements.

Access to the site is from Lower Outwoods Road to the north and Reservoir Road to the south. Three bus routes operate in the immediate area, along Shobnall Road also serving the Queen's Hospital on Belvedere Road. The nearest bus stop to the site is on Belvedere Road, at the bottom of Lower Outwoods Road.



# Land Use

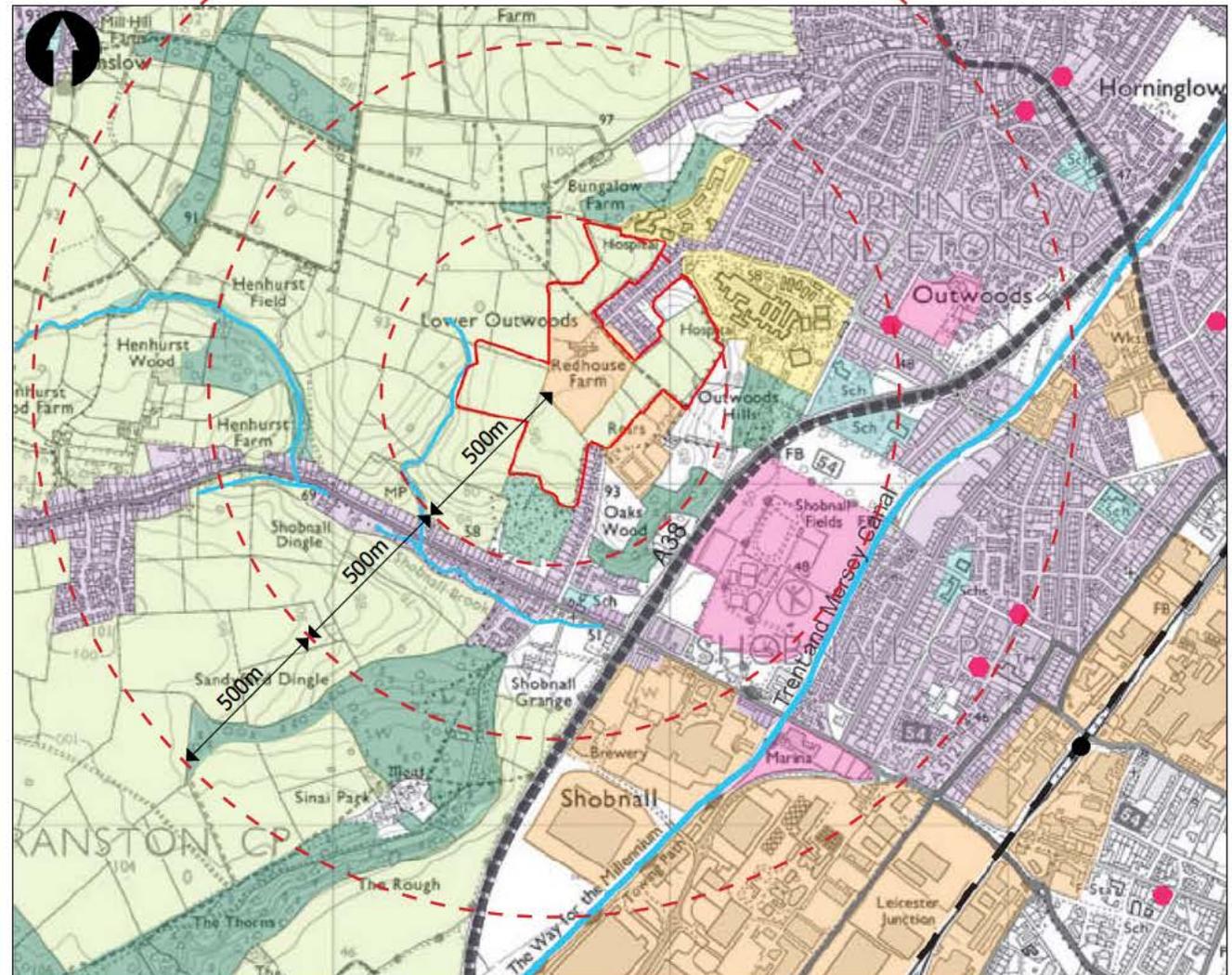
The predominant land uses surrounding the site are open countryside to the north and west with residential to the south and northeast. Other land uses nearby include health service, industrial, highway infrastructure and commercial.

The open countryside consists of small to medium size agricultural fields with strong hedgerow boundaries. Small blocks of woodland and individual trees are a common feature across the countryside field pattern, with individual farmsteads scattered between villages. The woodland cover is limited to strips and small blocks to the settlement edge and along watercourses.

The residential areas adjacent to the site are spurs of Shobnall to the south and Lower Outwoods to the north and consist of a mix of housing types; Victorian terrace and semi-detached to 1970s detached units.

Industrial / commercial land use is focussed to the south and east, adjacent to the A38 and railway, and east of the application site.

Recreation facilities to the southeast of the site provide open space, including leisure centre, sports track and skate park. There are pockets of green open space within residential areas to the northeast.



	Industry / Commercial use		Health Service		A-roads
	Open Countryside		Education		Railway Line with Station
	Woodland Blocks		Leisure Facilities		Representation Site Boundary
	Residential Areas		Religious		Water Course

## Site Analysis

The Red House Farm site is approximately 23.36 hectares in size and is located on existing agricultural and commercial land; used for lawn turf cultivation, with large sheds (use class B2) on site.

Whilst much of the site is open land, field boundary hedgerows form strong vegetated screenings within which are some mature trees. The land to the west of the site is predominantly open countryside, consisting of small to medium size agricultural fields with hedgerow boundaries and individual and groups of trees within and around fields.

Access to the site is from Lower Outwoods Road to the north and Reservoir Road to the south. Three bus routes operate in the immediate area, along Shobnall Road also serving the Queen's Hospital on Belvedere Road. The nearest bus stop to the site is on Belvedere Road, at the bottom of Lower Outwoods Road.

### Topography

The central area of the application site is plateaued at approximately 95m AOD, sloping away to the northern, eastern, southern and western boundaries to approximately 70m AOD, 82.0m AOD, 87.5 AOD and 80m AOD respectively.

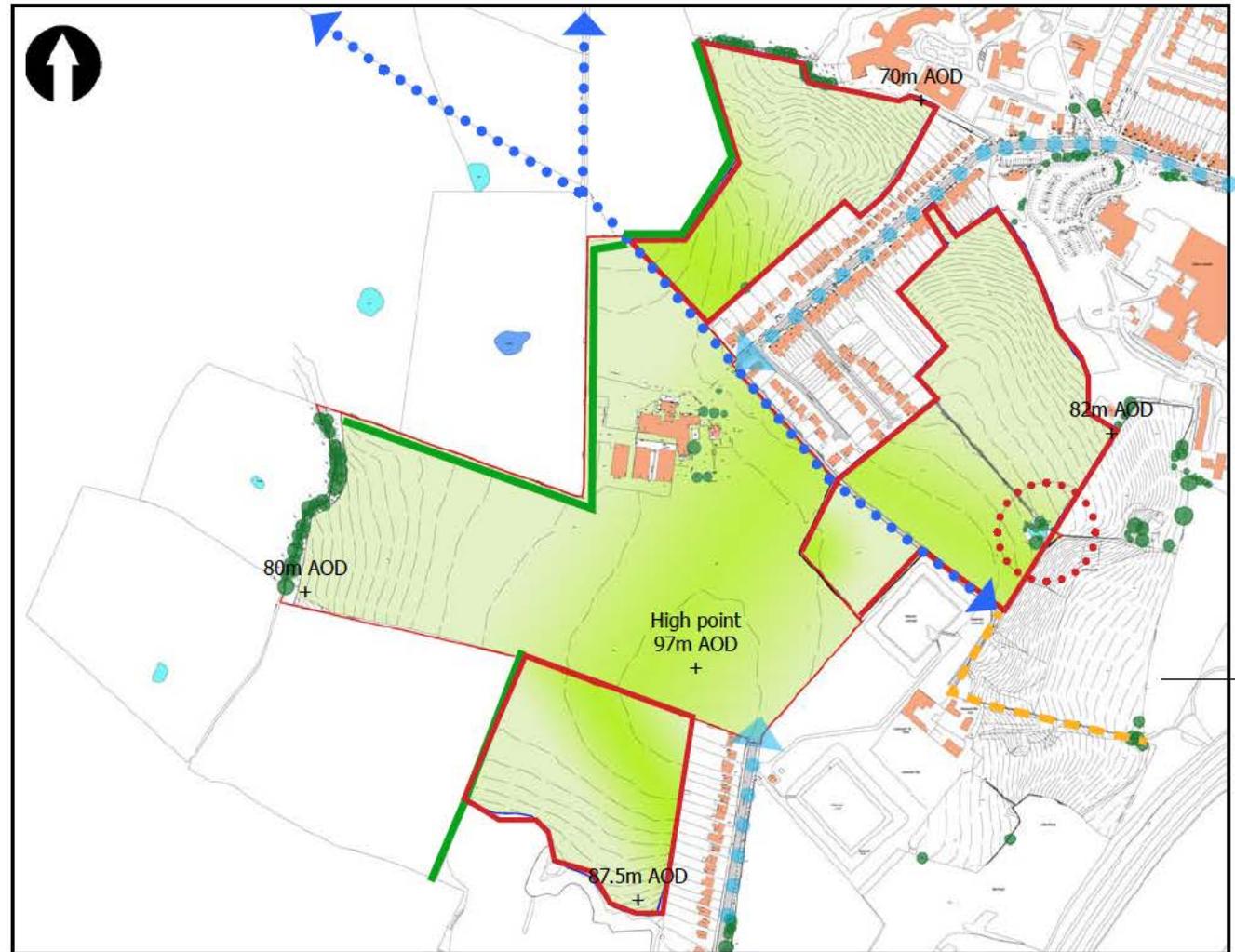
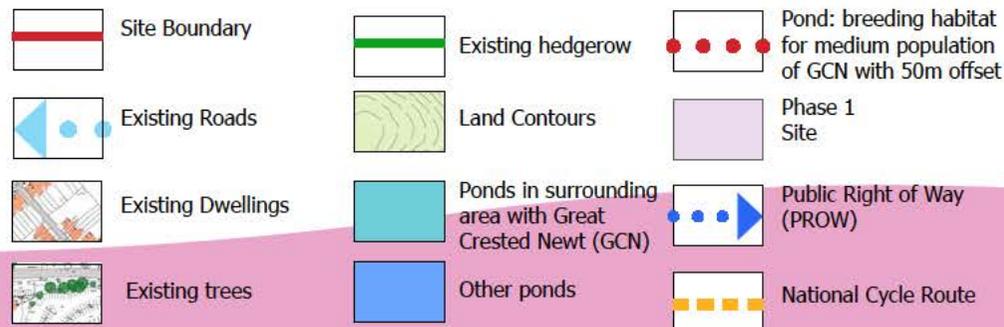


Figure 4 - Site Analysis



# Existing Site Views



Looking along hospital buildings to the northern site boundary, towards site entrance from Lower Outwoods Road



Looking across the north of the site and properties on Lower Outwoods Road, towards Burton upon Trent



View along the boundary with properties on Lower Outwoods Road, looking towards the plateau



Existing entrance way to the northeast of the site, from Lower Outwoods Road



View along PRoWs 10 and 11 towards the site entrance at the top of Lower Outwoods Road



Looking across the southern part of the site towards industrial units along the A38 corridor, south of Burton upon Trent



Site photo location plan

1 Site Photo locations

# Local Character



View of the application site entrance, looking along Lower Outwoods Road



View from PROW 11, looking east towards Burton upon Trent town centre



View west along Shobnall Road to the south of the application site



View along Station Street, in town centre



Figure 7 - Site surroundings photograph plan



View from Battlestead Hill, looking north east across Burton upon Trent



Typical red-brick housing in Anslow to the west of the application site

# Surrounding Housing Typology

The surrounding housing types have been looked at, as a guide for design, layout and size of the proposed housing development. The surrounding housing ranges from Victorian terraces and pre-WW1 semi-detached housing to modern detached units. and townhouses.

## Lower Outwoods Road

Mixed styles: small Victorian terraces, 1970s detached brick housing and modern bungalows on side streets, off narrow road.



## Denton Road

Predominantly modern bungalows line Denton Road, with 1940-60s semi-detached housing along the roads perpendicular to this. Large back gardens.



## Reservoir Road

Variety of styles; semi-detached, bungalows & detached with garages. Range of ages; generally post 1930s. Along a wide, straight road with large back gardens to the countryside.



## Henhurst Hill

Small, modern red-brick housing development that forms part of the linear extension of Shobnall to the west. Sits between older semi-detached houses set back from the road, off private drives. Large detached properties.

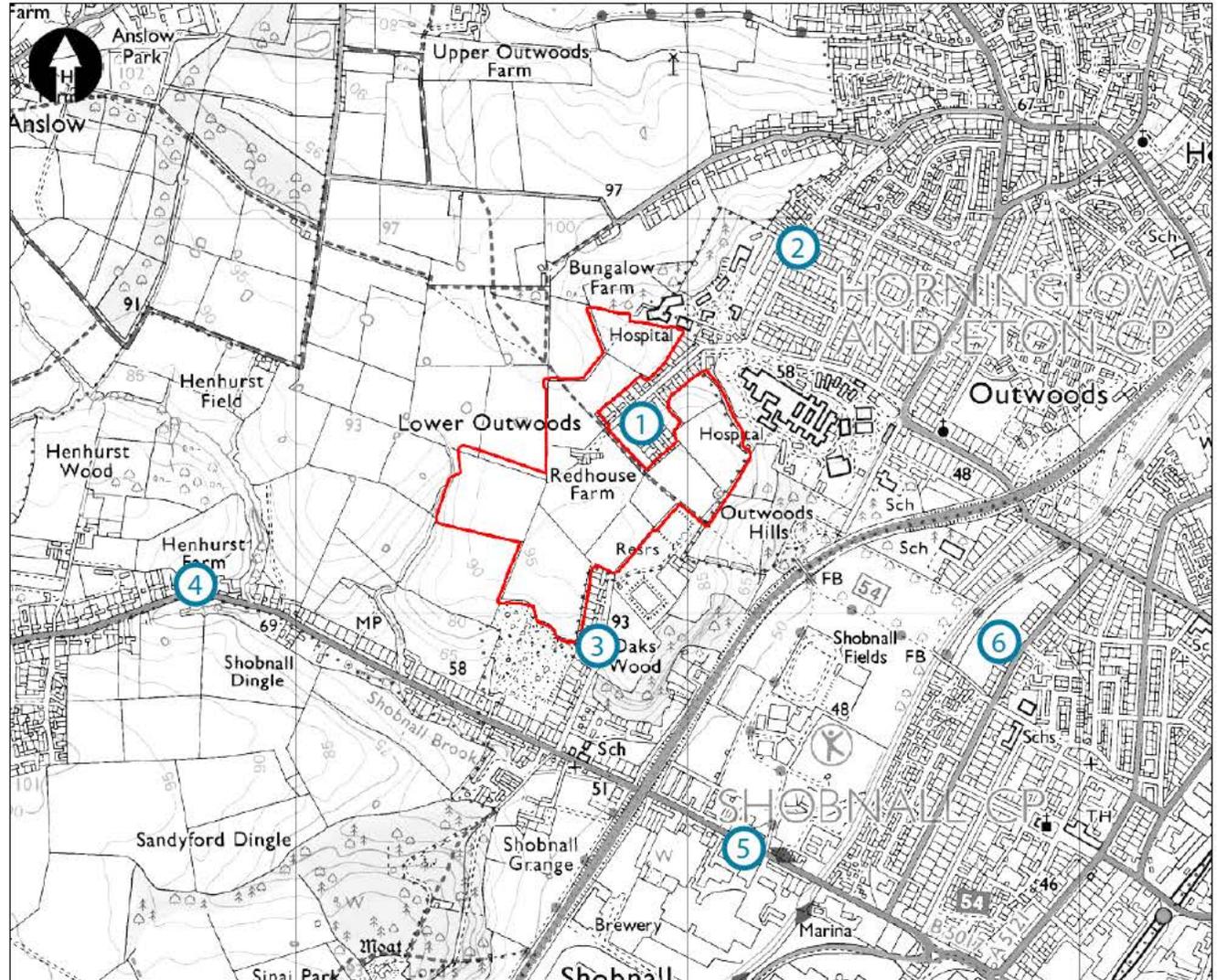


Figure 5 - Surrounding Housing Typology

## Marston's Brewery

Long line of small terraces, pertaining to the brewery. Dating from late 1800s. Entrance from rear through gardens, which have been made smaller as the modern brewery has grown. Red-brick with sash windows.



## Pipers Way

Modern, Miller Homes development; townhouses, flats over garages, 3-storey apartment units. Cul-de-sac development off Shobnall Street, which consists of small Victorian terraces.



## Location

The site's location lends itself to extending the existing settlement boundary of Lower Outwoods in a natural and sympathetic way. Development at the site will utilise the existing landscape features to integrate the proposal within the built environment without having any adverse impact upon the local character and setting and the open countryside.

## Design Potential

The site offers an opportunity to provide a natural extension to the adjacent housing, within an attractive rural environment, enhanced by the existing mature planting and screened by surrounding trees and hedgerows.

A landscape strategy will be developed to include enhanced hedgerow planting around the site boundary with tree planting extended through the residential areas. As the planting schemes mature, they will provide visual links across the plateau and the proposed development will be assimilated into the surrounding landscape.

The proposed boundary vegetation will limit both long and short distance views of the built form from sensitive views from the countryside.

## Community Involvement

The scheme would reinforce the existing community by providing a mix of family dwellings of different types and tenures.

The proposals would be the subject of preplanning application public consultation, as well as discussions with the Council's Officers and other statutory bodies.

## Development within the National Forest

Development and planning continue to play a vital part in the realisation of The National Forest improving the environment, contributing to the economy and increasing the number of people who want to live within The National Forest (NF). Developments that contribute to the NF will enhance the value of their schemes by creating a more desirable location in which to live and do business.

The overriding principles for design aim to create new inspiring and quality places with a safe and individual identity, promoting sustainable materials and connecting to the wider community. The aim is to create a 'National Forest Setting' including strong wooded areas in which proposed development is sited and a strong scheme of tree planting through the public realm and green open spaces.

The design principles of the NF will inform and play a major contribution to the quality and appearance of the site and will be integrated into a comprehensive landscape scheme to enhance the built development and contribute to the landscape character of the area.

New planting introduced to the site would be of native species chosen to reinforce the existing planting in the surrounding area.

## Ecology

A full ecological assessment undertaken by the Environmental Dimension Partnership (EDP) has identified that certain protected species require consideration in the development of the scheme.

Great crested newt (*Triturus cristatus*) surveys have confirmed the presence of a medium-sized population of great crested newts within five ponds. The majority of these ponds are located north west of the site. However, one pond is located to the east and would, therefore, become isolated from the other ponds without the implementation of a carefully considered landscape planting strategy.

As such, the development principles could include provision of a green corridor along the north east boundary of the site to maintain and improve connectivity of the pond to the east with the wider countryside and other ponds supporting newts north and west of the site. This corridor would also be of benefit to other wildlife, such as commuting and foraging bats.

There no other significant ecological constraints associated with the site.

## Trees

EDP has carried out a BS5837:2012 compliant tree survey and has determined that the site is capable of being developed without the loss of any trees or hedgerows worthy of retention.

All retained trees and their associated RPA's would be protected throughout an implementation stage of the proposals via means of protective barriers, erected and maintained in accordance with BS5837.

**The landowners have commissioned a full Landscape and Visual Impact Assessment of the site being promoted through the Local Plan Strategy, as well as other technical reports such as Heritage, Transport and flood Risk.**

**Their conclusions are summarized in this chapter.**

### Landscape Sensitivity

The site is within the 'settled farmland plateau slopes' Local Character Type (LCT). The key characteristics of this LCT are typical of the surrounding landscape to the north and west, with remnant broadleaf woodland, small streams, field ponds and irregular field pattern.

The site itself has experienced a change in land use. Internal hedgerows and associated trees have been replaced by incongruous features such as large modern sheds, intensification of land cultivation and associated areas of hardstanding; more characteristic of the adjacent urban area. Overall the site and its adjacent environs are considered to have an overall low landscape sensitivity.

Landscape proposals as part of any proposed development would enhance surrounding hedgerows and reintroduce woodland planting to the west, in line with National Forest policy, to provide visual connections to the surrounding landscape.

Built form would be of high architectural quality and make use of locally sourced materials including part-timbering in line with local character. Improvements to Public Rights of Way can create new habitats and provide a green link between Burton upon Trent and the surrounding countryside.

### Visual Sensitivity

The site, is located within an urban fringe landscape on a plateau above Burton upon Trent. There is potential for views of the site from surrounding high topography and nearby residential receptors on Reservoir Road and Lower Outwoods Road, as well as from recreational users of the nearby PRowS to the north and west.

However, the overall visibility of the site within the surrounding landscape is limited due to a combination of undulating topography, sloping valley sides, woodland blocks, mature hedgerows and built form. The overall visual sensitivity of the surrounding receptors is considered to be medium.

### Heritage Assets

The site was subject to an archaeological assessment in August 2012, which involved consultation with the county's Historic Environment Record, analysis of historic maps and aerial photographs and a walkover survey.

This confirmed that there are no designated heritage assets within the site. However, it did highlight the archaeological potential of the wider area; identifying one scheduled monument, one conservation area and nine listed buildings within the site's wider zone of influence.

The assessment has concluded that any development on the proposed land will have a negligible impact on the settings of these designated heritage assets and is therefore in keeping with legislative and planning policy requirements.

### Highways

It is proposed to provide general vehicular access to the residential development from Reservoir Road via the Phase 1 residential development and bus only access via Lower Outwoods Road. This route also has the potential to be used by emergency and service vehicles.

In addition to this Phil Jones Associates have provided a series of access options for connecting the wider phase 2 land into Lower Outwoods near to the Queen's Hospital on Belvedere Road.

Any internal layout can offer a hierarchy of streets, providing a "spine" route through the site of an appropriate standard to permit use by buses. Below this higher category street could be a series of lower hierarchy streets of varying design and characteristics, reflecting the principles of home zones to reduce vehicle speeds and create a pedestrian friendly neighbourhood.

Pedestrian and cycle access can be retained between the site and Lower Outwoods Road, connecting with the east-west public right of way at this location. The right of way also has the potential to offer a connection between the site and local cycle routes.



Highways options for connection to Lower Outwoods Road by Phil Jones Associates

### Flood risk and Drainage

A preliminary assessment by M-EC Consulting indicates that the site is located in Flood Zone 1 and is therefore at low risk of flooding and suitable for residential development.

Soakage testing carried out by M-EC has confirmed the ground is not suitable for infiltration type drainage and, therefore, the preferred drainage solution is to drain the development with a piped system outfalling to the existing watercourse to the west, via a series of attenuation ponds.

It is expected that the surface water drainage will run into the watercourse and any site layout will incorporate Sustainable Urban Drainage features to attenuate and maintain water quality.

Flows will be restricted to provide betterment over existing Greenfield runoff rates into the existing watercourse.

# Design Concept

The concept layout is principally based on the formation of perimeter blocks to create structure and key movement corridors integrating with existing access points.

The scheme concept envisages a development of up to 500 dwellings, based upon a density of between 25 and 30 dwellings per hectare, with the final number being related to the following factors:

- Topography of the site in terms of gradients;
- 30% of the development be allocated for woodland planting / landscape improvements as part of the National Forest charter;
- Highways, in particular the preferred option and approval of a new connection to Lower Outwoods Road;
- Ecological corridors and tree retention.

A series of development cells will be created based on a best practice back-to-back housing layout with natural surveillance of the streetscape and newly created public open space.

**KEY**

- |   |   |   |  |
|---|---|---|--|
|  | Site Boundary   |  | Gateway space  |
|  | New dwellings   |  | Wildlife and Attenuation Pond                              |
|  | Proposed site access (subject to the relevant highways approvals) |  | Improvements to the Public Right of Way / ecology corridor |
|  | Development Cells   |  | Improved Hedgerow boundaries / screening                   |
|  | Residential Squares   |  | Woodland planting  |
|  | Public Open Space   |   |  |



# Movement

The concept layout suggests three parcels of development principally based on the formation of perimeter blocks to create structure and key movement corridors integrating with existing access points.

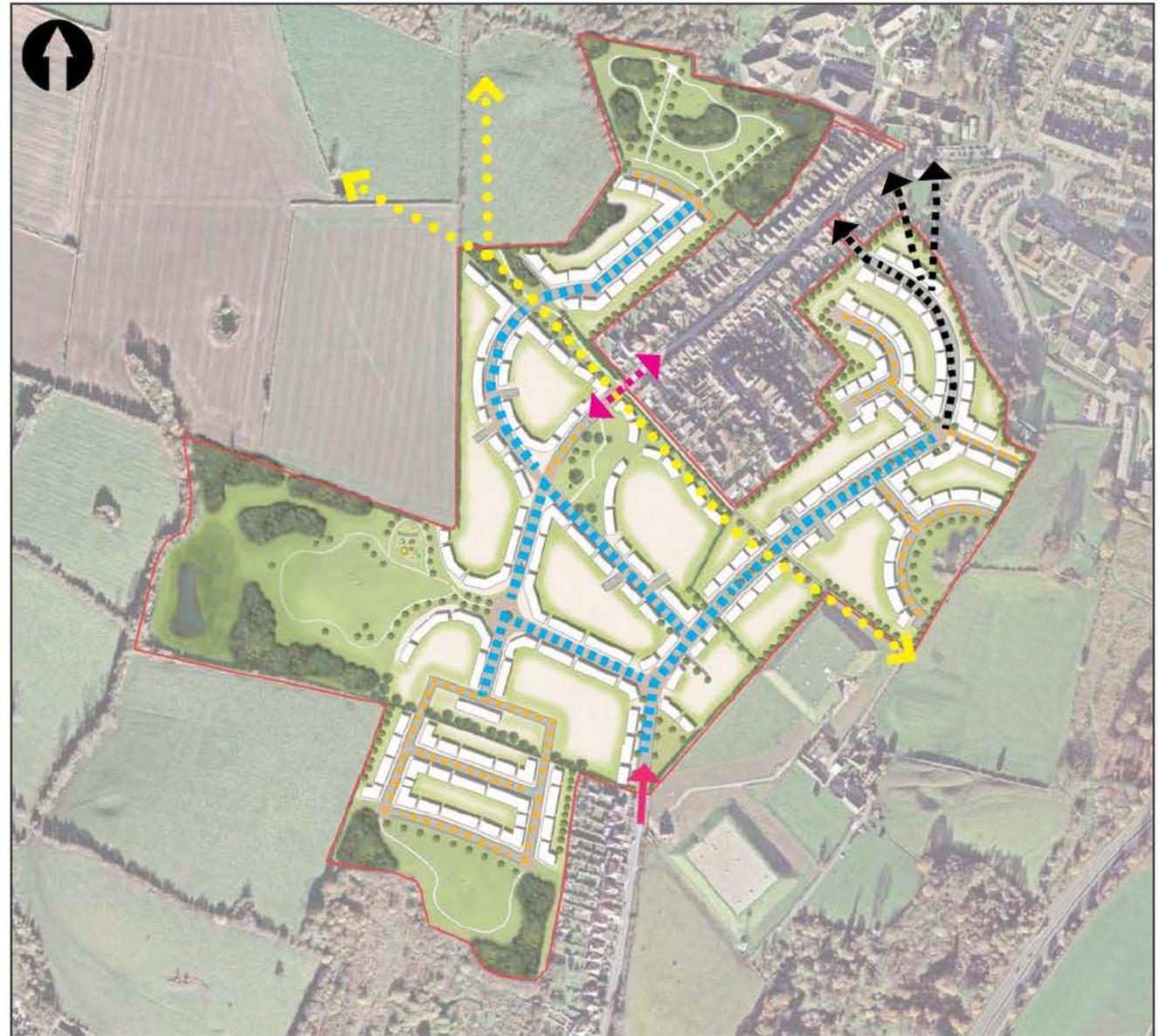
The scheme concept envisages a development of up to 250 dwellings, based upon a density of between 25 and 30 dwellings per hectare, with the final number being related to the following factors:

- Topography of the site in terms of gradients;
- 30% of the development be allocated for woodland planting / landscape improvements as part of the National Forest charter;
- Highways, in particular the preferred option and approval of a new connection to Lower Outwoods Road;
- Ecological corridors and tree retention.

A series of development cells will be created based on a best practice back-to-back housing layout with natural surveillance of the streetscape and newly created public open space.

### KEY

- |   |  |   |  |
|---|--|---|--|
|  | Site Boundary                                      |  | Connections options to Lower Outwoods Road - Refer to highway assessment |
|  | Proposed access to site                            |  | Primary access routes  |
|  | Proposed access to site (emergency and buses only) |  | Secondary access routes  |
|   |  |  | Existing Public Rights of Way  |



# Development Design Principles

## Layout

The form of development would be likely to comprise a mixture of two, three, and four-bedroom houses to create a balanced community.

It is envisaged that the dwellings would be arranged to include some on individual plots, some semi-detached or linked, and some in short terraces. The scale of development would generally be two-stories in height but might include houses with attic storeys with dormer windows to add interest to the roof-scape.

The Key criteria of the Indicative Development Principles is to create a family friendly neighbourhood that complements the existing community, prioritising the following key aspects;

- Family market/suburban/aspirational;
- Front gardens and front doors;
- A setting which reflects the design charter of the National Forest;
- Ecological friendly providing and improving Green Corridors through the site, bringing the natural environment into the development;
- Connecting the development to the wider communities so it is perceived as part of the local community;
- Safe and secure setting maximising natural surveillance.

## Appearance

The appearance of the dwellings could focus on a traditional form reflecting the location and character of the site within the National Forest to harmonise with the surrounding landscape.

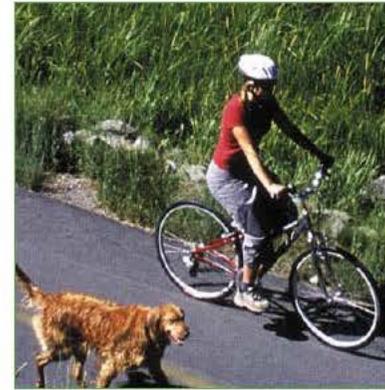
The residential palette might reflect the surrounding area - strong, traditional housing with clear, simple design features. The houses could have pitched roofs, gables, dormers and porches, with a range of facing materials and roof tiles that are characteristic of the area.

Any hard and soft landscaping proposals would benefit from an integrated design with the dwellings to create a sense of place within the development and focal point buildings would be designed to close views and mark road junctions.





**integrate  
development  
with the  
National  
Forest**



**create  
a sense of  
well being**

**locally  
distinct**



**pedestrian  
friendly  
streets**



**protect  
biodiversity**



# Going Forward

## Conclusion

This document summarises the Vision of the landowner and development partner for the residential development opportunity of Red House Farm and the matters that have been addressed by the design team in providing deliverability.

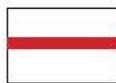
The proposal is submitted to East Staffordshire Borough Council's on the basis that it represents a deliverable contribution to the Council's aspirations for growth and would result in a scheme that would enhance its surroundings.

## Delivery

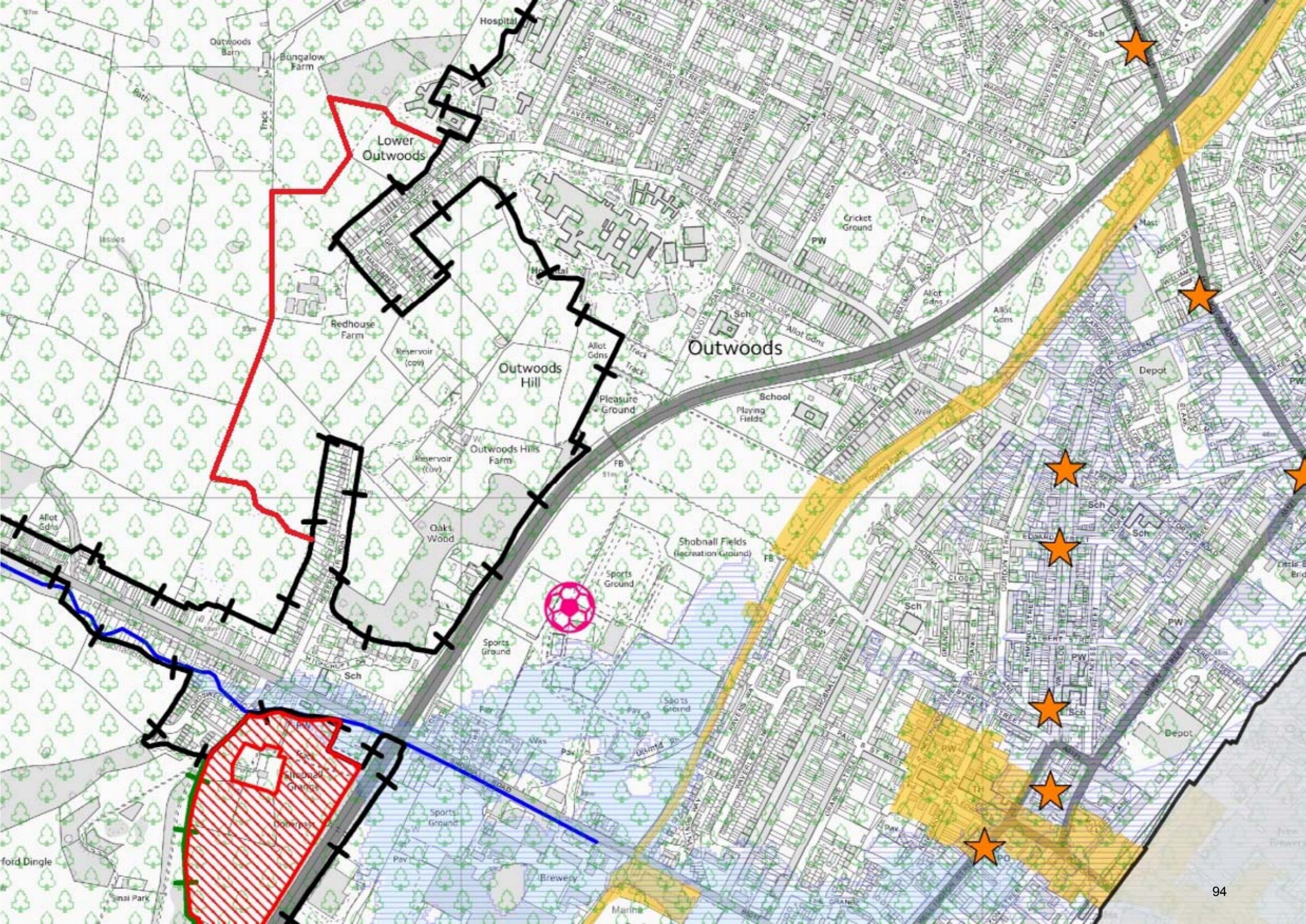
The site is held in a single ownership and is available, subject to the necessary permissions being obtained, for development.

The land owner and development partner are committed to delivering a high quality and sustainable residential development of up to 500 dwellings across two 5 year development phases.

### Key

-  Site Boundary
-  Phase 1  
- 250 Units in years 1 to 5
-  Phase 2  
- 250 Units in years 6 to 10





**Written Representations to East Staffordshire Borough Council**  
**East Staffordshire Local Plan**  
**Pre-submission October 2013**

**Land at Red House Farm, Outwoods, Burton-Upon-Trent**

**On behalf of**  
**Barwood Strategic Land II LLP & Mr and Mrs G Skipper**

**November 2013**

**Alliance Planning**

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**REFERENCE: BDS4072**

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**WRITTEN REPRESENTATIONS TO EAST STAFFORDSHIRE BOROUGH COUNCIL**

**EAST STAFFORDSHIRE LOCAL PLAN**

**PRE-SUBMISSION OCTOBER 2013**

**LAND AT RED HOUSE FARM, OUTWOODS, BURTON-UPON-TRENT**

**ON BEHALF OF: BARWOOD STRATEGIC LAND II LLP  
& MR AND MRS G**

**KEITH FENWICK**

**REVIEWED BY: PAUL ELLINGHAM**

**DATE: NOVEMBER 2013**

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## APPENDICES

Appendix 1	Appeal Decision APP/B3410/A/B/2197299
Appendix 2	Illustrative Master Plan regarding Appeal Decision APP/B3410/A/B/2197299
Appendix 3	Delivery Document September 2012 'Proposal to Deliver New Homes at Red House Farm, Burton Upon Trent'.
Appendix 4	Revised Settlement Boundary 'Burton'

## 1.0 INTRODUCTION

- 1.1 Alliance Planning are instructed by Barwood Strategic Land II LLP and Mr and Mrs G Skipper to review and prepare written representations in response to the East Staffordshire Local Plan Pre-Submission Draft October 2013.
- 1.2 These representations review the pre-submission draft published by the Council which seeks to meet the Borough's growth and development needs to 2031. These representations focus primarily on the proposed growth area of Burton-upon-Trent. Our client owns land at Red House Farm, Burton-upon-Trent, which has recently been a subject of the grant of planning permission for 250 houses by the Secretary of State in a recovered decision and following a full local inquiry (APP/B3410/A/13/2197299) Appendix 1. See also the illustrative masterplan at Appendix 2.
- 1.3 These representations support the allocation of my client's wider land interest for development of an additional 250 dwellings (see previously submitted Delivery Document Appendix 3). In developing proposals for the site the client has formed a dedicated project team to advise on its development potential. The team includes the following consultants
- Barwood Strategic Land II LLP – Land Promoter
  - Alliance Planning – Planning Consultant
  - Influence CLA – Landscape Master Planners
  - PJA – Transport Consultants
  - EDP – Ecology, Archaeology, Arboriculture
  - M-EC – Drainage, Engineering, Noise
- 1.4 This submission produced by Alliance Planning reflects input from the team. It also includes a preliminary master plan included in the Delivery Document for the wider Red House Farm site which has been prepared by Influence CLA and provides an illustration of how the site could be developed (Appendix 3). This is a proposal in addition to the now consented scheme for 250 dwellings referenced at Appendix 1, the master plan for which is attached at Appendix 2.
- 1.5 Representations have previously been made to the Strategic Options paper produced in August 2011 by the Borough Council, and to the Preferred Options paper published in July 2012. In addition, the landowner/promoter has had numerous meetings with the Local Authority during the course of determination of the planning application and subsequent

appeal. These submissions, therefore, flow from an ongoing engagement with the Local Planning Authority, they do not sit in isolation but form part of that continuing dialogue. The previous emerging plan representations remain valid and should be read in conjunction with this submission. These representations draw upon and make critical reference to other documents in the evidence base, notably the Local Plan Pre-Submission Sustainability Appraisal Report (SA), within which concerns raised at Preferred Options stage have been perpetuated.

- 1.6 Red House Farm lies some 2 km to the west of Burton-upon-Trent Town Centre and comprises predominantly agricultural land use for the production of turf. It also includes an area of existing built development focused on Red House Farm and a series of industrial buildings around it.
- 1.7 Given the previous representations made to the Strategic Options paper, and to the Preferred Options papers, along with the appeal decision attached at Appendix 1, it is not considered necessary to reiterate further a description of the site and surroundings within this submission.
- 1.8 These representations are structured under the following broad themes, flowing from the Pre-Submission Local Plan order, the Duty to Cooperate, the Sustainable Development Strategy and Strategic Policies.

## 2.0 DUTY TO COOPERATE

2.1 Concern is raised that the Authority have not fully addressed the implications of their Duty to Cooperate in reaching a conclusion on their objectively assessed housing need.

2.2 In making these representations, Alliance Planning have had sight of the representations drafted by the Home Builders Federation in respect of the Duty to Cooperate, and those submissions are endorsed and supported on behalf of our client, and are not repeated here. Suffice to say that the principal conclusion reached by the HBF is endorsed, that is:

*“many issues on overall housing numbers, unmet housing needs and cross boundary migration patterns between East Staffordshire and its neighbouring authorities ... remain unresolved. The potential under-provision of housing against objectively assessed housing needs and neighbouring authorities could have significant implications such as worsening an existing housing affordability crisis and increasing the numbers of households living in housing stress.”*

2.3 Moreover, it is further agreed that:

*“whilst these issues remain unresolved the Duty to Cooperate has not been satisfied in the preparation of the East Staffordshire Local Plan and therefore the plan is unsound.”*

### 3.0 THE SUSTAINABLE DEVELOPMENT STRATEGY

- 3.1 The strategy adopted by the Council is described as “a combination of many of the options, addressed through the Council’s Interim Sustainability Appraisal in October 2012”. This, however, is a less than clear vision for development of a Local Plan as is explained below, a review of the SA would suggest that the actual strategy is a version of the second Preferred Option with a “bolt on” supply of housing. We are critical of the process that has led to this stage.
- 3.2 There were five options addressed in the original Sustainability Appraisal, with Option 2 (urban extensions plus villages) being further subdivided into four subsections 2a, 2b, 2c and 2d. At the time of the Preferred Options paper, the Authority chose to promote option 2d.
- 3.3 As our representations at that time commented, however, each of the Option 2 proposals included a strategically different number of dwellings at Burton-upon-Trent. Option 2a proposed 2,400, Option 2b, 2,550, Option 2c 3,550 and Option 2d 3,900.
- 3.4 What is now clear from reference to Strategic Policy 4 of the emerging Plan, is that the Authority are now promoting 6,473 dwellings in strategic options at Burton-upon-Trent (and this does not include the 250 dwellings now consented at Red House Farm). This scale of development has clearly not been assessed through any of the preceding strategic papers. Indeed, it was a criticism of the Preferred Options stage that the Authority had not, in accordance with the clear guidance of the Framework, started from a position of having identified the objectively assessed need and then work back to an appropriate strategy. Rather, the Authority at that time was promoting a constraint led development strategy, for which the development target was established by the constraints rather than the need.
- 3.5 As with the Preferred Options stage, which sought a preferred strategy which had not actually been the subject of testing through the Issues and Options strategy, so it is with the Pre-Submission Local Plan which now pursues an option which has not been tested through the Preferred Option stage. To a large extent, the need to identify a wholly new strategy as touched upon by para 2.11 of the Pre-Submission Local Plan, has arisen through the recognition by the Council of the need to provide for substantially more dwellings over the plan period than had previously been thought to be the case (11,648 dwellings now compared to 8,935 dwellings at Preferred Options stage) There are now an additional 2,713 dwellings to be accommodated within the strategy for the plan period, compared to that which was addressed through the Preferred Options stage.

- 3.6 It is clear that this represents a substantial increase in housing provision within the Borough, and that the strategy now emerging is not one which can be said to flow from the previous consultation stages, as the Authority have not at any time sought to strategise development within the Borough at this level of provision.
- 3.7 The spatial strategy to housing, specifically the approach to greenfield development is also less than clear.
- 3.8 Whilst it is recognised and it is supported that greenfield sites will need to be released, the strategy of *“sustainable urban extensions”* is promoted because it *“supports the Council’s intention to deliver truly sustainable growth and developments that the Borough can be proud of. The scale of these extensions will enable the delivery of high-quality new places, characterised by high levels of design and open space, and which can deliver the required infrastructure to ensure a critical mass of activity and high degree of sustainability.”*
- 3.9 However, there is no explanation as to what the Council mean by *“truly sustainable growth”*, what it means by *“scale”* in the context of this statement, why the Council considers that high-quality new places can only be delivered with *“a critical mass of activity and a high degree of sustainability”*. In adopting this strategy, which does not include the identification of a wider settlement boundary to include my client’s site, reference is made to paragraph 9.17 of the recent appeal decision for part of the Red house Farm site in which the Inspector concluded:
- “I am satisfied that the proposal would recognise the intrinsic character and beauty of that part of the countryside, as required in paragraph 17 of the Framework, by the provision of areas of open space and new woodland planting and landscaping to mitigate the effect of the proposed buildings.”*
- 3.10 Moreover, the Secretary of State in his decision on the appeal concluded at para 15 that *“the appeal site is in a sustainable location for housing development”*.
- 3.11 There is concern, therefore, that on a site found by the Secretary of State to be sustainably located for housing development, and capable of meeting the Borough Council’s needs, the emerging plan strategy does not seek to identify this with a revised settlement boundary or a strategy which allocates the site for development. By implication the strategy is clearly flawed.

- 3.12 It is of concern that the Council's preferred strategy is one which is incapable of identifying a site such as Red House Farm as suitable for development, given that the Secretary of State's appeal has now found it an appropriate location for residential development.
- 3.13 Para 2.36 of the Pre-Submission Local Plan references that *"the Council has not chosen a strategy of piecemeal development whereby growth is scattered around different sites because of the impact that this would have on existing communities"*.
- 3.14 The SA is surprisingly absent on an explanation as to how the impacts of an additional 2,700 dwellings have been accommodated. The analysis within the SA identifies the process through to Preferred Options, and examines the Options 2a – 2d in detail. However these related to a substantially lower housing requirement, the SA then identifies that the housing requirement was substantially increased and additional sites were examined for allocation. However it does not explain how this strategy has emerged, the testing or visioning which underlay it, and it is very difficult to view the SA as anything other than a reaction to the identification of a significantly increased housing requirement without any coherent underlying vision or approach.
- 3.15 In effect, these additional dwellings have been identified as a "bolt on" to a strategy that was devised to meet a much lower housing requirement. It is not clear that in approaching this new strategy the Authority have started with a wholly fresh review of their approach to reflect whether this strategy, related to the development requirements and settlement boundaries now identified, remains the most appropriate one going forward.
- 3.16 Specifically, it is noted that at para 6.8 of the SA which identifies alternative strategic sites, does not seek to address Red House Farm. If it is the case that the Authority are looking to rely on the Interim Sustainability Assessment prepared for the Preferred Options, then there were substantive objections raised to the manner in which the Interim SA incorrectly sought to classify the Red House Farm site as not an appropriate location for development. Those concerns, raised by the landowner at that time, have subsequently been proved to be well founded given the support for the site through the Secretary of State's recent appeal decision. Moreover, those concerns were not addressed in Appendix M to the current SA which deals with the responses to the Interim SA.
- 3.17 In the circumstances, the Council are continuing to prepare their Local Plan without having given a proper analysis to the Red House Farm site as a suitable location for development, they have failed to respond to representations previously made in respect of the veracity of

the interim SA's analysis of Red House Farm. The spatial strategy now emerging is in effect Option 2d of the Preferred Options with a series of "bolt on" sites, and it is considered that the emerging strategy is one which lacks coherence through a robust or credible evidence base. In this regard, the strategy is considered unsound, and the Authority are encouraged to consider the strategy afresh in the light of the now identified objective housing need, and in the light of decisions granted both at appeal by the Secretary of State, and more recently by the Authority themselves (Lawns Farm) which now clearly impact upon the identified development strategy.

### **The Merits of Red House Farm**

- 3.18 Concern is raised by the landowner that the Council's understanding and summation of Red House Farm as a strategic development option has not been accurately recorded through the Council's SA accompanying the Pre-Submission Local Plan.
- 3.19 Its assessment of Transportation, rather than being "red" should be "green" as the development now consented makes provision for a bus service through the site avoiding the provision of a "cul-de-sac" service to Queens Hospital, to the benefit of residents, users of the hospital and bus operators and like. The Use of the Land should also be "green" and a positive benefit arising from the site, reflecting the Secretary of State's conclusions that the site is in a sustainable location for housing development and that the benefits of development of the site significantly and demonstrably outweigh the adverse impacts.
- 3.20 The 'Countryside and Landscape' quality assessment should also be "green", again recognising the Secretary of State's consideration in relation to the most visible part of the site that the quality of the landscape has been identified for enhancement and that the proposal would recognise the intrinsic character and beauty of that part of the countryside and would mitigate the effect of the proposed buildings.
- 3.21 The 'Biodiversity and Geodiversity' of the site should be identified as "green", it was agreed by the Borough Council in the Statement of Common Ground for the recent appeal that there would be a net biodiversity gain as a result of the development.
- 3.22 The 'Historic Environment and Heritage Asset' should also be identified as at worst, neutral, if not "green" and positive. It was agreed through the application/appeal process that there are no historic environment or heritage asset issues for bringing the site forward for development. Finally, the issue of 'Local Distinctiveness' should also be identified as "green"

reflecting both the recent appeal decision, and the potential for further enhancement of the area with additional National Forest planting and landscaping/open space.

#### Summary

- 3.23 The Sustainable Development Strategy is unsound, it does not demonstrably show a coherent strategy, vision or response to the objectively assessed housing need. For the reasons explained above it is not positively prepared, justified or effective.

## 4.0 STRATEGIC POLICIES

- 4.1 The recognition within the Pre-Submission Local Plan of the need to avoid repetition of policies is contained within the Framework is supported. Principle 1, setting out the presumption in favour of sustainable development which is consistent with the guidance from DCLG is also welcomed.

### **Strategic Policy 1**

- 4.1 Objection is raised to Strategic Policy 1 on the grounds that it is unsound, in that it is not consistent with national policy, and as such will not be effective.
- 4.2 The policy by seeking to reinterpret the guidance within principle 1, fails to make clear that the merits of sustainability need to be considered within the context of the planning balance, as established by paras 7 and 8 of the Framework. That is, the policy fails to acknowledge that where one or more of the criteria are not able to be addressed by development, development may still be acceptable and sustainable if, within the round, the planning merits of a development outweigh the harm.
- 4.3 Concern is also raised that the viability assessment which accompanies the Local Plan does not properly apportion the costs of implementation of the policy within its viability appraisal of the Local Plan.
- 4.4 Specifically, whilst para 8.5 of the Council's Local Plan and CIL Viability Study states that energy-efficient measures and SUDS are included in the modelling, para 8.4 notes that "*... there is no intention to require developers to incur additional costs in procuring additional reports to demonstrate that they have complied with this policy.*" It is difficult to understand, therefore, how it is intended that the Council will apply the policy.
- 4.5 Moreover, the viability report also identifies that the test of locally sourced procurement for construction materials will be difficult to comply with or verify in particular circumstances.

#### **Strategic Policy 4**

- 4.6 Objection is raised to Strategic Policy 4 on the grounds that it is unsound in that it is neither positively prepared, justified nor effective in the terms established by para 182 of the Framework.
- 4.7 It is not positively prepared as it fails to address sufficiently the unmet requirements from neighbouring authorities as established under the representations relating to the Duty to Cooperate at Section 2 above.
- 4.8 It is not justified as it is not the most appropriate strategy to meet housing within the Borough. As noted in the representations above to the "Sustainable Development Strategy" this is not a coherent strategy which has been developed to identify the current objectively assessed housing need, rather it is a strategy which has been arrived at default. The strategy effectively represents Option 2d of the Preferred Options paper along with a "bolt on" increase in housing numbers the recognition of the need for which has arisen between publication of Preferred Options and Pre-Submission Local Plan.
- 4.9 The greater part of my client's site at Red House Farm has, since the publication of the Pre-Submission Local Plan, received planning permission from the Secretary of State following a call and inquiry (Appendix 1), and this will require the redrawing of the development boundaries to the west of Burton-upon-Trent. The logical extension of those boundaries will incorporate land within the urban area of Burton-upon-Trent which ought then more properly to be recognised as having the potential to provide for additional housing (see proposed revised boundary plan at Appendix 4).
- 4.10 The immediately preceding text to Strategic Policy 4 at page 84 of the Pre-Submission Local Plan makes an oblique reference to my client's site in the context of there being "*two residential applications which are due to be determined by the Secretary of State*". The Red House Farm site now consented should be identified as a greenfield strategic allocation within the text of Strategic Policy 4 in recognition of this materially changed circumstance.
- 4.11 Moreover, objection is raised to the significant reliance on windfall sites to meet the needs of the main towns. The issue of windfall development was a matter considered in detailed submissions to the inquiry at Red House Farm. During the course of cross examination of evidence, the Council's policy officer confirmed that no reliance could be placed upon any of the Council's Annual Monitoring Reports before 2013, as the survey effort and evidence base underlying these documents was fundamentally flawed. Specifically on the issue of windfall

development, the Inspector concluded that *“the Council has failed to demonstrate that it has compelling evidence that 90 dwellings per year will consistently become available from windfall sites and will continue to provide reliable source of supply.”*

- 4.12 This conclusion was inevitable given the concessions made about veracity of the evidence base underlying the assumptions, and the failure of the Council to provide any audit trail as to how it had reached its specific conclusions on a site-by-site basis.
- 4.13 Within this context, it is entirely inappropriate for the Council to now seek to rely on a very significant windfall allowance of some 1,710 dwellings over the plan period (of which 1,359 are within the main towns). The evidence base underlying the assumptions that this quantum of development will continue to come forward has already been found to be wanting by the Secretary of State, and the Council should in this regard seek to plan positively through strategic allocation rather than rely on an unjustified rolling forward of a windfall assumption already found to be without merit.
- 4.14 Moreover, the substantial step change in housing delivery required to meet the expectations of the Council’s housing trajectory (Figure 3.1) will require a marked change in delivery rates (from circa 100 dwellings in 2012/2013 and 2013/2014, to 700 dwellings per annum by 2015/2016 and then nearly 1,000 dwellings per annum by 2016/2017). The only way in which this step change in delivery is capable of being achieved is by the identification of substantial additional positive allocations, not a reliance upon unjustified windfall development to meet this need.
- 4.15 The Council are invited to amend the text of Strategic Policy 4 through the inclusion of land at Red House Farm as a greenfield allocation, and the recognition of its capacity to deliver an additional 250 dwellings over and above the 250 already consented.

### **Strategic Policy 7 – Sustainable Urban Extensions**

- 4.16 Objection is raised to the failure of Strategic Policy 7 to identify Red House Farm as a sustainable urban extension site. In not doing so, the Plan is unsound as it is not justified or effective. Moreover, the policy does not appear to have been properly subject of viability assessment.
- 4.17 Para 8.11 of the Local Plan and CIL Viability Study states that Sustainable Urban Extensions policy applies to requirements for Lawns Farm west of Uttoxeter only, and that these sites are not subject to assessment under the study. It is not clear, where all the other sites within the Policy, or for that matter my client's site which ought properly to be identified under this policy, have been the subject of any Local Plan viability assessment.
- 4.18 Moreover, given that the policy refers to both major SUEs and "two smaller allocations" it is dealing with a range of sizes of site. The list of bullet point requirements arising therefore, are clearly not going to be appropriate to all of the sites identified. Whilst there is a coda to the policy which confirms that it may not be feasible or desirable to provide these requirements to all sites because of the size of the site, it may be beneficial to have more policy specific requirements.
- 4.19 For example, at Red House Farm, the site is already well located to existing bus routes, primary school, shops and services, local hospital and employment opportunities. Located as it is immediately adjacent to existing urban area of Burton, it does not need to provide for such a mix of uses within its own boundaries, but rather can provide a residential focused extension to the edge of an already existing and sustainable settlement location. These merits and its sustainable location were specifically recognised in the recent appeal decision.

**Strategic Policy 16 – Meeting Housing Needs**

- 4.20 This policy is considered unsound as it is not justified in the context of para 182 of the Framework.
- 4.21 Specifically, the requirement that all new housing shall meet lifetime home standard is considered onerous and unnecessary. The provision of this standard has a cost associated with it, and that cost is not accounted for within the Local Plan and CIL Viability Study. It is also not established why there a need for all homes to need this enhanced standard.

### **Strategic Policy 17 – Affordable Housing**

- 4.22 The policy as drafted is objected to as it is unsound through reason of not being sufficiently justified.
- 4.23 There is conflict between this policy and the Council's Housing Choice SPD Appendix 1 revision also the subject of concurrent consultation (and to which separate representations are made). The supporting text to Strategic Policy 17 states that details of how the policy will be applied are set out in a Housing Choice SPD, the Housing Choice SPD seeks to apply a requirement of 30% dwellings on Major Sustainable Urban Extensions and all other sites other than Urban Brownfield sites. The policy within the SPD, therefore, is contrary to the guidance figure within Strategic Policy 17. Moreover, para 8.26 of the Local Plan and CIL Viability Study makes it clear that the viability of this policy was assessed on 25% provision with the first 13% being provided on site and an offsite commuted sum of £40,000 per dwelling.
- 4.24 The commuted sums contained within the Housing Choice SPD however, are £41,900 on urban sites, and £58,400 on all other sites. Neither of these sums has been the subject of viability assessment. The policy as drafted, therefore, is not one which has been properly viability assessed for the purposes of understanding the delivery implications for the Local Plan.
- 4.25 Moreover, the evidence base behind the policy, and in particular that of the Housing Choice SPD does not support the 25% provision on Urban Extensions Sites. The policy only supports provision of 15% affordable housing on Urban Extension Sites, and indeed this was accepted as recently as 12 November 2013 by the Secretary of State in his decision on Red House Farm (Appendix 1) (para 14). This figure flows from the Council's own viability analysis which underpinned the Housing Choice SPD.

### **Settlement Boundary**

- 4.26 Objection is raised to the settlement boundaries for Burton District as identified on Inset No. 1 of the Local Plan Proposal which is considered unsound. The boundaries should reflect the recent grant of planning permission by the Secretary of State at appeal by encompassing the Red House Farm site, within the settlement boundary. The delivery of the Red House Farm site, in its extended 500 dwelling unit form, would be consistent with the overarching principles of sustainable development established through the Framework, and which are clearly demonstrated and flow through the recent Secretary of State's appeal decision. The

amendment to the boundaries sought through these representations is indicated on the plan at Appendix 4.

REFERENCE BDS4072

TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED)

WRITTEN REPRESENTATIONS TO:

EAST STAFFORDSHIRE BOROUGH COUNCIL  
EAST STAFFORDSHIRE LOCAL PLAN  
PREFERRED OPTION JULY 2012

ON BEHALF OF: BARWOOD STRATEGIC LAND II LLP &  
MR AND MRS G SKIPPER

FOR: LAND AT RED HOUSE FARM,  
OUTWOODS,  
BURTON UPON TRENT

PREPARED BY: ALLIANCE PLANNING

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KEITH FENWICK**

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### APPENDICES

Appendix 1 - Site Plan

Appendix 2 – Illustrative Masterplan

## 1.0 INTRODUCTION

- 1.1 Alliance Planning have been instructed by Barwood Strategic Land II LLP and Mr and Mrs G Skipper to review and prepare written representations in response to the East Staffordshire Local Plan Preferred Option July 2012.
- 1.2 These representations review the Preferred Option proposed by the Council to meet the Borough's growth and development needs to 2031. These representations focus primarily on the proposed growth area of Burton upon Trent. Our client owns land at Red House Farm, Burton upon Trent and contemporaneously with the submission of these representations; they are submitting a planning application in respect of part of their landowning for up to 250 new dwellings. The representations draw upon and make critical reference to other documents in the evidence base, notably the Interim Sustainability Appraisal.
- 1.3 These representations support the allocation of their wider land interest for development of up to some 500 dwellings (see Site Plan at Appendix 1). In developing proposals for the site the client has formed a dedicated project team to advise on its development potential. These written submissions are also accompanied by a Delivery Document, which addresses the technical and environmental delivery merits of the site. The team includes the following consultants;
  - Barwood Strategic Land II LLP– land promoter
  - Alliance Planning – planning consultants
  - Influence CLA – landscape master planners
  - PJA – transport consultants
  - EDP – ecology, archaeology, arboriculture.
  - M-EC – drainage, engineering, noise
- 1.4 This submission produced by Alliance Planning also reflects input from the team. It includes a preliminary master plan for Red House Farm which has been prepared by Influence CLA and provides an illustration of how the site could be developed (Appendix 2)
- 1.5 Representations have been made previously to the Strategic Options paper produced in August 2011 by the Borough Council, and the landowner/promoter has held numerous pre-application meetings, in respect of their immediate development proposals. In addition, that planning application proposal has been subject of a

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recent public consultation exercise held in the locality. These submissions, therefore, flow from an ongoing programme of discussion and engagement with the Local Planning Authority. They do not sit in isolation but form part of a continuing dialogue.

- 1.6 Red House Farm lies some 2 km to the west of Burton-Upon-Trent town centre and comprises predominantly agricultural land, but also includes an area of existing built development focused on Red House Farm and a series of industrial buildings around it.
- 1.7 Given the previous representations made to the Strategic Options paper, and the accompanying Delivery Document which accompany these submissions and should be read alongside them, it is not considered necessary to reiterate further a description of the site and surroundings within this submission.
- 1.8 These representations are structured under the following broad themes, flowing from the Local Plan order; the spatial strategy, strategic policies, and delivery and monitoring.

## 2.0 THE SPATIAL STRATEGY

2.1 There are a significant number of concerns raised by my client, both in respect of how their specific site is treated within the Preferred Option and through the Interim Sustainability Appraisal (Interim SA) but also more generally about how the Preferred Option strategy has been selected. In no specific order, these concerns are covered under the following headings

### The Spatial Strategy

2.2 There is concern that the approach the Council have adopted is one of reaching a conclusion first, and then working backwards to establish the questions. By way of example, in our opinion the appropriate approach to establishing the spatial strategy for the plan would be first to understand the housing need of Burton-Upon-Trent (and Uttoxeter and the Rural Areas), and then having established the actual quantum of housing necessary to meet that need, only then to approach the issue of geographic distribution.

2.3 However, the Council's approach seems to take this in reverse. It looks at a series of options which it compares in terms of their sustainability credentials as if they are being compared on a like-for-like basis, but the four options which it reviews (options 2a, 2b, 2c, 2d) each represent a different level of housing need for Burton.

2.4 For example, option 2a seeks to make provision for 2,400 strategic dwelling sites at Burton, option 2b, 2,550, option 2c, 3,550, and option 2d, 3,900. It is not clear from the analysis provided what the Council's view is as to the actual housing need for Burton-On-Trent. Is it that Burton should be meeting a housing need of 2,400 or 3,900?

2.5 Each of these options in turn, have implications for the level of provision in Uttoxeter and subsequently the Rural Areas. Although as noted in the introduction to these submissions my client's interests focus specifically on Burton, and hence I make no comment on those areas other than to say that the approach within the Regional Spatial Strategy panel report there was a clear identification that Burton was to accommodate 80% of predicted growth, with Uttoxeter to accommodate 20%. The emerging "strategy", however, makes no such clear-cut provision whilst the Interim SA notes that the balance will be about 68% to Burton – there is no sense that this balance was reached out through a positive process of undertaking and assessing the actual needs v capacity of Burton, Uttoxeter and the Rural Area, rather it appears as a residual calculation.

- 2.6 It seems to be a critical omission that the Spatial Strategy of the plan does not start from a premise of establishing the need for housing in Burton, and then work forwards from that point to establish a distribution strategy which best addresses that need.
- 2.7 The Council's approach in contrast appears to be one of identifying a series of options of varying scales, and then concluding that only a "larger sustainable mixed-use urban extension" can provide a "sustainable development" option. If in the Council's opinion only a large development site can be "sustainable" then it would suggest that the remainder of the options presented were never 'real alternatives'. If the Council is wedded to the concept of large single site release as the principle mechanism for delivering housing, then it ought to have assessed 4 large alternative single site scenarios.
- 2.8 Clearly if an assessment of Burton's housing needs established that actually the requirement was only for 2,400 dwellings (as in Option 2a) then a very different conclusion about the Preferred Option might be reached to that which is. However there is no analysis through the documentation either within the Preferred Option paper, the Interim SA, or the Housing Requirements and SHMA Update Report, which provide the information as to the actual perceived housing need in Burton. This evidence base is lacking in this regard.
- 2.9 The net result, is that the 'Spatial Strategy' has been arrived at by default, following a pre-conceived notion that sustainable urban extensions are the most 'sustainable development' form for the Borough. This by implication then leads to a conclusion about housing distribution which has implications both in terms of housing provision for Uttoxeter and the rural areas which are arrived at by default, rather than through a positive and planned understanding of the actual housing requirements for each of the principal settlement locations.
- 2.10 It is noted that the Preferred Option states at para 5.32 that the growth requirement for the Borough is 8,935 dwellings. This figure is derived from the Housing Requirements and SHMA Update Final Report July 2012.
- 2.11 We have serious concerns over the veracity of this figure, which is substantially lower than the previously "examined" and endorsed figures for the Borough (RSS, Panel Report). There are concerns that the assumption on migration and growth rates have been under-estimated with a net result that the housing requirement for the Borough will not be properly met.

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Process

- 2.12 There is a concern that of the four scenarios examined through the Council's Preferred Options paper, the option selected was not considered within the Strategic Options paper prepared only some 12 months previously. Moreover there is nothing within the analysis of the responses provided by the Council to the earlier Strategic Options paper which would have naturally led to the conclusion that the Council's Preferred Option of a single and substantial allocation to deliver the majority of housing for Burton at a location to the south-west of the town would be a natural outcome of that process.
- 2.13 Whilst clearly it is right that the Council remains open to the possibility that all of its previously promoted and considered strategic options were wrong (they were after all never subject to Sustainability Appraisal) the identification of a wholly new option not previously the subject of any consultation might more usefully have been trialled through an addendum Strategic Options consultation paper prior to the publication of this Preferred Option submission.

The Merits of Red House Farm

- 2.14 Concern is raised by the landowner that the Council's understanding and summation of Red House Farm as a strategic development option has not been accurately recorded through the Council's Interim SA, and incorrect conclusions are then drawn about the sites deliverability and sustainability credentials. These erroneous conclusions may have unfairly affected consideration of the site's merits.
- 2.15 Notwithstanding my client's submissions through the formal Strategic Option consultation process in August/September 2011, the Red House Farm site is identified at Figure 3.7 of the Interim SA, as being a far more extensive area of land than that which actually being promoted for development.
- 2.16 Previous submissions made by Alliance Planning identify a much reduced site area, tight up to the urban fringe, and providing the potential for a strategic transport linkage which would be focused around Red House Farm and deliver circa 500 dwellings. It is envisaged that these could come forward in two development phases, the first 250 units in the period in 2012 to 2017, the second 250 units in the period 2017 to 2022.
- 2.17 The Interim SA correctly identifies that Red House Farm has the potential to deliver a mix of housing, and is located close to Queen's Hospital, one of the towns most

- significant employers. It also notes that local services are within easy reach of the site.
- 2.18 The Interim SA however incorrectly identifies the development of the site would have a significant negative impact on the countryside and landscape owing to its visual impact. Detailed landscape visual impact analysis has been undertaken in respect of the landowner's application being submitted concurrently with these representations. That analysis confirms that development on the site is achievable without significant landscape or visual impact, or the need for significant mitigation. This is because much of the site sits behind the existing reservoir, which creates the ridgeline focus in long distance views.
- 2.19 The Interim SA also identifies that there are potential environmental and historical constraints, again this is not supported in the Interim SA with production of any evidence. Discussions held with the County Council's Principal Archaeologist have indicated that there are in no archaeological constraints within the land being promoted for development. The work undertaken by EDP also indicates that there are no Heritage Assets materially affected by the potential site development.
- 2.20 The detailed ecological work undertaken on behalf of the landowner has also confirmed that the land being proposed for development which currently forms part of a turf farm is ecologically sterile. Existing field boundaries including hedgerows and trees which offer some interest are sought to be retained within any development of the site.
- 2.21 It can be concluded therefore that there are no significant environmental constraints to the development of the site.
- 2.22 Concern about poor access is fully addressed within the detailed Transport Assessment work produced in consultation with County Council's Highways Department for the Phase 1 application. It has confirmed that there are no significant transportation constraints to development of the site, and this is reflected in the attached Delivery Document. A number of options for providing access to Phase 2 exist, which include a new highways link to Belvedere Road across land in the ownership of Burton Hospitals NHS Trust over which the Red House Farm owners have sufficient legal rights to deliver.
- 2.23 There are justified and significant concerns on the part of my client that in misrepresenting the physical extent of the site being promoted for development of up to 500 dwellings, the Council may inadvertently have dismissed its potential for reasons which are neither substantiated nor sustainable.

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Selection Criteria for Option 2d

- 2.24 A summary of the Council's assessment criteria for the four different options can be found at Table 6.2 of the Interim SA. Dealing with Red House Farm, its conclusions on Countryside and Landscape Quality, Biodiversity and Geo-diversity, and Historic Environment and Heritage Assets, are all considered to be incorrectly represented within the assessment.
- 2.25 The attached Delivery Document addresses these technical issues in more detail, but as noted above there is no significant biodiversity associated with the site, that which does exist will actually be enhanced through development proposals. The County Council's Principal Archaeologist has confirmed in pre-application discussions that there are no heritage aspects to the scheme which require to be addressed other than maintaining a watching brief through condition, and the detailed work undertaken in respect of countryside and landscape quality has confirmed that there will be no significant landscape or visual impact arising from development.
- 2.26 It is difficult to understand how the 'potentially negative' a judgement has been reached in respect of 'local distinctiveness' for Red House Farm. It is not a conclusion supported by our evidence, and appears counter intuitive when for example, the provision of 2,790 dwellings in the Lawns Farm area is considered a positive factor. The criteria for judging local distinctiveness appears far from clear.
- 2.27 Dealing specifically with Lawns Farm as the principle allocation in the 2d option these submissions do not seek to make or pass judgement on the appropriateness or otherwise of the Lawns Farm's designation. However, it is useful by way of reference to consider how Lawns Farm has been assessed in comparison to Red House Farm. For example Lawns Farm scores more highly on the issue of local distinctiveness because "the delivery of a community will provide opportunities to deliver a well-designed and distinctive development." There is no explanation as to why such aspirations are exclusively the realm of "a community development". It is equally true that a development at Red House Farm acknowledged by the Interim SA to be well located to existing employment and local services will also provide an opportunity to deliver a "well designed and distinctive development".
- 2.28 The assessment appears to treat lightly the fact that large parts of the Lawns Farm site lie within Flood Zone 2 & 3; it argues that the site is sustainable as it is close to the town centre, albeit the Red House Farm is closer, and it fails to reflect in its assessment of countryside and landscape quality that a significant portion of the site falls within an area noted as Special Landscape Area in the Strategic Option Paper. It

is unclear how the conclusion is reached that the countryside and landscape quality impact of Lawns Farm is neutral, when the impact of Red House Farm is deemed to be of a possible negative impact. This is despite the fact that there are no landscape designations affected by Red House Farm.

- 2.29 My clients' concern, is that there has not been an equitable treatment in the assessment of the sites through the evidence base, or a proper understanding of the Red House Farm development proposals as promoted through the Strategic Options paper last year. Were such an assessment to be undertaken it is possible that the Council may reach a different conclusion as to the relative merits of their competing strategies particularly given the acknowledged relative merits of Option 2c, within which my clients' site formed a part as opposed to Option 2d which it does not. Indeed, my client does not accept the reasoning for dismissal of Options 2a or 2b either, both of which appear to rely in part on a flawed evidence base.
- 2.30 Moreover the summation at para 5.117 of the Preferred Options document as to why Option 2d was selected over option 2c does not seem to present a compelling case for that selection. It concludes that the balance between the two options was required and that the reasons for the preference for Option 2d include the ability of that option to provide a broad range of housing type and mix (in our opinion Option 2c could equally do this).
- It would provide additional services and facilities for the towns (albeit that it commends option 2d as being a self-contained urban extension).
  - That option 2d provides for more employment land (albeit that there would be nothing to prevent the Local Plan allocating employment land in addition to the housing sites identified at adoption 2c).
  - Option 2d proposes more development on Brownfield sites in the town (again this seems an entirely false suggestion given that had the Council wished could have identified additional town centre Brownfield sites as part of the option 2c proposals, especially given that option 2c in total is providing 900 fewer dwellings in total than option 2d).

#### Predetermination

- 2.31 It is difficult to escape a conclusion in examining the Council's Preferred Option that the sentiments expressed at para 5.123 of the plan have dictated the Council's approach. That is, that there is a preconceived notion that only sustainable urban

extensions can "deliver truly sustainable growth", and that "the Council does not want a strategy based upon piecemeal development".

- 2.32 These statements would indicate a degree of pre-determination in the selected strategy option 2d. The process is one which should be led by a methodological examination of the relative merits of competing spatial strategies against a given and understood housing requirement/need for the principal towns. Rather, it is possible to conclude that the approach may have been one that started from a premise that "the Council does not want a strategy based on piecemeal development", and then worked backwards to conclude that this strategy could only be delivered through a sustainable urban extension. We do not consider this to be a robust analysis or approach, or an appropriate way to identify a preferred development strategy.

#### Minimising Risk

- 2.33 There is a subsidiary issue to the Council's preferred development option which is acknowledged in their plans recognition that planning for the delivery of the substantial part of the Council's housing supply on a single site represents a very high-risk strategy. In the Council's view, this risk is reduced simply to the issue of whether or not it can maintain a five-year land supply whilst the SUE allocations are brought on stream. However we would argue that there is a subsidiary risk, if any future constraints are subsequently identified such as those based around heritage assets as acknowledged within the plan, flood risk, or other unforeseen circumstances. In any event, relying upon a single substantial allocation proposes a high-risk strategy for the Council because if it fails to deliver in the quantum or timescales expected, it will have a significant and major implication upon the ability of the plan to deliver its wider objectives.
- 2.34 To address this risk, the plan acknowledges specifically that there is an issue potentially with five-year land supply and to this end seeks to identify Harehedge Lane, Burton as a 300 dwelling site capable of meeting an immediate housing need to ensure the maintenance of a five-year land supply.
- 2.35 We would note, however, that the relative merits of Harehedge Lane and Red House Farm have not been equitably or properly assessed against each other, due to the misrepresentation on the Interim SA of the merits of the Red House Farm. Were a more equitable assessment undertaken, it is considered that Red House Farm has significant advantages associated with it, not least related to its immediate availability.

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Summary

- 2.36 The Council's Preferred Options paper asks three questions in respect of the spatial strategies:
- Is there rationale for the Council's choice of preferred option clear?
  - Do you think there are any valid, reasonable options not addressed so far?
  - Is the proposal to allow very small-scale development in the smallest villages appropriately justified?
- 2.37 We have no submission to make in respect of small-scale development in the villages. However, in respect of the rationale behind the Council's Preferred Option this is far from clear. The document as presented provides a very confused picture as to the methodological and transparent process which should have been undertaken to conclude firstly the appropriate quantum of development to be provided at Burton-Upon-Trent, and then secondly a preferred Spatial Strategy for the delivery of that option.
- 2.38 The four options considered in detail through the Preferred Option paper do not seek to provide a consistent quantum of development, and it is therefore impossible to conclude what they achieve on a like-for-like basis.
- 2.39 In our opinion, the Preferred Option is flawed in its approach to identifying an appropriate strategy. It should start first with an understanding of the housing requirement for Burton-On-Trent and then work towards a strategy which best fulfils that need. In our opinion the substantial reliance made on delivery of so much of the Council's Local Plan objectives through a single site (which requires a new junction onto the A38, crossing British Waterways Canal, mitigating Flood Risk, Mitigating Landscape sensitivity etc, none of which has been the subject of a viability assessment) is a high-risk strategy which the Plan does not adequately mitigate. A strategy which provides a greater level of dispersal around different sites to the western edge of Burton-On-Trent would be better placed to meet the development needs of the plan period.

### 3.0 STRATEGIC POLICIES

- 3.1 The recognition within the Preferred Options of the need to avoid repetition of policies contained within the National Planning Policy Framework within the Local Plan is supported. The statement setting out the presumption in favour of sustainable development which is consistent with the guidance from DCLG is also welcomed.
- 3.2 There is, however, a significant concern that the Local Plan Preferred Option shows no evidence of having been tested for viability. There is no evidence on the Council's website that a viability assessment has been undertaken or has formed part of the evidence base supported the local plan. This would suggest given the statutory requirement to consider viability, that such an exercise is being undertaken retrospectively, which cannot be the appropriate way to prepare policy. It runs wholly counter to the guidance of the Local Housing Delivery Group which was convened by DCLG to provide guidance on the role of viability informing (not being informed by) the Development Plan process.
- 3.3 There is an obligation on the Council to ensure that all policies contained in the Local Plan that are to be applied to development are viable and deliverable. It is important that sites are not subject to policy demands and levels of obligations which will render them undeliverable. It is for the Council to assess the likely cumulative impact on development of all their existing and proposed local standards, Supplementary Planning Documents and policies that support the Development Plan, when added to nationally required standards. Para 174 of the NPPF notes that in order to be appropriate, the cumulative impact of the standards and policies should not put implementation of the plan at serious risk, and should facilitate developments through the economic cycle.
- 3.4 The Council have not produced the requisite evidence base to demonstrate that the combined effect of policies within the Local Plan do not place any unnecessary burdens upon future development. The Local Housing Delivery Group's June 2012 paper "Viability Testing Local Plans: Advice of Planning Practitioners" talks throughout about the importance of a collaborative approach to viability testing, sharing of information, as an re-iterative process to both inform and be informed by emerging policies. In the absence of a viability assessment, it is difficult to understand whether any of the emerging policies are in fact deliverable.

### **Policy SP1**

- 3.5 Policy SP1 could be enhanced by a more explicit statement as to the housing requirement, and the plan period which it covers. Moreover, clarity could also be provided by indicating the individual brownfield windfall allowance for each of Burton and Uttoxeter.
- 3.6 Working on an assumption that the Burton/Uttoxeter windfall allowance is split approximately 80/20, this would infer an overall split in the strategic allocations to Burton on Trent at some 68% of the overall housing total. For reasons set out in the preceding section, it is not considered that the Preferred Option establishes a clear and justified spatial strategy which supports this split.

***Policy SP2***

- 3.7 There is concern that Policy SP2 could lead to an over-detailed attempt to control delivery of the greenfield sites relied upon to deliver the Council's housing strategy (wherever those sites may be).
- 3.8 Greenfield sites, particularly larger allocations, can require significant lead in times to deliver significant new infrastructure (such as new road junctions, canal crossings etc), and there is a need to understand the certainty of that delivery in order to secure funding.
- 3.9 The policy would imply that on an annual basis the Council might seek to stop or start greenfield sites depending upon the supply of brownfield sites. Such an approach could have significant implications for cash flow on development sites and it is not clear (in the absence of any viability assessment) how this has been accounted for in the establishment of this policy. The policy as drafted is considered to be unsound.

***Policy SP3***

- 3.10 The Council is commended for seeking to require “high quality design” on new development. Indeed in the light of this policy it is perhaps harder to understand the subtle differentiations which the Council have made in their Interim SA in terms of different sites being able to achieve “local distinctiveness”, given that the policy requires all sites to achieve this benchmark standard.
- 3.11 The above said it is important that the requirements of this policy exceed the provisions of national standards. Because of this it is necessary that the implications of these enhanced standards are addressed through the Council’s viability assessment which should have accompanied this Preferred Options paper. In its absence the policy is considered unsound.

***Policy SP4***

- 3.12 For the reasons noted in respect of the overall Spatial Strategy, it is considered that the Council have not demonstrated through the preferred options paper or the background papers to it, that a “sustainable urban extension” is necessarily the appropriate solution to deliver the housing needs of the Borough during the plan period.
- 3.13 It is noted that all of the requirements of Policy SP4 could be met as equally well through development at Red House Farm as they can be through a Sustainable Urban Extension, albeit that Red House Farm would not need to provide its own onsite retail leisure social or cultural facilities, given its proximity to the existing facilities which it could support within the town centre.

***Policy SP5***

- 3.14 The introductory comments to the strategic policies indicated that the plan would not seek to replicate the requirements of the NPPF, however, this policy does potentially overlap with it.
- 3.15 NPPF para 32 identifies that  
*“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* (our emphasis).
- 3.16 This test is translated, however, within Policy SP5 into a test of “significant harm”. There is potential for unnecessary conflict here between the two policies, and it is suggested that the policy could be clarified through either cross-reference to the NPPF, or rewording to establish the same test of “sever impact” as set out within the NPPF.
- 3.17 Policy SP5 could also benefit from clarity in terms of references to contributions and to how these would sit alongside the introduction of CIL, and how these requirements have been assessed in terms of their implications for viability of site development.

***Policy SP6 and SP7***

- 3.18 Both of these policies go significantly beyond the requirements of NPPF. There is no evidence that they have been subject viability assessment in terms of the additional imposition these would place upon development costs.
- 3.19 Policy SP6 in particular seeks to include a level of detail which it is not considered necessary for detailed inclusion within the Local Plan.

***Policy SP8***

- 3.20 Whilst the desire for development to provide a wider choice of homes is supported, concern is raised that the local plan needs to be sufficiently flexible to respond rapidly to changing market conditions. The relationship between the Housing Choice SPD, and the principal requirements of Policy SP8 could usefully be clarified. Phrases included within the policy including “the full range of dwelling sizes and types” could also benefit from some clarity in definition, thereby aiding certainty.
- 3.21 Objection is raised to the requirement that all new housing should meet Lifetime Homes’ standard. The government is currently undertaking a review of all standards applicable to housing development in conjunction with the HBF, in recognition of industry concerns that the myriad of different policies relating to housing standards can have a significant and negative effect on the viable delivery of new homes. The cost of achieving Lifetime Homes has not been taken into account by the Council in their assessment of the Local Plan’s viability. In the absence of this critical part of the Local Plan’s evidence base, it is difficult to envisage that this policy in its current phrasing could be found sound.

***Policy SP9***

- 3.22 The Council is to be commended for its recognition that the provision of affordable housing on single sites is not necessarily the best way of delivering social housing for the Borough. Specifically, the Council's proposals that above 15%, contributions in lieu of onsite provision may be made in order to fund improvements to existing housing stock is welcomed.
- 3.23 However, concern is raised regarding the soundness of this policy because it seeks to defer elements of its detailed implementation (specifically a clear statement of the Borough wide requirement and expectation for delivery) to a subsidiary document, namely the Housing Choice SPD.
- 3.24 Such an approach is contrary to the advice of the NPPF, and in so doing it fails to have regard to the implications of the policy on the viability of the delivery of the local plan, again contrary to the advice within NPPF. As previously noted guidance in the Local Housing Delivery Group's document "Viability Testing Local Plans" make it clear that viability should inform the policies of the Local Plan. It is considered that on a matter so critical to the viability of any development site, the expectation for delivery of affordable housing should be explicitly established through the adopted local plan policy.

***Policy SP17***

- 3.25 Objection is raised in respect of this policy specifically as to the suggestion that the implementation of planting and landscaping schemes for approved new development in the National Forest Area would be secured either “by means of conditions, or would be a constituent part of the Community Infrastructure Levy”.
- 3.26 Once the Community Infrastructure Levy is set, then there is an established fixed rate for financial contributions which are payable in most circumstances on a “non-negotiable basis”. It is unclear, in the circumstances where the authority might seek to require provision by means of condition, how a contribution through CIL could be discounted to reflect the fact that this cost is already being borne onsite by development.
- 3.27 Clarification of this matter is sought.

***Policy SP18***

- 3.28 It is noted that the Policy seeks to require all new development to incorporate SUDS within its design. However, as the situation currently stands neither ESBC nor the County Council are willing to adopt SUDS as a matter of course – this creates delivery problems for House Builders.
- 3.29 If it is the Council's desire that scheme's should incorporate SUDS then it is important that there is an 'adopting body' available. The Water Management Act will likely lead in future to the County Council assuming this role – however in the interim the Plan should explain which public body will look to adopt SUDS and manage them? In the absence of such a commitment, and if the Authority believe that they should be maintained at the developers expense through a management company, then it is necessary to understand how the implications of this have been costed as part of the Council's viability assessment of the plan's policies.

***Policy SP19***

- 3.30 Objection is raised to this draft policy, which as worded is considered unsound. As with other policies, there is concern that this potentially significant cost burden on development is being delegated to a subsidiary Supplementary Planning Document. As noted elsewhere, such an approach is contrary to the advice of the NPPF, in failing to have regard within the local plan, to the implications of the policy on the viability of the delivery of the local plan.
- 3.31 The terms of the policy are also considered vague and not properly justified as required by Para 182 of the NPPF. The policy is considered to be imprecise. Its opening statement that development should "*encourage all technologies and types of renewable and low carbon energy generation does not define its terms, nor seek to identify how such provision would be meaningfully assessed or measured*".
- 3.32 The policy sets out that further guidance on how development should contribute would be set out in an additional Supplementary Planning Document. However on such a critical issue to the viability of the delivery of the plan's strategic sites and the plan's objectives, it is imperative that the implications of these policies are fully understood, and accounted for within an assessment of the plan's viability.
- 3.33 Para 153 of the NPPF makes it clear that additional Development Plan Document should only be used where they are clearly justified, and that Supplementary Planning Documents should not be used to add unnecessarily to the financial burdens on development.
- 3.34 Given that the expectations arising from this policy are in any event largely replicated through the Building Regulations, the Council are requested to amend the policy simply to reflect that their objectives on the use of renewable and low carbon technologies would be met through adherence to current building regulations. If there is a requirement to move away from those regulations, then it is incumbent upon the Council to have assessed, costed and applied those additional costs into the viability assessment of the local plan.

### ***Summary***

3.35 The strategic policy section of the local plan is concluded through the request to address three specific questions

- Should the Council have a policy on sustainable development?
- Should individual SUEs have a specific policy relating to the delivery of the site?
- Should the Council allow for custom built housing on the SUEs?

3.36 Given the substantive range of issues raised by the strategic policies these questions do not adequately cover the issues raised by the breadth and depth of the matters addressed. We are concerns about how over-reliance on a response to these questions might be used to erroneously justify a Preferred Option for the submission Draft Local Plan.

#### 4.0 DELIVERY AND MONITORING

- 4.1 Question 12 asks whether the monitoring framework is clear and will allow the Council to monitor policies effectively.
- 4.2 We would suggest that the monitoring method proposed is in many places over-simplistic and does not actually establish a clear tool with which the authority can benchmark the success or otherwise of its policies.
- 4.3 For example, the monitoring method for 'high quality design' is to count the number of master plans submitted, and to consider the percentage of new dwellings built to BREEAM standard. Neither of these criteria actually deals with design quality.
- 4.4 Similarly the suggestion that the "presumption in favour of sustainable development" is not in gift of the Council to deliver (the monitoring method states that the policy depends on the implementation of others), is erroneous. It is absolutely for the Council to establish those applications which constitute sustainable development, and then to apply a presumption in favour of their being granted of planning permission.
- 4.5 Measures related to accessibility and sustainable transport, fail to establish benchmarks for changes in mode share, which might be a key measure of success of the policy.
- 4.6 It is suggested that the monitoring method for affordable housing solely taken as the is number of affordable housing completions. However, the policy for affordable houses is explicit that the Council may actually seek contributions to improve existing housing stock, rather than actually provide new onsite units. There needs to be a more "intelligent" mechanism for measuring success in the regard.
- 4.7 We would encourage the Council to review the monitoring method against the actual objectives of each of the policies, and provide a more precise set of assessment criteria.

# Appendix 1



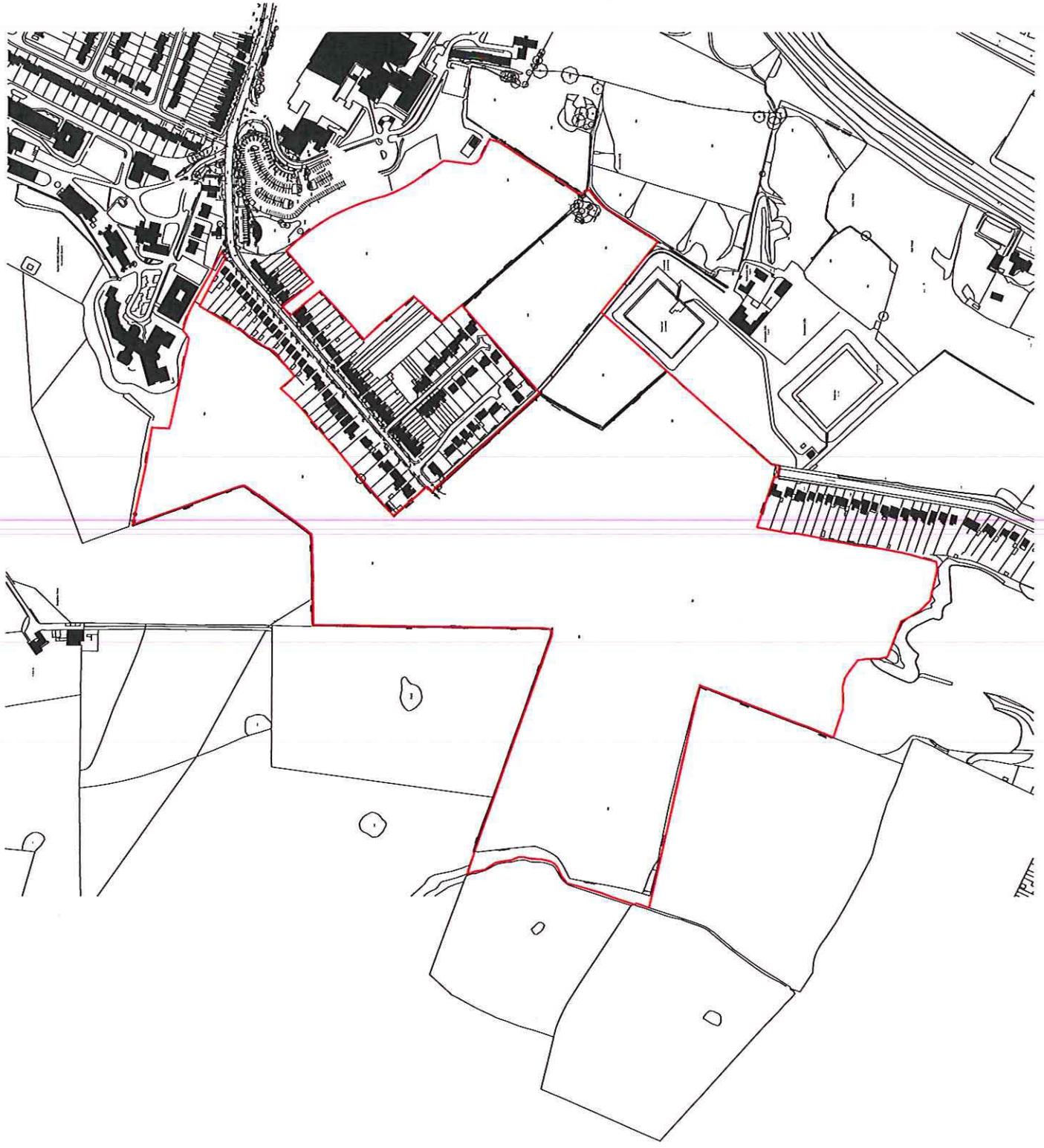
NOTES:

- 1. This drawing is to be read in conjunction with all relevant contract drawings and specifications, with any amendments thereto, and the terms and conditions of Influencia's before works commence on site.
- 2. Do not scale from this drawing, always work to noted dimensions.
- 3. All given dimensions in mm.

KEY



Site Boundary



DATE	21.09.2012
DESIGN	LANDSCAPE ARCHITECTURE
SCALE	AS SHOWN
PROJECT NO.	15200
PROJECT NAME	Red House Farm Silo Boundary

FOR PLANNING

**Influencia Architects**  
Landscape Architects  
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PROJECT NO: 15200  
PROJECT NAME: Red House Farm Silo Boundary  
DATE: 21.09.2012  
SCALE: AS SHOWN  
PROJECT NO: 15200  
PROJECT NAME: Red House Farm Silo Boundary  
DATE: 21.09.2012  
SCALE: AS SHOWN

# Appendix 2

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30<sup>th</sup> April 2014

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Dear Madam,

#### **LOCAL PLAN PRE-SUBMISSION REVISED SUSTAINABILITY APPRAISAL REPORT – MARCH 2014**

Alliance Planning act on behalf of Barwood Strategic Land II LLP and Mr and Mrs G Skipper in respect of their land interests at Red House Farm, Burton-upon-Trent. Representations have previously been submitted throughout the emerging Local Plan process, and include representations to the Strategic Options paper in August 2011, the Preferred Options paper published in July 2012, and the Pre-Submissions Draft Local Plan in October 2013. Within the last two submissions, reference was made to the Council's Sustainability Appraisal report.

Also pertinent to these submissions are the findings of the Secretary of State in respect of two recent planning appeals at Burton-on-Trent, one related to part of the site covered by these representations at Red House Farm (APP/B3410/A/13/2197299) and secondly in relation to an appeal at Forest Road, Burton-on-Trent (APP/B3410/A/13/2193657).

These representations should be read in conjunction with the submissions made to the Pre-Submission Local Plan in October 2013, and in particular those comments within Section 3 of the submissions which are appended to these representations for completeness.

In particular, the failure of the Council to address through a wholly fresh review of the Sustainability Appraisal the strategic approach to the Local Plan, following the identification of a substantially increased housing need within the Borough, is criticised. This criticism is further supported by the findings of the Secretary of State in respect of the Red House Farm and the Forest Road appeals such that the Sustainability Appraisal simply does not reflect the planned growth now proposed for the Borough.

### **The Merits of Red House Farm**

The Sustainability Appraisal (SA) assessment of the merits of Red House Farm is contained at page 93 of the Appendices to the SA and is identified by site reference 107.

The site assessment has not changed since earlier drafts of the Local Plan, albeit there has been a material change in circumstance in the grant of planning permission over much of the site by the Secretary of State, who clearly reached different conclusions on the assessment merits of the site and its sustainability compared to that undertaken by the Council.

Concerns about the misrepresentation of the site through the Sustainability Appraisal were first raised with the Council through submissions to earlier drafts of the Local Plan, specifically representations made in September 2012 to the Preferred Option Local Plan, July 2012. Concern was raised that the conclusions reached by the Council in respect of the impact the development of the site would have on countryside and landscape, environmental and historical constraints, ecological constraints and transport impact, were all misplaced and not based upon a cogent evidence base.

These concerns were subsequently demonstrated to be well founded, when the Secretary of State granted planning permission for the first phase of development for up to 250 units on the site in November 2013. At that time, representations were made to the Council highlighting that the continued assessment of Red House Farm within the Council's Sustainability Appraisal failed to properly recognise the merits of the site.

My client is, therefore, disappointed that with the opportunity of the revised Sustainability Appraisal report published in March 2014 to reflect upon recent appeal decisions and to more accurately reflect the merits of Red House Farm site (and for that matter the Forest Road, Burton-on-Trent site), the opportunity has not been taken. It can only lead to a conclusion that at its core the SA is flawed, as the conclusions reached on these two sites have a significant bearing on which of the strategic options (i.e. 2A, 2B, 2C or option 2D, the Plan sought to pursue. For completeness, I also append the representations made in September 2012 on these matters which were contained at paragraph 2.14–2.23.

### **Selection Criteria for Option 2d**

Notwithstanding the commendable desire of the Authority to progress a Local Plan to adoption (a matter first identified as an urgent requirement in the GoWM saving letter of 9<sup>th</sup> July 2009) there must come a point where the changes on the ground resulting from decisions made in other arenas, have a tangible bearing upon the process. Such that the process needs to be paused to take on board those changes. To this end, changes on the ground have occurred in Burton which can not be ignored in the pursuit of adopting the Local Plan.

The SA identified through assessment the requirement to pursue Option 2 of the five high level options, it further concluded that subsidiary Option 2d should be the preferred Plan Strategy. However, a number of material changed circumstances have now occurred;

- the grant of planning permission to Hallam Land at Outwoods (950 dwellings),
- the grant of planning permission at Red House Farm (250 dwellings),
- the grant of planning permission at Forest Road (300 dwellings), and
- the grant of planning permission at Lawns Farm (2,500 dwellings)
-

The strategic growth options to the west side of Burton-Upon-Trent, (Options 2a, b, c and d) simply fail to reflect the reality of the growth proposed as it now is on the ground.

That is, the SA does not appraise the growth of Burton as it is now proposed. Planning permission now exists at Outwoods for 950 dwellings, at Red House Farm for some 250 dwellings (with a phase 2 application in pre-application stage), at Forest Road for 300 dwellings, and Lawns Farm for some 2500 dwellings. This growth scenario was not modelled in the SA.

Not only, therefore, has the SA not addressed the implications of the additional 2700 dwellings identified by the Council's review of their housing assessment in 2013 (a point highlighted in my client's November 2013 submissions to the Pre-Submission Local Plan, see attached), but it has also failed to address in terms of the assessed strategic options, the scale of development now proposed on the west side of Burton.

Whilst the Sustainability Appraisal concluded that Option 2d should be the preferred strategic option for the Local Plan, this is not in practice the growth strategy which has now emerged for Burton. The SA does not therefore assess the actual growth strategy.

#### **Summary Conclusions**

The March 2014 SA does not appropriately assess potential alternative strategies, specifically a strategy which reflects the growth now actually planned for Burton-on-Trent which has emerged through the grant of numerous planning appeal decisions coupled with planning decisions of the Authority itself.

For the Local Plan to proceed in the absence of a proper assessment of the implications of the actual growth strategy, or a proper reflection of the merits of alternative sites being promoted through those strategies, represents a flawed basis on which to progress the emerging Local Plan.

I would be grateful if you could please keep me advised of the Council's timetable for Local Plan progression.

Yours faithfully

**Keith Fenwick BA (Hons) MRTPI**

Director

Encs.

## **East Staffordshire Borough Council Local Plan Examination Response to Inspector's Questions and Issues for Discussion**

**on behalf of  
Barwood Strategic Land II LLP and Mr & Mrs G Skipper**

**October 2014**

**Our Ref: 5044**

### **Alliance Planning**

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## **Preamble**

Detailed comments have been made at all stages of the East Staffordshire Borough Council Local Plan process, including draft Supplementary Planning Documents and emerging Neighbourhood Plans. This has included:

- Strategic Options Paper – August 2011
- Preferred Options Paper – July 2012
- Pre-Submission Local Plan – October 2013
- Local Plan Pre-Submission Revised Sustainability Appraisal Report – March 2014
- Outwoods Draft Neighbourhood Development Plan 2014-2031 – July 2014
- Housing Choice Supplementary Planning Document (Revision of Appendix 1) Consultation Statement – November 2013

Barwood Strategic Land II LLP and Mr and Mrs G Skipper are promoting land for residential development at Red House Farm, Outwoods, Burton-Upon-Trent, which lies within the administrative boundary of East Staffordshire Borough Council.

The site comprises three parcels of agricultural land (approximately 6.42ha) at Red House Farm and Outwoods Hill Farm, with site access on land at Queens Hospital, Burton. The site is located on the southern edge of Outwoods and falls outside but adjacent to the defined settlement boundary for Burton.

The site is located to the south of existing residential development at Lower Outwoods Road. Land falling immediately to the south west of the site was recently granted planning permission for the erection of up to 250 dwellings in November 2013 by the Secretary of State (APP/B3410/A/13/2197299) where it was concluded that the site is in a sustainable location for housing development.

The site identified at **Appendix 1** is now being put forward for residential development of up to 130 new homes with ancillary infrastructure in a sustainable location. The scheme will deliver a number of wider benefits for the future and existing local community including:

- High quality new homes including affordable properties;
- High quality designed development;
- New Public Open Space / National Forest Tree Planting;
- The protection and enhancement of existing landscape features and biodiversity habitats;
- Improved linkages to the surrounding area; and
- New Homes Bonus of £1.06m over 6 years.

Alliance Planning on behalf of Barwood Strategic Land LLP and Mr and Mrs G Skipper

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This Position Statement seeks to reiterate and update where necessary, comments previously made in respect of the Pre-Submission Local Plan and revised Sustainability Appraisal, to confirm our Client's position. The representations are structured under the following broad themes, flowing from the Inspector's Questions and the Pre-Submission Local Plan Order:

**Issues to which this Statement refers:**

Issue 1: Duty to Co-Operate	-	Page 4
Issue 2: Legal Compliance	-	Page 5
Issue 3: Relationship of the Local Plan to Development and Supplementary Planning Documents and Neighbourhood Plans	-	Page 10
Issue 4: Overall Spatial Strategy	-	Page 11
Issue 6: Housing Need and Requirement	-	Page 12
Issue 7: Housing Land Supply	-	Page 17
Issue 8: Affordable Housing and Exception Sites	-	Page 19
Issue 15 (b): Development Locations, Individual Sites and Villages	-	Page 20

**Issue 1 – Duty to Co-Operate**

*Inspector's Question: Does the Plan and its preparation comply with the statutory Duty to Co-Operate with prescribed bodies regarding cross-boundary strategic matters, including housing requirements in particular?*

Comments were made and concerns raised in regard to the implications of the Council's Duty to Co-Operate in the representations made to the Pre-Submission Local Plan and are not repeated here.

Principally, concern is raised that the Authority has not fully addressed the implications of their Duty to Co-Operate in reaching a conclusion on their objectively assessed housing need.

Alliance Planning has had sight of the representations made on this matter by the Home Builder's Federation and those submissions are endorsed and supported on behalf of our client. They are not repeated here. It is agreed that in conclusion *"the Council has not engaged in co-operative working with neighbouring authorities early enough in the plan making process to have meaningful outcomes. The submitted East Staffordshire Local Plan is not positively prepared and in the future it will not be effective."*

## **Issue 2: Legal Compliance**

*Inspector's questions: Is the Plan otherwise legally compliant including with respect to the:*

*b. Revised Sustainability Appraisal/Strategic Environmental Appraisal/Appropriate Assessment?*

Comments were made and concerns raised in regard to the Local Plan Pre-Submission Revised Sustainability Appraisal Report (March 2014) and to the Local Plan Pre-submission in October 2013. The position of our Client remains as previously stated.

In particular, the failure of the Council to address through a wholly fresh review of the Sustainability Appraisal the strategic approach to the Local Plan, following the identification of a substantially increased housing need within the Borough, is criticised. This criticism is further supported by the findings of the Secretary of State in respect of the Red House Farm (APP/B3410/A/13/2197299) and Forest Road (APP/B3410/A/13/2193657) appeals such that the Sustainability Appraisal simply does not reflect the planned growth now proposed for the Borough.

Under S19(5) of the Act and the SEA Regulations which came into force in England and Wales in July 2004, the undertaking of a Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) are mandatory for all Local Plans and SPDs. S39 of the Act requires Local Plans/SPDs to be prepared with a view to contributing to the achievement of sustainable development. SA is one way of helping fulfil this duty through a structured appraisal of the economic, social and environmental sustainability of the plan. The production of a SA is one of the "tests of soundness" on a Local Plan/SPD.

The requirement to undertake SEA is established in the EU by the European Directive 2001/42/EC, 'the Assessment of the Effects of Certain Plans and Programmes on the Environment' (commonly known as the SEA Directive). The SEA Directive is transposed into English law by the SEA Regulations. Although the requirement to undertake both SA and SEA is mandatory, it is possible to satisfy the requirements of both parties of the legislation, through a single appraisal process, as confirmed at paragraph 165 of the Framework.

A Sustainability Appraisal (SA) should meet all of the requirements of the Strategic Environmental Assessment (SEA) Directive and the Environmental Assessment of Plans and Programmes Regulations 2004, including that any likely significant effects of each policy/proposal, plus alterations have been assessed.

Further guidance on the preparation of the SA in relation to the stages of Local Plan production together with the information to be covered within the SA Report is set out in the Planning Policy Guidance (PPG) dated March 2014. The PPG states at paragraph 11-009 that the Sustainability Appraisal should "focus on the environmental, economic and social impacts that are likely to be significant."

The guidance goes on to state at paragraph 11-018 "The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach)".

The PPG states at para 11-021 and 11-023 that if draft Local Plans are modified either following consultation or through independent examination, the local planning authority should decide if the Sustainability Appraisal also needs to be updated. Para 11-021 states that *“further assessment may be required if the changes have not previously been assessed and are likely to give rise to significant effects.”*

The strategy adopted by the Council is described as “a combination of many of the options” (para 2.11 Submission Version Local Plan, April 2014) addressed through the Council’s Sustainability Appraisal in October 2012. This, however, is a less than clear vision for development of a Local Plan and is certainly not an option that has been specifically tested through the Sustainability Appraisal. In reviewing the various reiterations of the Sustainability Appraisal, it is suggested that the actual strategy is a version of the second Preferred Option with a “bolt on” supply of housing. We are critical of the process that has led to this stage.

There were five options addressed in the original Sustainability Appraisal and re-identified in the Interim Sustainability Appraisal, with Option 2 (urban extensions plus villages) being further subdivided into four subsections 2a, 2b, 2c and 2d, each of which included a strategically different number of dwellings at Burton on Trent. The Authority has chosen to promote option 2d.

Strategic Policy 4 of the emerging Plan shows that the Authority are now promoting 6,473 dwellings in strategic options at Burton-upon-Trent, 2,573 dwellings more than has been tested within the Sustainability Appraisal process. This scale of development has clearly not been assessed through any of the preceding strategic papers. Indeed, it has been a criticism of the process since the Preferred Options stage that the Authority had not, in accordance with the relevant legislation and clear guidance of the Framework, started from a position of having identified the objectively assessed need and then working back to an appropriate strategy. Rather, the Authority at that time was promoting a constraint led development strategy, for which the development target was established by the constraints rather than the need.

The SA is surprisingly absent on an explanation as to how the impacts of an additional 2,573 dwellings have been accommodated. The analysis of Options 2a-2d in the Sustainability Appraisal related to a substantially lower housing requirement. The Sustainability Appraisal then identifies that the housing requirement was substantially increased and additional sites were examined for allocation. However it does not explain how this strategy has emerged, the testing or visioning which underlay it, and it is very difficult to view the Sustainability Appraisal as anything other than a reaction to the identification of a significantly increased housing requirement without any coherent underlying vision or approach.

In effect, these additional dwellings have been identified as a “bolt on” to a strategy that was devised to meet a much lower housing requirement. It is not clear that in approaching this new strategy the Authority have started with a wholly fresh review of their approach and Sustainability Appraisal testing of the now proposed option, to reflect whether this strategy, related to the development requirements and settlement boundaries now identified, remains the most appropriate one going forward when

assessed against the alternatives. On this basis, the Council's Sustainability Appraisal is considered to fail relevant tests and is not legally compliant.

Whilst the need to release greenfield sites is identified in the Submission Version Local Plan and indeed such release supported, the strategy of "*sustainable urban extensions*" is promoted by the Authority because it "*supports the Council's intention to deliver truly sustainable growth and developments that the Borough can be proud of. The Council does not want a strategy based upon piecemeal development whereby growth is scattered around the town and sites are unable to contribute in full to the infrastructure required by new and existing communities.*"

Page 90 of the Submission Version Local Plan states that "*an urban Extension can be characterised as 'sustainable' if it meets the criteria of Principal 1 and Strategic Policy 1 (presumption in Favour of Sustainable Development and East Staffordshire Approach to Sustainable Development). To be considered a Sustainable Urban Extension a site needs to be either of a size large enough to support its own facilities and services or be located where there is a range of facilities already in existence sufficiently close to allow easy walking, cycling and bus access to these facilities.*"

In adopting this strategy, which does not include the identification of my client's site at Red House Farm that has the benefit of planning permission, reference is made to paragraph 15 of the recent appeal decision for part of the Red House Farm Site, in which the Inspector concluded that "*the appeal site is in a sustainable location for housing development*".

There is concern, therefore, that on a site found by the Secretary of State to be sustainably located for housing development, and capable of meeting the Borough Council's needs, the emerging plan strategy does not seek to identify this with a revised settlement boundary or a strategy which allocates the site for development, because it adopts a different view on sustainability than the Secretary of State. By implication the strategy is clearly flawed.

It is of concern that the Council's preferred strategy, set out in the Local Plan Pre-Submission Revised Sustainability Appraisal Report incorrectly sought to classify the Red House Farm site as not an appropriate location for development. Those concerns have already been raised by the landowner and subsequently been proved to be well founded given the support for the site through the Secretary of State's recent appeal decision. Moreover, those concerns were not addressed in Appendix M to the current Sustainability Appraisal, which deals with the responses to the Interim Sustainability Appraisal.

In the circumstances, the Council are continuing to prepare their Local Plan without having given a proper analysis to the Red House Farm site as a suitable location for development, they have failed to respond to representations previously made in respect of the veracity of the interim SA's analysis of Red House Farm.

Notwithstanding the commendable desire of the Authority to progress a Local Plan to adoption (a matter first identified as an urgent requirement in the GoWM saving letter of 9<sup>th</sup> July 2009) there must come a point where the changes on the ground resulting from decisions made in other arenas, have a

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tangible bearing upon the process. Such that the process needs to be paused to take on board those changes. To this end, changes on the ground have occurred in Burton which cannot be ignored in the pursuit of adopting the Local Plan.

That is, the SA does not appraise the growth of Burton as it is now proposed. Planning permission now exists at Outwoods for 950 dwellings, at Red House Farm for some 250 dwellings (with a phase 2 application in pre-application stage), at Forest Road for 300 dwellings, and Lawns Farm for some 2500 dwellings. This growth scenario was never modelled in the SA.

The spatial strategy now emerging is in effect Option 2d of the Preferred Options with a series of "bolt on" sites, and it is considered that the emerging strategy is one which lacks coherence through a robust or credible evidence base. In this regard, the strategy is considered unsound, and the Authority is encouraged to consider the strategy afresh in the light of the now identified objective housing need, and in the light of decisions granted both at appeal by the Secretary of State, and more recently by the Authority themselves (Lawns Farm) which now clearly impact upon the identified development strategy.

### Summary

The SA does not therefore assess the actual growth strategy and should not be considered legally compliant, and as a result the Local Plan cannot be considered to be soundly based.

For the Local Plan to proceed in the absence of a proper assessment of the implications of the actual growth strategy, or a proper reflection of the merits of alternative sites being promoted through those strategies, represents a flawed basis on which to progress the emerging Local Plan.

It is also disappointing that with the opportunity of the revised Sustainability Appraisal report published in March 2014 to reflect upon recent appeal decisions and to more accurately reflect the merits of Red House Farm site (and for that matter the Forest Road, Burton-on-Trent site), the opportunity has not been taken. This can only reinforce the conclusion reached above that the Sustainability Appraisal is flawed and not legally compliant.

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**Issue 3: Relationship of the Local Plan to Development and Supplementary Planning Documents (DPDs and SPDs) and Neighbourhood Plans**

*Inspector's Question: Is the ESNP effective in relying upon, or deferring to, other plans or policy documents, in particular:*

- a. A future site allocation Development Plan Document*
- b. Neighbourhood Plans, and*
- c. Supplementary Planning Document on Housing Choice.*

Concern is raised on the Council's reliance on the Housing Choices SPD within the Local Plan, particularly at Policy SP17. The NPPF para 153 and Glossary set out that SPDs are documents to add detail to Local Plan policy to provide further guidance and should not add financial burden to development.

Alliance Planning has had sight of the representations made on this matter by the Home Builder's Federation and those submissions are endorsed and supported on behalf of our client. They are not repeated here.

#### **Issue 4: Overall Spatial Strategy**

*Inspector's Question: Is the overall Spatial Strategy of the Plan sound including respect to the Options considered and:*

- b. Strategic Sites and Strategic Urban Extensions and:*
  - iii. Whether additional SUEs should be designated.*

Objection is raised to the failure of Strategic Policy 7 to identify Red House Farm as a sustainable urban extension site within the Policy SP7 or even within Policy SP4 as a Site Allocation for development. In not doing so, the Plan is unsound as it is not justified or effective with reference to para 183 of the Framework.

Given that Policy SP7 refers to both major SUEs and "two smaller allocations" it is dealing with a range of sizes of site. The list of bullet point requirements arising (Policy SP7) therefore, are clearly not going to be appropriate to all of the sites identified. Whilst there is a coda to the policy which confirms that it may not be feasible or desirable to provide these requirements to all sites because of the size of the site, it may be beneficial to have more policy specific requirements.

For example, at Red House Farm, the site is already well located to existing bus routes, primary school, shops and services, local hospital and employment opportunities. Located as it is immediately adjacent to the existing urban area of Burton, it does not need to provide for such a mix of uses within its own boundaries, but rather can provide a residential focused extension to the edge of an already existing and sustainable settlement location. These merits and its sustainable location were specifically recognised in the recent appeal decision.

On the basis of the above, objection is raised to the settlement boundaries for Burton District as identified on Inset No. 1 of the Local Plan Proposal which is considered unsound. It is noted that the Council's Table 'Housing units due for Delivery in...' includes the Red House Farm Site for the delivery of 250 units over the Plan period albeit it is under the sub-heading 'Appeal Sites' not the Allocations sub-heading. The proposed Burton development boundary should reflect the recent grant of planning permission by the Secretary of State at appeal by encompassing the Red House Farm site, within the settlement boundary. The delivery of the Red House Farm site, in its extended 500 dwelling unit form, would be consistent with the overarching principles of sustainable development established through the Framework, and which are clearly demonstrated and flow through the recent Secretary of State's appeal decision. The amendment to the boundaries sought through these representations is indicated on the plan at **Appendix 2**.

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### Summary

In response to the Inspector's Issue 4, part b)iii, it is considered that the Red House Farm Site should be identified within Policy SP7 as an additional Sustainable Urban Extension, to recognise its capacity to deliver an additional 250 dwellings over and above the 250 already consented.

## **Issue 6: Housing Need and Requirement**

*Inspector's Question:*

*Is the requirement for the provision of housing identified in the Plan:*

- a. Soundly based on an Objective Assessment of Need for market and affordable housing,*
- b. Based on an appropriately defined Housing Market Area,*
- c. To provide an appropriate mix of size and type of dwelling, including Extra Care accommodation?*

Given that much of the evidence that the Council are relying on to support the Local Plan was produced following the submission of the Local Plan this is the first opportunity to comment in detail on the Council's evidence base. Therefore, the report at **Appendix 3**, prepared by DLP Planning, has considered the Council's objectively assessed housing need. It is noted that Roland Bolton, Senior Director of DLP Planning will be the main witness on behalf of the client in respect of matters relating to Issue 6.

*a. Soundly based on an Objective Assessment of Need for Market and Affordable Housing:*

DLP Planning's Strategic Planning Research Unit (SPRU) has been commissioned to undertake an update of their objectively Assessed Need for Housing in East Staffordshire. This is included at **Appendix 3** of this submission. This assessment of objectively assessed need utilises the well recognised Chelmer Model which is a variant of the official government projection methodology (page 39 Strategic Housing Market Assessments – Practice Guidance).

This assessment concludes that the housing requirement for the plan should be **880 dwellings a year** in order to achieve the integration of housing and economic strategies as required by paragraph 158 of the Framework. This level of provision will also adequately address the Framework and Guidance in terms evidence and future migration patterns and improving access to housing.

The most up to date evidence on household formation is the Interim 2011 household projections while the most recent population projections are the 2012 SNPP which take account of the 2011 census. The housing requirement resulting from these projections has been calculated using the Chelmer Model and would suggest a dwelling requirement of between 414 and 515 dwellings a year for the period 2011 to 2031. The lower figure represents the impact of the 2011 household representation rates while the higher figure is a projection that starts with these lower rates but models improved access to housing by a partial return to previous trends. On this basis it is considered that this higher projection is preferred as it better reflects the policies within the Framework.

This demographic projection is the starting point from which to consider the appropriate level of housing requirement in the context of the Framework including the need to integrate economic and housing strategies and to accommodate development from other locations such as Birmingham.

**Integration of economic and housing targets:**

It is common ground between SPRU and the Council’s consultant who has produced the SHMA (2014) that the demographic led projections would provide insufficient increases to the local labour force given the requirement in the Framework (paragraph 158) for integration of housing and economic strategies.

The area of difference between SPRU and the SHMA (2014) is the level of labour force increase required to meet the requirements of the local economy.

There are two areas of difference; first is the overall level of likely economic growth and related employment growth and second, is the level of increase in the workforce required to facilitate such growth.

The 2014 SHMA increases the level of dwelling requirement to reflect an increase in employment over the plan period of 5,728 full time equivalent (FTE) jobs (the Alternative Labour Demand scenario forecasts).

This level of employment growth is under half the level of growth set out in East Staffordshire Regeneration and Growth Plan - Delivery Plan 2012- 2015 which suggests a growth rate of 790 jobs a year which in itself is just below past rates of growth of 800 jobs a year so would appear to be a reasonable assumption.

**Table 1 Comparison of chosen employment projection and past rates of employment growth**

Total (FTE jobs)	2010 Actual	2031 Projected	change	% change
Labour Demand	56,700	69,144	12,444	21.9%
Additional Forecast Scenario	56,700	61,130	4,430	7.8%
Past Trends 15 Years	56,700	72,623	15,923	28.1%
Past Trends 25 Years	56,700	65,524	8,824	15.6%
Labour Supply Scenario	56,700	60,310	3,610	6.4%
<b>Additional Labour Demand model</b>	<b>56,700</b>	<b>62,336</b>	<b>5,636</b>	<b>9.9%</b>

Source: SHMA paragraph 6.71 and Table 5.1 of the ELR report

It is clear that the council are planning for a substantially lower level of growth and this does not meet the Framework requirement which requires the Plan to be positively prepared.

The Employment Land Review (2013) assesses the likely level of employment to be generated from the local plan policies as being some 12,670 jobs. The SHMA then, incorrectly in our view, applies a “leakage” and a “displacement” allowance reducing this labour requirement figure by more than 50%

and thereby claiming the employment land and housing allocations are integrated as required by paragraph 158 of the Framework.

This heavy discounting of the likely additional jobs that will need to be met by an increased labour force is based on, in our view, a partial and misapplication of the English Partnerships Additionality Guidance (2008).

In summary the SHMA has applied incorrect ratios for leakage and displacement by not considering the area and target groups correctly. Furthermore and most damaging to the approach is that the consultants have failed to apply any multiplier in terms of additionality (see Appendix 3, Section 4).

A more considered approach however would be to apply the 9% leakage based on the commuting ratio, the 17% displacement figure for city challenge projects and the 1.21 to 1.38 multiplier effect. The impact of this is set out in the table below and suggests that rather than the two parts of the strategy being in balance they are potentially significantly out of balance (see Appendix 3, Section 4).

**Table 2 Alternative estimation of employment growth from commitments and allocations taking account of English Partnerships Additionality Guidance (2008)**

	Rate	Jobs
Table 6.4: Estimated Gross Employment Yield from Committed Projects (Jan 2013)		12,670
Leakage (commuting ratio)	0.09	1,153
Displacement	0.17	2,154
Additional jobs for local workforce		9,363
Multiplier	1.38	12,921
Multiplier	1.21	15,635

*Source: English Partnerships Additionality Guidance (2008) & table ELR table 6.4*

The SPRU approach, which is a more commonly accepted approach at examinations is to base the level of increased labour force requirement on the estimated impact of the planned provision of employment land. Therefore, to accommodate employment growth of 12,670 jobs (FTE) whilst allowing for in commuting would require an increase in the labour force of some 11,530 persons. Depending upon activity rates and household representation rates this level of labour force growth would require between 798 and 893 dwellings a year with the most likely outcome being towards the top of the range as this allows for improvements to household representation rates and models in the lower (and previously accepted) assumption regarding the pension age changes

These projections suggest that to cater for employment growth of over 600 jobs a year would require about 880 dwellings a year.

Unmet need in Birmingham

In addition to the above the noted undersupply in Birmingham needs to be taken into account (this is discussed in part 2 below) and this would suggest that additional dwelling provision would not only assist the local economy by facilitating future economic growth but will also assist in meeting the needs of Birmingham by accommodating higher levels of migration from the City.

### Vacancy Rates

In addition to the above, the noted undersupply in Birmingham also needs to be taken into account (this is discussed in part b below) and this would suggest that additional dwelling provision would not only assist the local economy by facilitating future economic growth but will also assist in meeting the needs of Birmingham by accommodating higher levels of migration from that city.

### Conclusion

It is noted that by a partial return to the 2008 based Household Representation Rates we have effectively “planned in” improvements to affordability and access to housing for some sections of the population most notably the younger age groups allowing them to form more traditional households at an earlier age. These assumptions are considered to be appropriate as they are in accordance with the Framework in particular paragraph 21 in terms of supporting the economy, paragraph 47 in respect of significantly increasing the supply of housing and paragraph 50 which requires decisions to widen the choice of high quality homes and of home ownership.

On consideration of all of the above evidence it is suggested that these circumstances the most appropriate assessment of the Objectively Assessed need for Housing in East Staffordshire is represented by an average between the two employment led (11,530 additions to the labour force projections) which equates to approximately 880 dwellings a year.

#### *b. Based on an appropriately defined Housing Market Area*

Section 5 of SPRU's Objectively Assessed Housing Need Report for East Staffordshire (Appendix 3) highlights the evidence regarding the appropriate Housing Market Area (HMA). This suggests that the HMA is larger than the local authority but recognises that the pattern of travel to work and migration actually extends beyond even this more widely defined HMA.

In particular the evidence highlights that there remains an important relationship with Birmingham and that as the City has identified a high level of unmet need the overall level of housing requirement for the district cannot be set without reference to and acknowledgement of the fact that the district has a role to play in addressing this unmet need.

The report concludes that the dwelling requirement in the previous Local Plan is out of date and that the evidence for the RSS Phase 2 revisions while subject to scrutiny is also out of date although the wider issue of how to address unmet demand from the Birmingham SHMA still remains an issue. It is noted therefore that the RSS review did suggest higher levels of housing need for East Staffordshire on the basis that the Borough would accommodate displaced demand from elsewhere in the region.

The issue of unmet need remains an unresolved issue for Birmingham as revealed by the City Council's letter to West Midlands Authorities highlighting that it will not be able to accommodate its future housing needs and there is likely to be a shortfall of some 40,000 dwellings. This has been reaffirmed in

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their latest position statement to the examination of their own plan where the issue of unmet need remains unresolved.

It is considered that the level of dwelling provision being proposed at 880 dwellings a year would assist in part in meeting some of Birmingham city's unmet need.

### Summary

- 6a. As set out above and confirmed in the DLP report at **Appendix 3**, the Council should be looking to provide housing at a rate of about 880 dwellings per year in order to achieve the integration of housing and economic strategies as required by para 158 of the Framework. The requirement for housing is therefore not based on a sound objective assessment of need for market and affordable housing.
- 6b. The SPRU Objectively Assessed Housing Need Report for East Staffordshire (**Appendix 3**) acknowledges that addressing unmet need from the Birmingham Strategic Housing Market Area remains an issue. The report also highlights evidence suggesting the appropriate Housing Market Area extends beyond the local authority's administration area and can be extended even further when patterns of travel to work and migration are also taken into account.
- 6c. No Comment

**Issue 7: Housing Land Supply**

*Inspector's Question:*

*Is there robust evidence that the development locations and sites allocated in the Plan, together with windfall sites:*

*b. Will maintain a minimum five year housing land supply at all times. And*

The Council's most recent own Five Year Land Supply Methodology Paper (Document C.120) dated 12<sup>th</sup> September 2014 identifies only a 3.9 year supply of housing.

If the correct objectively assessed need figure is included in the Five Year Land Supply figures, as reference in our comments on Issue 6 of 880 dwellings per year, this supply will reduce even further.

As shown in the Table below, if the correct objectively assessed need figure of 880 dwellings per year is included in the Council's figures, this supply reduces to a 2.9 year supply. It should also be noted that this quick reference calculation has not sought to challenge any of the Council's supply figures.

Table 1: Five Year Housing Land Supply Calculation using Objectively Assessed Need figure of 880 dwellings per annum.

	<b>Council Published Figures (Doc C120)</b>	<b>Using DLP Objectively Assessed Need figures of 880 per year)</b>
5 year requirement	613/year*5 = 3,065	880/year*5 = 4,400
Inclusion of 20% buffer	3,065*1.2 = 3,678	4,400*1.2 = 5,280
Annual Requirement (total /5)	3,678/5 = 736	5,280/5 = 1,056
<b>Annual requirement</b> with inclusion of previous undersupply (1,417 dwellings) at 283 per year	736+283 = <b>1,019</b>	1,056+283 = <b>1,339</b>
Five Year Requirement	5,095	6,695
<b>Total Supply</b> (including windfalls) (Council published figures)	<b>3,961</b>	<b>3,961</b>
Five Year Land Supply (total supply/annual requirement)	3.89 years	2.9 years

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In November 2013 (Doc C.7) the Council's published five year land supply was 3.9 years, in May 2014 this rose to 4.14 years (Doc C.93) and in the latest figures from September 2014 it is now at 3.89 years supply (Doc C.120). The Council has an unstable five year land supply as is evidenced by their own figures from the last 12 months. On this basis the Local Plan fails the tests of para 47 of the Framework and cannot be considered to be positively prepared.

**Issue 8: Affordable Housing Provision and Exception Sites**

*Inspector's Question:*

- a. *Does the Plan make appropriate provision for developer contributions toward an identified need for affordable housing:*
  - i. *Based on robust evidence of viability across the Borough*
  - ii. *Including with reference to consideration of the content of the Housing Choice SPD and representations made upon it during recent public consultation*

Policy SP17, as drafted is objected to as it is unsound through reason of not being sufficiently justified.

Para 153 of the NPPF specifies the Supplementary Planning Documents should be *“used where they can help applicants make successful applications or aid infrastructure deliver, and should not be used to add unnecessarily to the financial burdens on development.”* NPPF Glossary defines SPDs as *“documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.”* (Our emphasis)

The reference in the draft Policy SP17 to the Housing Choices SPD, which has not been through the same statutory process as the Local Plan, suggests greater weight should be given to the SPD than to the Plan, and that the Housing Choice SPD is the primary policy on affordable housing. Any reference to the SPD should be referred to in supporting text only and any 'policy' in the SPD should also be included in the text of Strategic Policy 17.

Notwithstanding the above, there is conflict between the draft Policy SP17 and the Housing Choice SPD. Policy SP17 in the emerging Local Plan states that the average affordable housing provision will be 25% on market housing led residential development. Yet the guidance in the SPD sets out at Table 1 (page 20) a requirement for up to 40% affordable housing. The policy within the SPD is therefore contrary to the guidance figure within Policy SP17. Moreover, para 8.26 of the Local Plan and CIL Viability Study makes it clear that the viability of the policy was assessed on only 25% provision, with the first 13% being provided on site and an off-site commuted sum of £40,000 per dwelling.

The Council are invited to revisit Policy SP17, to provide a clear affordable housing policy that is based on an up to date viability assessment, and which does not defer to an SPD.

### **Issue 15: Development Locations, Individual Sites and Villages**

*Inspector's Question:*

#### *15.b. Alternative (omission) sites*

With reference made to the concerns raised in respect of other issues discussed as part of the Local Plan Inquiry process, that land at Red House Farm should be identified as a suitable site for development during the Plan period and the Council are invited to amend their Plan policies through a Main Modification to reflect this.

### **Settlement Boundary**

Objection is raised to the settlement boundaries for Burton District as identified on Inset No. 1 of the Local Plan Proposal which is considered unsound. The boundaries should reflect the recent grant of planning permission by the Secretary of State at appeal by encompassing the Red House Farm site, within the settlement boundary. There is no other part of the Burton Urban Area which is excluded from the Town's development boundary in the way which is proposed for Red House Farm. No justification or explanation is provided as to why the site should be excluded like this. The delivery of the Red House Farm site, in its extended 500 dwelling unit form, would be consistent with the overarching principles of sustainable development established through the Framework, and which are clearly demonstrated and flow through the recent Secretary of State's appeal decision. The amendment to the boundaries sought through these representations is indicated on the plan at **Appendix 2**.

### **The Merits of Red House Farm**

Following the findings of the Inspector and the Secretary of State in concluding that the Red House Farm location is sustainable and the implications of this that should be considered by the Authority in the preparation of the emerging East Staffordshire Local Plan to ensure it is based on a robust, well tested and appropriate Strategy, my client is now promoting further land at Red House Farm for future residential development.

The additional land is identified on the Plan at **Appendix 1** and comprises land and buildings at Red House Farm which fall within the administrative boundary of East Staffordshire Borough Council and lies between the neighbourhoods of Outwoods and Shobnall. Given the previous representations to the Issues and Options, Preferred Option and Pre-Submissions documents, along with the appeal decision (ref: APP/B3410/A/13/2197299), it is not considered necessary to reiterate further a description of the site and surroundings within this Statement.

The Site is sustainably located, a view which is shared by the Secretary of State when reaching his decision for planning appeal (ref: APP/B3410/A/2197299). The site is accessible by a range of

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sustainable modes of transport, including pedestrian and cycle access, and with access to a public transport service. The site's sustainability can also be increased further through the introduction of new pedestrian linkages throughout the site and the introduction of a public service link as part of the adjacent residential proposals, providing access for local buses and emergency service vehicles.

These representations support the allocation of my client's land interest for development of an additional 250 dwellings and in developing proposals for the site the client has formed a dedicated project team to advise on its development potential. The development would represent an appropriate use of the site, in a sustainable location, with high quality of design and layout that will deliver a package of key environmental and local infrastructure improvements to the site and surrounding area.

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**LIST OF APPENDICES:**

- Appendix 1 Land at Red House Farm that is being promoted for residential development of up to 130 new dwellings.
- Appendix 2 Proposed Amendment to Burton Development Boundary
- Appendix 3 DLP Planning Objectively Assessed Housing Needs Report

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Mr W Nazir  
Director of Planning and Regeneration  
Birmingham City Council

5 January 2015

Dear Mr Nazir

**Examination of the Birmingham Development Plan 2031 –  
Inspector’s Interim Findings following the hearing sessions**

As I indicated at the end of the recent hearing sessions, I am writing to give you my interim findings on three of the key topics in the examination – the objective assessment of housing need, the sustainability appraisal of the Plan, and the duty to co-operate in the preparation of the Plan.

My interim findings on these three topics are set out in the enclosed paper. In reaching them I have given full consideration to all the relevant written representations made to date, as well as the discussions at the relevant hearing sessions. My interim findings are given here without prejudice to the conclusions that will appear in my report at the end of the examination. **Bold type** in the text indicates points on which further work by the Council is required.

I am not inviting responses from the Council or any other party on my interim findings. They are provided for the purpose of identifying those matters on which I consider that further work is needed. However, I would ask the Council to let me know as soon as possible, via the Programme Officer, if there are any points of fact or clarification you wish me to address.

When you have had time to consider the enclosed paper, I would appreciate it if you would let me have an estimate of the time that is likely to be required to complete the further work recommended. That will help me in planning the arrangements for, and timing of, the remainder of the examination.

I will write again as soon as possible to let you have my findings on the other points that were left unresolved at the end of the hearing sessions.

Yours sincerely

*Roger Clews*

Inspector

## EXAMINATION OF THE BIRMINGHAM DEVELOPMENT PLAN 2031 [BDP]- INSPECTOR'S INTERIM FINDINGS

1. These interim findings should be read in conjunction with the covering letter to Birmingham City Council ["the Council"] which accompanies them. They are given without prejudice to the conclusions that will appear in my report at the end of the examination. **Bold type** in the text indicates points on which further action by the Council is required.

### THE OBJECTIVE ASSESSMENT OF HOUSING NEED

#### *Background*

2. Paragraph 158 of the *National Planning Policy Framework* [NPPF] requires local planning authorities [LPAs] to ensure that their Local Plans are based on adequate, up-to-date and relevant evidence, and paragraph 159 requires them to prepare a Strategic Market Housing Assessment [SHMA] to assess their full housing needs, working with neighbouring authorities where housing market areas [HMAs] cross administrative boundaries. Paragraph 47 makes it clear that this work should identify the full, objectively assessed needs for market and affordable housing in the HMA. Further guidance on housing needs assessment is given in section 2a of the national *Planning Practice Guidance* [PPG].
3. The Council's *Strategic Housing Market Assessment 2012 (Revised January 2013)* [Examination Document EXAM H2] does not fully comply with the NPPF's requirements, in that it is principally focussed on housing need in Birmingham rather than in the housing market area as a whole. Moreover, because it was published before the PPG, its authors<sup>1</sup> were unable to take account of the guidance therein.
4. An HMA-wide *Strategic Housing Needs Study* has also been commissioned by the Greater Birmingham and Solihull Local Economic Partnership [GBSLEP] and the four Black Country local authorities [BCAs]. That study is being conducted in three stages and its Stage 2 Report [EXAM 90: *SHNS Stage 2 for short*] was published in November 2014, while the hearing sessions were taking place. I invited written comments on it from participants, which I have taken into account in these interim findings.
5. In paragraph 2.5 of their Matter A statement, and at the hearing session, the Council effectively conceded that SHNS Stage 2 provides a sounder basis than their 2012 SHMA for assessing housing need in Birmingham and

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<sup>1</sup> Peter Brett Associates [PBA], who are also the authors of the *Strategic Housing Needs Study*.

across the HMA over the Plan period, because it is based on more up-to-date evidence. In general terms I share this view, but with a number of reservations which I explain below.

6. Because of these reservations, I consider that further work needs to be done in order to arrive at an objective assessment of housing need for the HMA and for Birmingham that is consistent with guidance in the NPPF and the PPG. The need for some of that further work is anticipated in a proposed work programme submitted by PBA [EXAM 109]. The matters on which I consider that the further work is needed are discussed below.
7. An alternative approach to assessing housing need, which I have also considered in reaching these interim findings, was promoted by Barton Willmore in their evidence. That evidence included a *Sub-Regional Housing Study Part 2* (February 2014) and an *Addendum* to that study (15 September 2014), provided as an Appendix to Barton Willmore's Matter A hearing statement. (for short: *the BW Study* and *the BW Addendum*.)

#### *Definition of the housing market area*

8. Chapter 2 of SHNS Stage 2 draws the following conclusions about the Greater Birmingham HMA<sup>2</sup>: it does not correspond precisely to the study area formed by the nine GBSLEP authorities and the four BCAs; two of the GBSLEP authorities (East Staffordshire and Wyre Forest) actually lie outside the HMA; two other LPAs (South Staffordshire and North Warwickshire) lie within the HMA but outside the study area; and a third (Stratford-on-Avon) lies at the crossroads of several different HMAs including Greater Birmingham.
9. These conclusions are based on sound analysis and closely mirror the findings of section 3 of the BW Study. Accordingly, the latter takes as its assessment area the 14 LPAs that fall entirely or – in the case of Stratford-on-Avon – partly into the Greater Birmingham HMA. However, I see no difficulty in the fact that SHNS Stage 2 also considers East Staffordshire and Wyre Forest, as well as the 14 HMA authorities, as part of its overall study area. Given the basis on which the study was commissioned, that is a sensible and pragmatic position and it has no significant impact on the way in which housing needs in Birmingham and the HMA are assessed.

#### *Population and household projections*

10. The PPG advises that household projections published by DCLG should provide the starting-point estimate of overall housing need<sup>3</sup>. However, the

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<sup>2</sup> I use this term as shorthand for the HMA formed by 14 LPAs as described in this paragraph.

<sup>3</sup> PPG Ref 2a-015-20140306

latest available DCLG housing projections are the 2011-based interim set, which run only to 2021 and do not fully incorporate the findings of the 2011 Census. The previous full set of projections is 2008-based and is largely based on pre-recession trends that are unlikely fully to reflect current circumstances. In this situation I agree with the analysis in chapter 3 of SHNS Stage 2, which concludes that neither the 2011-based nor the 2008-based DCLG household projections provide a good basis for an assessment of housing need over the Plan period to 2031.

11. More recent official population projections – the 2012-based ONS sub-national projections [SNPP] – were published earlier this year, but have not yet been translated into official household projections. DCLG have, however, confirmed in an email<sup>4</sup> that they will use the same methodologies as for the 2008- and 2011-based interim projections to convert the population projections to household numbers. This confirmation suggests that DCLG’s household projections will not take account of Unattributable Population Change [UPC]<sup>5</sup> and lends support to the SHNS Stage 2 projection referred to as “ONS/PBA 2012”, which is based on the 2012-based SNPP and attempts as far as possible to mirror the process likely to be used by DCLG to derive household projections from them.
12. Nonetheless, there is a critical assumption built into ONS/PBA 2012 in respect of Household Representative Rates [HRRs]. It assumes that HRRs will follow the trend assumed in the 2011-based household projections until 2021, and then revert to the rate of change projected in the 2008-based household projections, but without regaining the actual levels projected in that 2008-based series. This is known as the “index” method of calculating HRRs, which I endorsed in my interim conclusions on Stage 1 of the South Worcestershire Development Plan examination.
13. In the BW Addendum, an alternative approach to HRRs is taken after 2021, in which the rate of change accelerates more rapidly than in the “index” method, so that by 2031 HRRs have returned to the actual levels predicted by DCLG in the 2008-based household projections. This is described by BW as the “Full Return” approach, and it largely accounts for the much higher average rate of household growth projected by BW for Birmingham compared with ONS/PBA 2012 – 5,416 dwellings per annum [dpa] and 4,317 dpa respectively – despite both projecting very similar levels of population growth<sup>6</sup>. BW claim that *a return to the 2008-based rates recently found favour* with the inspector examining the Derbyshire Dales Local Plan<sup>7</sup>, although that is not entirely clear from the evidence before me.

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<sup>4</sup> EXAM 129

<sup>5</sup> See EXAM 109, para 2i

<sup>6</sup> Sources – BW Addendum, Tables 5.1 & 5.2 and SHNS Stage 2, Tables 3.2 & 3.3.

<sup>7</sup> BW Addendum para 4.17 and Annex 3

14. Despite having found the “index” method to be appropriate in the circumstances of South Worcestershire, I would find it useful to see a more detailed explanation than is given in the material before me, of the reasons why it is considered to be appropriate in the present context of the Greater Birmingham HMA<sup>8</sup>. That explanation could also usefully include an examination of the evidence before the Derbyshire Dales inspector, which should help throw a clearer light on what his recommendation on HRRs actually means in practice.
15. Notwithstanding the position likely to be taken by DCLG, both SHNS Stage 2 and the 2012 SHMA argue that account may need to be taken of UPC when projecting future household growth, particularly in Birmingham. I would therefore welcome a further consideration of the consequences, in terms of accuracy, of excluding UPC from the projections<sup>9</sup>. (I would not expect this to require any projections to be produced over and above those already published in SHNS Stage 2.)
16. Finally on the issue of population and household projections, it may well be that the 2012-based DCLG household projections themselves are published before the further work is complete. Should that be the case I would expect relevant sections of SHNS Stage 2 and the further work to be reviewed as necessary to take full account of the new official projections.

*Employment trends, market signals and affordable housing*

17. SHNS Stage 2 itself acknowledges that it does not constitute a full SHMA, in that it does not consider certain factors that are mentioned in the NPPF and the PPG as bearing on housing need. It is intended that these will be dealt with at a more local level<sup>10</sup>. PBA’s proposed work programme [EXAM 109] draws on the PPG to identify three specific factors which require further consideration. I am satisfied with their proposals for work on *Future employment* and *Past provision and market signals*, set out in paragraphs 2ii and 2iii of EXAM 109.
18. On *Affordable housing*, I accept what is said in paragraph 2iv of EXAM 109 about the assessment of affordable housing need. However, the PPG goes on to say that the likely delivery of affordable housing should also be considered, and an increase in the total housing requirement should be

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<sup>8</sup> See paragraph 2a-016-20140306 of the PPG, which advises that adjustment may be required to reflect factors affecting local demography and household formation rates which are not captured in past trends.

<sup>9</sup> See PPG paragraph 2a-017-20140306.

<sup>10</sup> SHNS Stage 2, para 3.1

considered where it could help deliver the required number of affordable homes<sup>11</sup>. This point will also need to be dealt with.

19. In carrying out these elements of the further work, it would be sensible to review the assessments carried out by BW, particularly in the BW Addendum which addresses many of the same issues.

*Summary of further work required on the objective assessment of housing need*

**20. These are the elements that I wish to see covered in the further work:**

- **detailed explanation of why the “index” method of HRRs is considered appropriate in the Greater Birmingham context, including a review of the recommendations of the Derbyshire Dales inspector [paras 12-14 above];**
- **further consideration of the consequences, in terms of accuracy, of excluding UPC from the household projections, particularly for the Birmingham City Council [BCC] area [para 15 above];**
- **Future employment and Past provision and market signals to be considered on the basis set out in paragraphs 2ii and 2iii of EXAM 109 [para 17 above];**
- **Affordable housing to be dealt with as set out in paragraph 2iv of EXAM 109, but the additional point referred to in paragraph 18 above also to be considered.**

21. **I accept PBA’s proposed approach of producing a supplementary report covering all these points, to sit alongside the 2012 SHMA and SHNS Stage 2. However, the supplementary report itself will need to reach clear conclusions on the objectively-assessed level of market and affordable housing need over the Plan period.**

22. While the work listed in the first two bullet points above will need to have regard to the Greater Birmingham HMA as a whole, I am content that the more local factors covered in the last two bullet points will be considered only for the BCC area. **Should the 2012-based DCLG household projections themselves be published before this further work is complete, I would expect relevant sections of SHNS Stage 2 and the further work to be reviewed as necessary.**

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<sup>11</sup> PPG paragraph 2a-029-20140306

## SUSTAINABILITY APPRAISAL

### Background

23. The statutory requirements concerning sustainability appraisal of Local Plans are set out in European Directive 2001/42/EC [*the SEA Directive*] (transposed into English law by the *Environmental Assessment of Plans and Programmes Regulations 2004 [the 2004 Regulations]*), and in the *Planning and Compulsory Purchase Act 2004 [the 2004 Act]*. Section 19(5) of the 2004 Act requires a sustainability appraisal [SA] to be carried out of the proposals in each Local Plan. SAs covered by this provision incorporate the corresponding requirements of the SEA Directive and the 2004 Regulations. Guidance on the SA process is given in the PPG, section 11.
24. The PPG explains that the role of SA is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives<sup>12</sup>. The SA needs to compare all reasonable alternatives including the preferred approach. It should predict and evaluate the effects of the preferred approach and reasonable alternatives, and clearly identify the positive and negative effects of each alternative. All reasonable alternatives should be assessed at the same level of detail as the preferred approach. The SA should outline the reasons why the alternatives were selected, the reasons why the rejected alternatives were not taken forward, and the reasons for selecting the preferred approach in the light of the alternatives<sup>13</sup>.
25. Article 12 of the 2004 Regulations provides that an SA report (corresponding to the Environmental Report that is required by the SEA Directive and the 2004 Regulations) must identify, describe and evaluate the likely significant effects on the environment of implementing the Local Plan policies and of the reasonable alternatives.
26. During the preparation of the BDP, SA was carried out at two main stages<sup>14</sup>. An *Interim Sustainability Appraisal* report on the first stage [HTY14] was published for consultation in October 2012 alongside the BDP Options Consultation document [HTY11]. The second main stage culminated in the *Sustainability Appraisal Report of the Pre-Submission BDP* [HTY17], published in October 2013, and consulted upon alongside the Pre-Submission Version of the BDP in accordance with article 19 of the 2004 Regulations. A *Sustainability Appraisal Report of the Submission BDP*

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<sup>12</sup> PPG para 11-001-20140306

<sup>13</sup> PPG para 11-018-20140306

<sup>14</sup> SA was also carried out on the Birmingham Core Strategy [CS], but as the preparation of the CS was discontinued in favour of the BDP it is unnecessary to consider it here.

[SUB3] was published in June 2014 to accompany the submission of the BDP for examination. It is not materially different from HTY17.

27. The principal criticism of the SA process made in the representations concerns its treatment of the options for strategic development allocations in the Green Belt to the north and east of Sutton Coldfield. It is contended that neither HTY17 nor SUB3 meets the statutory requirement to provide *an outline of the reasons for selecting the alternatives dealt with in the report*<sup>15</sup>. In addition, there are some specific criticisms of the detailed assessments of Green Belt sites that are reported in SUB5. From my own assessment of the SA material I see no reason to believe that there are any other significant defects in the SA process, and so I shall focus on these criticisms.

#### *Reasons for selecting alternatives*

28. The 2012 Interim SA [HTY14] tested three strategic options for development across the city: Do Nothing, ie plan for growth at the same level as in the draft Core Strategy<sup>16</sup>; Accommodate additional growth within the existing urban area; and Strategic Green Belt Release. These three options were subject to a matrix-based analysis against the 28 SA objectives identified in the *SA Scoping Report Autumn 2012 Update*<sup>17</sup>. In my view this analysis provided a reasonable explanation for the Council's decision to reject the first two alternatives and promote the Strategic Green Belt Release option in the BDP Options Consultation document [HTY11].
29. It is important to note that the second bullet point on page 16 of HTY11 says that *a reasonable limit for any new housing on land currently designated Green Belt in North and North East Birmingham would be a range of between 5,000 to 10,000 dwellings over the plan period*. On page 19, the document makes it clear that the preferred option also envisages a 50-hectare employment site on land currently designated as Green Belt.
30. HTY11 was accompanied by a *Green Belt Options Appendix* which assessed 19 areas of Green Belt in Birmingham for their suitability to accommodate a sustainable urban extension or a 50ha employment site. 15 areas were discounted on the basis of inadequate size or significant environmental and/or physical constraints. The remaining four, to the north and east of Sutton Coldfield<sup>18</sup>, were considered against their contribution to the five purposes of the Green Belt identified in the NPPF and then against a range

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<sup>15</sup> See Article 5.1 & Annex I(h) of the SEA Directive, and Article 12 & Schedule 2(8) of the 2004 Regulations.

<sup>16</sup> See para 63 below.

<sup>17</sup> HTY12

<sup>18</sup> These correspond to the *land currently designated Green Belt in North and North East Birmingham* referred to in HTY11, p16.

of environmental and other criteria. However, no attempt was made to select a preferred option.

31. Similarly, while some information on the four remaining Green Belt sites was provided in HTY14, it contained no conclusive comparative analysis. That was a reasonable position for the Interim SA to take at the time, given that its primary purpose was to assess the strategic options for development across the city as a whole.
32. I now turn to the 2013 Pre-Submission SA [HTY17]. It contains a high-level sustainability analysis of the BDP strategy, a matrix-based analysis of each BDP policy<sup>19</sup>, and a textual commentary on this analysis, including consideration of secondary, cumulative and synergistic effects, with recommendations on each group of policies.
33. At page 28, HTY17 contains a summary of the three strategic options which were the principal focus of the Interim SA [HTY14], the reasons for preferring the Strategic Green Belt Release option, and a clear reference to the Interim SA where further details can be found. To this extent, HTY17 partially complies with the statutory requirement to provide an outline of the reasons for selecting the alternatives it deals with.
34. In respect of the strategic Green Belt sites, HTY17 provides a sustainability analysis of policies GA5 and GA6, which respectively allocate land for a sustainable urban extension at Langley and an 80ha employment site at Peddimore. Crucially, however, there is in HTY17 no sustainability analysis that compares the allocated strategic sites with the other two Green Belt areas which emerged from the *Green Belt Options Appendix* to HTY11, nor is there any explanation of why the latter alternatives were not taken forward into the report or the Pre-Submission Version of the BDP. The same applies to the Submission SA of June 2014 [SUB3] which, as I have noted, is not materially different from HTY17.
35. The Council argue that this absence of analysis and explanation does not constitute a breach of the relevant statutory requirement because they are provided in the SA of Proposed Site Allocations [SUB5, September 2013] and the Council's *Green Belt Assessment* [PG1, October 2013], and because the latter document is referred to in both HTY17 and SUB3. But I cannot agree, for the following reasons.
36. First, while it is true that SUB5 contains matrix-based assessments<sup>20</sup>, against the 28 SA objectives, of each of the four potential strategic Green Belt development areas, there is no explanation of why those assessments

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<sup>19</sup> Set out in a more expanded format in Appendix B of the document.

<sup>20</sup> In summary form in section 3 and in an expanded format in Appendix A.

have led to two of the areas being discarded and the other two being taken forward as allocations in the pre-submission BDP.

37. Secondly, even if SUB5 had contained such an explanation, it is not clear on its face that it forms part of the pre-submission SA that was provided for consultation alongside the pre-submission BDP [HTY17] or the SA report submitted with the BDP for the purposes of the examination [SUB3]. It is said at paragraph 1.1 that it *contributes to the Environmental Report prepared to accompany the draft Publication version of the BDP*, but not that it is formally part of that report.
38. Thirdly, the references in HTY17 and SUB3 to PG1 give no details of the assessment it contains, and so do not assist in explaining why certain alternatives were not taken forward.
39. For these reasons I find that there was a breach of the SA Directive and the 2004 Regulations, in that neither the *Sustainability Appraisal Report of the Pre-Submission BDP* [HTY17] nor the *Sustainability Appraisal Report of the Submission BDP* [SUB3] provided an outline of the reasons for selecting the alternatives dealt with in those reports.
40. I consider further that the SA process failed to follow the guidance in the PPG, in the following respects. First, while the *Green Belt Assessment* [PG1] does contain a detailed, two-stage comparative assessment of the four Green Belt areas, resulting in the rejection of Areas A and B and the selection of the Langley and Peddimore sites for allocation, it is not a sustainability appraisal as such. It assesses the four areas against the NPPF's Green Belt purposes and a number of other criteria, but not against the SA objectives that are used in HTY17 and SUB3.
41. Secondly, there is no clear explanation in either HTY17 or SUB3 of why the potential urban extension areas were assessed on the basis that what was being sought was a single site for around 5,000 dwellings. That is a clear change from the position set out in the BDP Options Consultation document [HTY11], which referred to *a range of between 5,000 to 10,000 dwellings*<sup>21</sup>. Some reasoning to support the change in position is given on pp13-14 of PG1, but not in the SA documents themselves.
42. In these ways the SA of the BDP failed to follow the guidance in the PPG that the sustainability appraisal should predict and evaluate the effects of the preferred approach and reasonable alternatives, and that all reasonable

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<sup>21</sup> See para 29 above.

alternatives should be assessed at the same level of detail as the option the plan-maker proposes to take forward in the Local Plan<sup>22</sup>.

#### *Detailed assessments of Green Belt sites*

43. A substantial amount of material was submitted by those promoting alternatives to the allocated Green Belt sites, seeking to demonstrate that the assessment of each of the sites in SUB5, PG1 and related evidence documents, was flawed in various detailed respects. However, with the exception of the major procedural defects that I have identified above, in most cases I find that this material demonstrates differences over the professional evaluation of the available evidence, rather than actual flaws in the analysis. That is entirely reasonable, since SA is not an objective science but relies substantially on professional judgment.
44. One exception to this general point, however, is the textual summary of the Area B1 assessment on p32 of SUB5, which the Council accepted contains an erroneous reference to landscape constraints. **That will need to be corrected in any further SA work.**
45. Moreover, notwithstanding the general point, it would be prudent, in my view, for the Council, or their consultants, to review the material submitted by the promoters of the alternative sites alongside the material previously prepared on the Council's behalf, as part of the preparations for carrying out the further SA work outlined below. This would not require a detailed, point-by-point rebuttal of that other material, but rather the consideration of the other material as a "sense-check" on their own assessments.
46. One additional factor which it would be prudent to review would be the way in which the Green Belt areas were subdivided for the purposes of Stage 2 of the *Green Belt Assessment* [PG1], and some of the sub-divisions were then re-combined for the purposes of Stage 3. While I understand the rationale for this in the context of PG1, it may or may not necessarily be appropriate for the further SA work.

#### *Rectifying the defects in the SA*

47. Following the judgment in the *Cogent Land* case<sup>23</sup>, it is clear that, in principle, the defects in an Environmental Report may be cured by a later document. The same principle applies to any defects in the SA process.
48. In this case, I have found no significant defects in the SA process up to and including the publication of the 2012 Interim SA [HTY14]. In addition, much of the work reported in the SA of Proposed Site Allocations [SUB5],

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<sup>22</sup> See para 24 above.

<sup>23</sup> *Cogent Land LLP v Rochford DC* [2012] EWHC 2542 (Admin): see paras 124-127

the *Green Belt Assessment* [PG1], and the other documents that fed into SUB5, is sound. The two crucial defects in the process, however, were:

- (a) the failure to explain the reasons for the selection of the allocated Green Belt strategic sites, and the corresponding rejection of Areas A and B; and
- (b) the failure to explain why the potential urban extension areas were assessed on the basis that what was being sought was a single site for around 5,000 dwellings, rather than site(s) for a range of between 5,000 to 10,000 dwellings as stated in HTY11.

49. This meant that all reasonable alternatives were not assessed at the same level of detail as the option taken forward in the submitted Local Plan. In order to rectify these defects, further SA work will need to be undertaken. I suggest that this would best be done in two stages. The first stage would compare the positive and negative effects of providing urban extension(s) for up to 10,000 dwellings, or for around 5,000 dwellings. Once the choice of one or other of those alternatives had been justified, the second stage would compare the positive and negative effects of alternative sites for the required urban extension(s) and strategic employment site (that is to say, the previously-identified areas to the north and east of Sutton Coldfield) and provide reasons for selecting one or more of the alternatives and rejecting the others.
50. I stress that in making these recommendations I am expressing no preference for any of the alternatives, nor recommending that the Council should favour any of them. Nor am I suggesting that SA should be the only basis on which decisions on the strategic allocations in the BDP are taken. My aim is solely to ensure that the SA process is carried out in full accordance with national policy guidance and with the statutory requirements. **In order to maintain the integrity of the SA process, it will be essential that those who undertake this additional SA work approach it with an open mind, and not on the basis of seeking to justify decisions previously taken.**
51. This does not mean, however, that no reference can be made to work previously carried out. Provided it is properly reviewed in the light of my findings, taking into account the specific criticisms outlined above, there is scope for much of the underlying analysis undertaken for the Council and others to feed into the fresh SA of reasonable alternatives.
52. Once the further SA work is complete, it should form the basis for an SA Report that meets all the relevant requirements of the SEA Directive and

the 2004 Regulations. When complete, this should be submitted to me along with all the relevant background documents.

53. The SA Report will need to be published for public consultation<sup>24</sup>, and, depending on its outcome, the further SA work may or may not indicate the need for modifications to the BDP. Any such modifications would also need to be the subject of public consultation. I suggest that the consultation arrangements are discussed once a timescale for the further SA work has been agreed.

#### *Summary of further work required on sustainability appraisal*

54. **Further SA work needs to be carried out in order to ensure that all reasonable alternatives have been assessed at the same level of detail as the option taken forward in the submitted Local Plan** [paras 49-50 above].
55. **A review of the relevant material prepared previously for the Council and for those promoting alternative sites should form an input to this work, and any errors should be corrected** [paras 43-46 & 51 above].
56. **A report of the further SA work, meeting all relevant statutory requirements, should then be prepared and submitted to me, and consideration given as to whether or not the further SA work indicates the need for modifications to the BDP** [paras 52-53 above].
57. **Arrangements for public consultation on the SA report and any modifications to the BDP should be discussed once the timescale for the further SA work has been agreed** [para 53 above].

## **DUTY TO CO-OPERATE**

### *Background*

58. The Council have set out, in two Duty to Co-operate statements [DC1 and DC2] and two extensive bundles of appendices, the steps they have taken in order to fulfil their duty to co-operate under section 33A of the 2004 Act. The appendices include records of correspondence and, in many cases, meetings with a wide range of bodies including 14 other LPAs, two LPA consortia<sup>25</sup>, three county councils, GBSLEP, the West Midlands Metropolitan Area Duty to Co-operate Group, West Midlands Planning Officers Group,

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<sup>24</sup> In accordance with the statutory consultation requirements.

<sup>25</sup> The BCAs and the three South Worcestershire Councils.

Regional Technical Advisory Body and West Midlands Regional Aggregates Working Party.

59. The Council have sought to conclude bilateral Duty to Co-operate Agreements with the LPAs and county councils, and 10 have been signed so far<sup>26</sup>, covering 13 LPAs including the four BCAs. The Agreements each deal with 11 matters which together cover everything that could reasonably be considered as a strategic matter within the meaning of section 33A(4). The only matters on which there were substantial representations to the effect that the duty had not been met were those concerning housing need, provision and distribution.
60. Even though agreements have not been signed with all the other local authorities, I am satisfied that any outstanding disagreements on strategic matters other than housing are to do with the adequacy of evidence to support the proposals in the BDP (which will be considered in my report), rather than with any failure on the Council's part to discharge the duty to co-operate.
61. I shall therefore focus here on strategic housing matters: assessment of housing needs, the extent to which Birmingham's housing needs cannot be met within its own boundaries, and arrangements for the shortfall to be met elsewhere in the housing market area. As was recognised during the hearing session, any consideration of whether or not the duty to co-operate has been met must deal with both the legal requirements in respect of the duty, and its outcome in terms of the soundness of the plan.

#### *Legal requirements*

62. Section 33A(1) requires a LPA to co-operate on strategic matters with other bodies and persons in *maximising the effectiveness* of certain activities including the preparation of development plan documents. The reference to "preparation" means that any failure to meet the legal requirements of the duty cannot be rectified after the plan has been submitted for examination. Section 33A(2) further defines the duty as requiring the LPA *to engage constructively, actively and on an ongoing basis* in any process by means of which such activities are undertaken. Additional guidance on the duty is given in section 9 of the PPG.
63. The Localism Act 2011, which enacted the duty to co-operate, received royal assent in November 2011, and the NPPF was published in March 2012. In the same month, the Council commissioned the 2012 SHMA. This marked a move away from the earlier draft Core Strategy (December 2010)

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<sup>26</sup> Those with Lichfield DC [EXAM 73] and the BCAs [EXAM 122] were signed after DC2 was published.

which proposed a much lower level of housing development than the BDP, all of which would have been met within the city. Population and household projections and early results from the 2011 Census had indicated that this approach would not reflect the NPPF's new emphasis on meeting objectively-assessed housing need.

64. In August 2012, the Council wrote to all the other LPAs in the GBSLEP area as well as the BCAs, Coventry City Council and North Warwickshire Council, referring to all these matters and making it clear that it was likely that Birmingham would need to look to adjoining areas to accommodate some of the city's housing requirement. The letter proposed a meeting to discuss the issues and resolve a way forward in addressing them. A number of meetings and discussions on these matters followed, and other LPAs, including South Staffordshire, Stratford-on-Avon and Telford & Wrekin were also involved in discussions.
65. One important outcome from these discussions was the commissioning by the GBSLEP of the Strategic Housing Needs Study [SHNS], Stage 2 of which has been discussed above. Following the completion of Stage 2 – an assessment of housing needs and existing capacity across the HMA – the intention is for Stage 3 to identify broad spatial options for accommodating housing growth, including housing needs arising in Birmingham that cannot be met within the city.
66. Furthermore, as a result – at least in part – of representations by the Council, so far seven LPAs within the HMA have included a commitment in their adopted or emerging Local Plans to review those plans, should there be evidence (including from the SHNS) of housing needs arising in Birmingham or the West Midlands conurbation that cannot be met within the areas in which they arise<sup>27</sup>.
67. Stage 3 of the SHNS was originally programmed for completion by February 2014, well before the BDP was submitted for examination, but in the event it is likely to be about a year beyond that date before it is finalised. At the hearing session there was criticism of the Council for having submitted the BDP before either Stage 2 or Stage 3 of the SHNS had been completed. It was argued that the Council could not be found to have complied with the legal duty to co-operate in the preparation of the plan, in circumstances where the full extent of housing needs in Birmingham and across the HMA

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<sup>27</sup> See EXAM 83. The seven LPAs are Bromsgrove, Cannock Chase, Lichfield, North Warwickshire, Redditch, Solihull and Stratford-on-Avon. In Bromsgrove, the emerging policy states that any additional provision would be considered as part of a Green Belt review already programmed for 2023. In Cannock Chase, any additional provision would come forward through Part 2 of the Local Plan.

was not known, and specific proposals for meeting Birmingham's housing shortfall in other LPA areas had not been identified.

68. But the legal duty to co-operate is not a duty to agree, nor is it a duty to reach a particular policy outcome: instead the objective, in the present context, is to maximise the effectiveness of plan preparation in respect of the strategic matters of housing needs, provision and distribution.
69. I consider that the steps taken by the Council, prior to the submission of the BDP for examination, were consistent with that objective. They sought to identify the full scale of housing needs in Birmingham through the 2012 HMA, and across the HMA through their participation in the GBSLEP's commissioning of SHNS Stage 2. When it became clear that they could not accommodate provision to meet all Birmingham's housing needs within the city, they held meetings and discussions with other LPAs in the HMA in order to address the issue. Through the GBSLEP, they went on to prepare a brief for Stage 3 of the SHNS, and through their representations they helped to persuade other LPAs to include commitments in their Local Plans to review those plans if this becomes necessary to address the shortfall.
70. It is true that further work needs to be done (as I have made clear earlier in this paper) to establish the full, objectively-assessed need for housing in Birmingham over the plan period. But that is a matter of soundness and it does not alter the general position, on which the Council based their plan preparations, that there will be a substantial shortfall of housing provision in the city to meet the city's needs, and that the shortfall will need to be met by other LPAs in the HMA.
71. Drawing all these points together, I find that it would be reasonable to conclude that the Council have complied with the relevant legal requirements in respect of their duty to co-operate in the preparation of the BDP.

#### *Outcome of co-operation in terms of soundness*

72. Given that a large proportion of Birmingham's housing needs cannot be met within the BCC area, the most important outcome that needs to be achieved through the duty to co-operate is a mechanism for that housing shortfall to be met through the provision of sites elsewhere in the Greater Birmingham HMA<sup>28</sup>.
73. However, it is not within my remit, as the inspector examining the Birmingham Development Plan, to specify how much land should be allocated for development in each other local authority area. That would

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<sup>28</sup> See PPG, para 3-026-20140306

require separate examinations of Local Plans or plan reviews for each LPA. Nor would it be consistent with the NPPF's emphasis on the need to have up-to-date plans in place, to delay the adoption of the BDP until every other relevant council in the HMA had reviewed their Local Plan to provide for the Birmingham shortfall – a process that could take several years and would delay necessary housing development coming forward within the city itself.

74. For these reasons I do not regard it as practical for me to recommend that the BDP should include a policy listing other local authorities in the HMA and setting out what specific share of the Birmingham housing shortfall each is required to accommodate. On the other hand, I would not be justified in recommending the BDP for adoption without being satisfied that Birmingham's full housing needs are capable of being met over the Plan period. The question is therefore whether or not adequate arrangements have been put in place, including through the duty to co-operate, to enable this to happen.
75. The specific commitments by seven LPAs, so far, to a review of their adopted or emerging Local Plans should this be necessary in order to meet unmet housing need from Birmingham, are very important in this context. Completion of Stage 3 of the SHNS will be another important step, as it will identify specific options for meeting the shortfall and undertake sustainability appraisal of them. As the Council made clear at the hearing session, however, that will not be the end of the process. It will then be for the GBSLEP itself to assess the options and decide on a preferred option to take forward into the next iteration of its *Spatial Plan for Recovery and Growth* [SPRG]. That process is expected to be complete by the summer of 2015.
76. As I was urged to do at the hearing session, I have considered whether it would be sensible to suspend the examination until next summer, when the outcome of SHNS Stage 3 and the GBSLEP's preferred option should be known. However, there is no guarantee that the anticipated timescale will be met, and as the process is not within the Council's control, this could lead to an open-ended suspension of the examination.
77. Moreover, even after a preferred option has been agreed upon by the GBSLEP and included in the SPRG, it will not form part of the statutory development plan. Section 33(2)(b) of the 2004 Act requires LPAs to have regard to the activities of the GBSLEP, and thus the outcome of the SPRG process, as part of their duty to co-operate. But in order to actually provide the housing sites envisaged by the preferred option, it will still be necessary for individual LPAs to undertake reviews of their Local Plans.

78. Thus I see nothing substantial to be gained from the delay that would be involved in suspending the examination in the way that was suggested. Having said that, **I would find it helpful to consider the outcome of SHNS Stage 3 (ie, the options report) as part of my examination of the BDP.** On the timescale for Stage 3 outlined by the Council, that would not involve any delay in the examination, given the other work that I have identified in this paper as needing to be done before I can submit my report.
79. That other work – on the objective assessment of housing needs and sustainability appraisal – will enable the scale of need arising in Birmingham, and the extent to which it can be met within the city in a manner consistent with achieving sustainable development, to be definitively established. From this, the extent of the shortfall that will need to be met by other LPAs in the HMA will also be clear. As a first step in achieving an effective mechanism for ensuring that the city’s full housing needs will be met, the shortfall will need to be included in a BDP policy as an element of the housing requirement – while making it clear that sites to meet the shortfall are to be provided within the HMA but outside the city’s boundaries.
80. Specific identification of the shortfall in an adopted BDP policy will provide evidence of the need to review the other LPAs’ plans, referred to above, that include a commitment to a review in the event that such circumstances require it. For those LPAs that have not yet made such a commitment, guidance in the NPPF and PPG nonetheless makes it clear that it is incumbent on other authorities in the HMA to work with Birmingham to meet the housing shortfall – to the extent that it is also consistent with achieving sustainable development in their own areas<sup>29</sup>.
81. The duty to co-operate is an ongoing one, and the Council will need to take an active, continuing role in ensuring that provision to meet the housing shortfall is met as early as possible, through the SHNS Stage 3 and SPRG process, through representations on emerging Local Plans and plan reviews, and through further meetings, discussions and formal agreements with other LPAs. I recognise that it will take time for the necessary plan reviews to come forward so that sites are allocated to meet the Birmingham shortfall. But on the evidence before me, I see no other way of proceeding that would achieve a faster result.
82. The BDP will also need to set out a mechanism for monitoring the provision made by other LPAs towards Birmingham’s identified housing shortfall. Alongside this, it will need to set out the circumstances in which an early

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<sup>29</sup> See, in particular, NPPF paragraphs 14, 47 & 179, and PPG para 3-026-20140306.

review of the BDP would become necessary. This will involve identifying the expected rate of progress towards achieving provision by other LPAs to meet the shortfall, and the triggers that would require an early review to be brought forward should that rate of progress not be achieved<sup>30</sup>.

83. Provided that all this is done, my view is that the BDP will include mechanisms to ensure, as far as is reasonably possible, that Birmingham's full housing needs are capable of being met over the plan period. Thus the duty to co-operate will have achieved a satisfactory outcome in terms of soundness.

*Summary of further work required arising from the duty to co-operate*

**84. I would like the Council to bring forward proposed modifications to the BDP to address the following points:**

- **inclusion of the shortfall in a BDP policy as an element of the housing requirement [para 79 above];**
- **inclusion of mechanisms for monitoring provision of land by other LPAs to meet the shortfall, and for an early review of the BDP should the expected rate of progress in this regard not be met (para 82 above);**
- **a commitment by the Council to an active, continuing role in ensuring that provision to meet the housing shortfall is met (para 81 above).**

Roger Clews

Inspector

5 January 2015

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<sup>30</sup> These provisions would sensibly sit alongside the similar provisions I recommended during the hearing sessions for an early review of the BDP, should development within the city not come forward as planned.

Neutral Citation Number: [2012] EWHC 2542 (Admin)

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/09/2012

Before :

**THE HONOURABLE MR JUSTICE SINGH**

Between :

<b>COGENT LAND LLP</b>	<b><u>Claimant</u></b>
- and -	
<b>ROCHFORD DISTRICT COUNCIL</b>	<b><u>Defendant</u></b>
- and -	
<b>BELLWAY HOMES Ltd</b>	<b><u>Interested Party</u></b>

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**Russell Harris QC and Sasha White** (instructed by **Clyde & Co**) for the **Claimant**  
**Gregory Jones QC** and **Juan Lopez** (instructed by the Solicitor, Rochford District Council) for  
the **Defendant**  
**Paul Brown QC** (instructed by **Reynolds Porter Chamberlain**) for the **Interested Party**

Hearing dates: 30th May and 1st June 2012

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**Judgment**

## **Mr Justice Singh :**

### Introduction

1. This is an application under section 113 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to quash parts of the Housing Chapter of the adopted Rochford Core Strategy (RCS). The RCS was adopted by the defendant local planning authority on 13 December 2011. That adoption followed an Examination in Public (EiP) into a draft version of the RCS by an inspector appointed by the Secretary of State for Communities and Local Government.
2. The claimant owns the freehold interest in land to the south of Stambridge Road, which for present purposes can be described as being in the general location of East Rochford.
3. The claimant's challenge is to three housing policies in the adopted RCS: policy H1 (Distribution), policy H2 (General Locations) and policy H3 (Phasing General Locations Post 2021). Policies H2 and H3 identify a number of general locations proposed to be released from the Green Belt in satisfaction of the annual requirement to deliver housing for the plan period. Under those policies, the general location of West Rochford is to provide approximately 450 dwellings by 2015, with approximately 150 further dwellings from 2015 to 2021.
4. The interested party, Bellway Homes Limited (Bellway) supports the defendant in opposing the present application. Bellway controls a site of some 33.45 hectares at Hall Road on the western edge of Rochford. Bellway participated in the consultations on the RCS and made detailed submissions at the EiP in support of the release of land to the west of Rochford (and its own site in particular) for residential development. In April 2010 Bellway submitted an application for outline planning permission for residential development of 600 dwellings, associated access and a new primary school. That application is in accordance with Policy H2 of the adopted RCS. On 18 January 2012 the defendant's Development Committee accepted the recommendation of its planning officers and resolved to grant planning permission for that development, subject to the conclusion of a section 106 agreement and the imposition of appropriate conditions. I was informed that no formal decision notice has yet been issued on the Bellway application, because the section 106 agreement is still being finalised.
5. The claimant's Skeleton Argument makes numerous criticisms of the defendant's approach to the production of the RCS. However, at the hearing it became clear that its essential grounds relate to the following:
  - (1) the defendant's selection of alternatives for potential general locations for housing (alleged failure to explain the initial selection process);
  - (2) the defendant's reasons given for preferring or rejecting reasonable alternatives (alleged failure to give an adequate explanation of the comparative assessment);
  - (3) the defendant's Addendum of July 2011 (alleged inadequacies in that document);

- (4) whether, even if the Addendum was otherwise adequate, it was capable in law of curing the alleged earlier defects;
- (5) the claimant also complains that in failing to re-open the public hearings the inspector failed to comply with the requirements of natural justice. Although the Secretary of State is not a defendant in these proceedings, it is argued that the defendant erred in law by adopting the inspector's report in spite of this alleged breach of natural justice.

### Brief Chronology

6. In 2005 the defendant commenced preparation of its Core Strategy.
7. In September 2006 the defendant published a document called Core Strategy Issues and Options. It also published its Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) in respect of that document.
8. In May 2007 the defendant published its Core Strategy Preferred Options. In June 2007 the defendant published its SA and SEA in respect of that document.
9. In February 2008 the claimant purchased its freehold interest in the land to which I have referred in East Rochford.
10. In October 2008 the defendant published its Revised Core Strategy Preferred Options. In November 2008 the defendant published its SA and SEA in respect of that document.
11. In September 2009 the defendant published its pre-submission Core Strategy and also its SA and SEA in respect of that document.
12. On 14 January 2010 the defendant submitted its Core Strategy for examination by the Secretary of State.
13. Between 11 and 21 May 2010 EiP hearings were held into the submission draft Core Strategy. There were also EiP hearings on 7 September 2010 and 1-2 February 2011.
14. On 25 March 2011 the High Court gave judgment in a case called Forest Heath, to which I will refer below. On 7 April 2011 the claimant requested that the examination be suspended following that judgment.
15. On 11 May 2011 the defendant requested that the inspector should not issue her report in order to allow the defendant to carry out a review of the SA and SEA in respect of the submission draft Core Strategy. On the same date the inspector agreed to delay publication of her report.
16. In July 2011 the defendant published an Addendum to its SA and SEA in respect of the submission draft Core Strategy.

17. On 27 July 2011 the claimant requested the inspector to suspend the examination until December that year. On 11 August 2011 the inspector refused to suspend the examination.
18. On 27 October 2011 the inspector submitted her report to the Secretary of State.
19. On 13 December 2011 the defendant resolved to adopt the RCS, incorporating changes recommended by the inspector, and on the same date did adopt the RCS. That is now the subject of the present challenge.

The development of the RCS in more detail

20. In its Draft Core Strategy (Regulation 25 version) of September 2006 the defendant set out options that it considered to be realistic to shape the development of its District in the period until 2021 and beyond. Options for development were presented in tables and listed in two categories of “possible” or “probable”.
21. At para. 4.6.2 this document said:

“The council will allocate land in locations that are considered sustainable and such locations will be tested through the Strategic Environmental Assessment/Sustainability Appraisal process. The council will not allocate sites which are considered sensitive due to landscape designations, biodiversity issues or where there may be a risk of flooding.”
22. Para. 4.6.3 stated:

“Within the District there are three tiers of settlements. The top tier is that comprising Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon. These are all towns and villages with a good range of services and facilities as well as some access to public transport. They are capable of sustaining some expansion, in-filling and redevelopment.”
23. After describing in brief the second and third tier areas, para. 4.6.6 stated:

“Taking into account such sustainability issues, the council believes that the settlement pattern should be focussed on existing settlements, with the main settlements in the District taking the majority of development required. The majority is defined as 90% of the housing development required. The main settlements are considered to be Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon.”
24. In a table at page 149 of the document, the council set out the options which it considered should be considered as follows. In the column headed “possible” there were the following four bullet points:
  - “Greater dispersal to minor settlements, enabling possible regeneration of local facilities.

- Split the housing allocation evenly between the parishes (excluding Foulness), so that each area gets a small amount of housing.
- Develop a new settlement, well related to transport links and providing its own basic infrastructure.
- Focus solely on an expansion of one settlement, creating a significant urban expansion.”

25. Under the heading “probable” there were two bullet points as follows:

- “Allocate the total number of housing units to the top (90%) and second tier (10%) settlements, to gain a smaller number of large sites which will deliver the greatest amount of infrastructure improvements.
- A timescale will be specified detailing the expected phasing of development.”

26. The next relevant document is the Draft Core Strategy Preferred Options (Regulation 26 version) of May 2007. Section 4.6, on general development locations, was in similar terms to the 2006 document. In particular, it again described the three tiers of settlement in the District, with the top tier comprising Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon.

27. Para. 4.6.10 set out the defendant’s preferred options for general development locations as follows:

- “The council will set out a policy detailing a settlement hierarchy split into three tiers based on services and sustainability.
- The council will set out a policy detailing a timescale for the expected phasing of development.
- The council will set out a policy allocating the total number of housing units to the top (90%) and second tier (10%) settlements, to gain a smaller number of large sites which will deliver the greatest amount of infrastructure improvements. The split (with approximate numbers) will be as follows: ...”

There then followed a table with a description of the relevant location and the approximate number of units envisaged to be allocated there. The total number of units envisaged was 4,600. The number of units envisaged for Rochford/Ashingdon was 1,000.

28. Para. 4.6.11 set out alternative options for general development locations as follows:

- “Greater dispersal making more use of settlements in the East of the District.
- Greater dispersal to minor settlements, enabling possible regeneration of local facilities.
- Focus solely on an expansion of one settlement, creating a significant urban expansion.”

29. Para. 4.6.15 stated:

“In reaching a decision about the broad distribution of future housing the starting point is that the top tier of settlements – Rayleigh (population 30,196), Rochford/Ashingdon (population 10,775), and Hockley/Hawkwell (population 20,140) are best placed to accommodate expansion.”

30. Para. 4.6.16 stated:

“The top tier settlements are generally better located in relation to the highway network, though the provision of new housing must be used as an opportunity to seek infrastructure improvements, particularly in relation to the highway network.”

31. Para. 4.6.20 stated:

“Rochford/Ashingdon has in theory reasonably good transport links to Southend and the A127, but in practice the area is heavily congested with congestion on Ashingdon Road being amongst the worst in the District. To the West, Hall Road links directly to the Cherry Orchard Way link road, but the railway bridge at the eastern end of Hall Road is a severe constraint on traffic movements.”

32. Para 4.6.21 stated:

“There are environmental designations on the West side of Ashingdon north of the railway line and Rochford town centre is a conservation area and its setting must be protected. There are some opportunities for expansion, though road infrastructure will need to be carefully considered.”

33. The next relevant document is the Core Strategy Preferred Options document of October 2008. Section 3 of this document, which dealt with strategies, activities and actions, listed the defendant’s preferred options in green boxes and its alternative options in yellow boxes.

34. Page 13 of this document described the characteristics of the District in the following way:

“The District of Rochford is situated within a peninsula between the Rivers Thames and Crouch, and is bounded to the East by the North Sea. The District has land boundaries with Basildon and Castle Point District and Southend-on-Sea borough councils. It also has marine boundaries with Maldon and Chelmsford Districts. The District has linkages to the M25 via the A127 and the A13 and direct rail links to London. ... The landscape of the District has been broadly identified as being made up of three types: Crouch and Roach Farmland; Dengle and Foulness Coastal; and South Essex Coastal Towns. The latter of these three is least sensitive to development.

The character of the District is split, with a clear East-West divide. Areas at risk of flooding and of ecological importance are predominantly situated in the sparsely populated, relatively inaccessible East. The West of the District contains the majority of the District’s population, has better access to services and fewer physical constraints.”

35. Page 20 of this document set out a brief description of the tiers of settlement. Page 26 of the document, headed General Locations, stated:

“It is not the purpose of the Core Strategy to set out the precise locations for new development - this is done through the Allocations Development Plan Document. Instead, the Core Strategy will set out the general approach for the allocations document.

The concept of sustainable development is at the heart of any decisions with regards to the location of housing. ...

As described in the Characteristics chapter of this document, the District’s settlements can be divided into four tiers, with the settlements in the higher tiers being generally more suitable to accommodate additional housing development for the reasons described above. The settlement hierarchy is as follows ...”

There then followed a table setting out in numbered tiers 1 to 4 the following:

1. Rayleigh; Rochford/Ashingdon; Hockley/Hawkwell.

2. Hullbridge; Great Wakering.
3. Canewdon.
4. All other settlements.

36. At page 28 of the 2008 document there appeared draft policy H2 on “General locations and phasing – preferred option”, which set out in a table the number of units envisaged to be allocated to various areas by 2015 and also the number of units envisaged to be allocated to each area between 2015 and 2021. In respect of West Rochford it was envisaged that there would be 300 units by 2015 and 100 units thereafter. In respect of East Ashingdon there would 120 units by 2015 and none thereafter. In respect of South East Ashingdon there would 120 units by 2015 and none thereafter.
37. At page 30 of the 2008 draft, in the discussion of alternative options under policy H2 there was a reference to East Rochford as an alternative to other Rochford locations and in answer to the question “Why is it not preferred?” there was stated the following:

“It is considered that West Rochford is a more suitable location given its proximity to the train station, town centre and its relationship with areas of significant employment growth potential at London Southend airport and its environs. Traffic flows from new development to the East of Rochford would be predominantly through the centre of the town centre resulting in significant congestion.”

38. The next relevant document is the SA/SEA non-technical summary in respect of the Rochford Core Strategy preferred options document of October 2008.
39. At about the same time, in November 2008, there was published the technical Report in relation to the SA and SEA. Para. 1.6 of this Report, under the heading Summary of Compliance with the SEA Directive and Regulations, stated:

“The SEA Regulations set out certain requirements for Reporting the SEA process, and specify that if an integrated appraisal is undertaken (i.e. SEA is subsumed within the SA process, as for the SA of the Rochford LDF), then the sections of the SA Report that meet the requirements set out for Reporting the SEA process must be clearly signposted. The requirements for Reporting the SEA process are set out in Appendix 1 and within each relevant section of this Report.”

40. Para. 5.3 of this document stated:

“An emerging draft of the revised Preferred Options policies was then subject to SA in October 2008. A summary of the results of this appraisal is provided below, with the detailed working matrices provided in Appendix vii. On the whole, the findings of the SA suggest that the emerging Core Strategy policies will make significant contributions to the progression of SA objectives.”

41. Paras. 5.7–5.11 dealt specifically with the draft policies H2 and H3. Para. 5.10 stated:

“The actual locations for growth proposed in the policy are considered to be the most sustainable options available, within the context of the overall high levels of population growth being proposed in the East of England Plan. The policy recognises the distinctive landscape and bio-diversity areas in the District, (including coastal landscapes and flood-prone areas in the East of the District) and takes an approach to development that minimises impacts on these areas through steering development toward the more developed Western side of the District.”

42. In Appendix 1 (statement on compliance with the SEA Directive and Regulations) para. 1.8 stated:

*“An outline for the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties encountered in compiling the required information:”*

This work, undertaken by Essex County Council’s Environmental Assessment Team is available in the Regulation 25 Issues and Options SA Report, and is summarised in section 4 of this Report. Details of how the assessment was undertaken are provided in section 3 of this SA Report (appraisal methodology), and difficulties encountered in compiling information summarised in Section 4 of this report.”

43. The next relevant document is the Core Strategy pre-submission draft of September 2009. Para. 4.9 of this document again set out the four tiers of settlement in the District.
44. In relation to policy H2 (extensions to residential envelopes and phasing) a table at page 44 of this document stated that it was envisaged that 450 dwellings would be allocated to the area of West Rochford by 2015 and 150 dwellings between 2015 and 2021. In relation to East Ashingdon the figure was 100 dwellings by 2015 and none thereafter. Nothing was allocated in respect of East Rochford.
45. In relation to policy H3 (extension to residential envelopes post-2021) a table at page 45 of the document envisaged 500 dwellings in that period in relation to South East Ashingdon. Again nothing was allocated in respect of East Rochford.
46. The next relevant document is the Technical Report for the SA/SEA in respect of the pre-submission draft of 2009. This had an Appendix 1 also in similar terms to that which has already been quoted from the 2008 report: see in particular para. 1.8 of that Appendix.
47. The next relevant document, which is very important to the present proceedings, is the Sustainability Appraisal Addendum dated July 2011. The introduction to this document highlighted the reasons why it had been produced. Para. 1.3 stated:

“In light of the recent High Court ruling in Save Historic Newmarket v Forest Heath District Council, Enfusion advised the Council that it would be prudent to undertake a review of the Core Strategy Sustainability Appraisal, ensuring compliance with the new case law on SEA arising from this ruling. Rochford District Council has subsequently requested the issuing of a decision on the soundness of the Core Strategy be delayed to enable the Council to undertake such a review. The Planning Inspectorate has accepted this request and the Council commissioned Enfusion in May 2011 to undertake the work. In response to the findings of the Forest Heath case, this Addendum SA report provides a summary of the alternatives considered throughout the production of the plan setting out the reasons for selecting/rejecting those alternatives. It also includes consideration of more detailed housing locations (than previously appraised). ... This Addendum Report should be read in conjunction with previous Sustainability Appraisal Reports and iterations of the Core Strategy, in particular the SA Report of the LDF Core Strategy proposed submission draft DPD [Development Plan Document] (2009) for a full account of how the Sustainability Appraisal has influenced the process to date.”

48. Para. 2.2 of the Addendum stated that:

“The recent Forest Heath High Court ruling and recommendations by DCLG in its report on the effectiveness of SEA and SA have clarified and provided an additional interpretation of the EU SEA Directive. This section of the SA Report Addendum therefore seeks to provide a clear summary of the alternatives considered throughout the SA process and the reasons for selecting/rejecting those alternatives.”

49. Table 2.1 of the Addendum set out over several pages a summary of the approach to the assessment and selection of alternatives.
50. Section 3 dealt with “Further appraisal of alternatives: General housing development locations.” Para. 3.1 stated:

“As illustrated above, the Council has considered the results of the SA of issues and options (alternatives) in its selection and rejection of alternatives for plan-making. The Sustainability Appraisal considered a range of issues considered to be of key importance to the development of the Core Strategy. This included consideration of housing numbers and general locations for development (strategic options 4 and 5). The SA found that option E, the allocation of housing to the top and second tier settlements to gain a smaller number of large sites would have the most positive effects of all the options.”

51. Para. 3.2 stated:

“In light of the Forest Heath Ruling, it was decided to further develop this appraisal, considering the more detailed locations for development within

individual top and second tier settlements. The recent publication (in February 2010) of the LDF Allocations DPD Discussion and Consultation Document has also enabled a further consideration of the realistic locations for development, as it incorporates the findings of the Call for Sites process and Strategic Housing Land Availability Assessment (SHLAA).”

52. Para. 3.3 stated:

“Detailed appraisal of housing locations were undertaken for each of the top and second tier settlements and Canewdon, with full details provided in Appendix 1. ...”

53. Table 3.1 then set out over several pages the Housing Development Options for Rochford District: Reasons for selection/rejection. In this table location 1 was West Rochford and location 3 was East Rochford. Under the heading “Reasoning for Progressing or Rejecting the options in plan making” it was stated in respect of location 1 that this:

“was selected as it is a sustainable location, particularly in terms of accessibility, economy and employment, and balanced communities. In addition, the location relates well to London Southend airport and proposed employment growth there, is not subject to significant environmental constraints which would inhibit development, and is of a scale capable of accommodating other infrastructure, including a new primary school which would have wider community benefits. The location performs well to the proposed balanced strategy, and, due to its location in relation to Southend and the highway network, would avoid generating traffic on local networks for non local reasons. The location is unlikely to enable infrastructure improvements to King Edmund School, but is nevertheless selected for the aforementioned reasons.”

54. It should be mentioned that the table also said that location 5 (South East Ashingdon) and location 6 (East Ashingdon) were selected as they are well located in relation to King Edmund Secondary School.

55. Turning to location 3, East Rochford, the table said that this was not selected:

“as it was not considered as sustainable a location as West Rochford. There are greater environmental constraints to the East of Rochford, including Natura 2000 and Ramsar sites. Development to the East of Rochford has the potential to be affected by noise from London Southend airport, given its relationship to the existing runway. Whilst a small quantum of development may be accommodated within this general location avoiding land subject to physical constraints, such an approach is less likely to deliver community benefits, and would necessitate the identification of additional land, diluting the concentration of development and thus reducing the sustainability benefits of focussing development on larger sites. Location 3 is also unlikely to aid the delivery of improvements to King Edmund School. Furthermore, it would

generate traffic on local networks for non local reasons, i.e. traffic to Southend would be likely to be directed through the centre of Rochford, including through the Conservation Area.”

### Legal Framework

56. Section 19(5) of the 2004 Act requires a local planning authority to carry out an appraisal of the sustainability of the proposals in each development plan document and to prepare a report of the findings of that appraisal. This is known as an SA. It is common ground that the RCS is a development plan document by virtue of regulation 7(a) of the Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004 No. 2204).
57. The background to the present case can be found in Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. This is sometimes known as the Strategic Environmental Assessment (SEA) Directive.
58. The SEA Directive has been implemented in domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633). Part 3 of those Regulations concerns environmental reports and consultation procedures.
59. Regulation 12 provides that:
  - “(1) Where an environmental assessment is required by any provision of Part 2 of these regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
  - (2) The report shall identify, describe and evaluate the likely significant effects on the environment of –
    - (a) implementing the plan or programme; and
    - (b) reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.
  - (3) The report shall include such information referred to in schedule 2 to these regulations as may be reasonably required, taking account of – [a number of matters are then set out in sub-paragraphs (a) to (d)]....”
60. Paragraph 8 of Schedule 2 requires “an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken ...” The other paragraphs in Schedule 2 deal with a number of other items of information which must be included in an Environmental Report (ER), for example the likely

significant effects on the environment, including such matters as biodiversity, fauna, flora and climatic factors: see paragraph 6 of Schedule 2.

61. Regulation 13(1) provides that:

“(1) Every draft plan or programme for which an Environmental Report has been prepared in accordance with Regulation 12 and its accompanying Environmental Report (‘the relevant documents’) shall be made available for the purposes of consultation in accordance with the following provisions of this Regulation.”

62. Regulation 13(2) sets out a number of steps in relation to the consultation process which must be followed. Paragraph (3) specifies that the period for consultation must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

63. It was common ground before me that:

- (1) the Regulations are the relevant source of law in this country, since the Directive, unlike an EU Regulation, is not directly applicable;
- (2) the Regulations should be interpreted so far as possible in a way which is compatible with the Directive; and
- (3) if an interpretation of the Regulations is incompatible with the Directive and no other interpretation is possible, then, to the extent of any incompatibility, the claimant may rely on a provision of the Directive, since there will, to that extent, have been a failure correctly to transpose the Directive into domestic law: in those circumstances the Directive may have direct effect.

It is therefore appropriate now to turn to the material provisions of the Directive.

64. Article 1 of the Directive provides:

“The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive an Environmental Assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

65. Article 2(b) defines “Environmental Assessment” to mean:

“The preparation of an Environmental Report, the carrying out of consultations, the taking into account of the Environmental Report and the results of the consultations in decision-making and the provision of information on the decision in accordance with articles 4 to 9.”

66. Article 4, which sets out general obligations, provides in paragraph (1):

“The Environmental Assessment referred to in article 3 shall be carried out in the preparation of a plan or programme and before its adoption or submission to legislative procedure.”

67. Article 3, which deals with the scope of the Directive, requires in paragraph (1) that an Environmental Assessment, in accordance with articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

68. Article 5(1) provides that:

“Where an Environmental Assessment is required under article 3(1), an Environmental Report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex 1. Annex 1 sets out a number of matters, including at sub paragraph (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken....”

69. Article 6 provides that:

“(1) The draft plan or programme and the Environmental Report prepared in accordance with article 5 shall be made available to the authorities referred to in paragraph 3 of this article and the public.

(2) The authorities referred to in paragraph 3 and public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate timeframes to express their opinion on the draft plan or programme and the accompanying Environmental Report before the adoption of the plan or programme or its submission to the legislative procedure. ...”

70. Guidance on implementation of the Directive has been issued by the European Commission. Para. 1.5 of that Guidance makes it clear that it represents only the views of the Commission and is not of a binding nature. As Ouseley J commented in Heard v Broadland DC [2012] EWHC 344 (Admin), at para. 69, the Guidance is not a source of law.

71. Para. 4.2 of the Guidance states:

“As a matter of good practice, the Environmental Assessment of plans and programmes should influence the way the plans and programmes themselves are drawn up. While a plan or programme is relatively fluid, it may be easier to discard elements which are likely to have undesirable environmental effects than it would be when the plan or programme has been completed. At that stage, an Environmental Assessment may be informative but is likely to be less influential. Article 4(1) places a clear obligation on authorities to carry out the assessment during the preparation of the plan or programme.”

72. Para. 5.11 of the Guidance states that:

“The obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption.”

73. Para. 5.12 of the Guidance states:

“In requiring the likely significant environmental effects or reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives. The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in article 5(2) concerning the scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or Parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex 1 should thus be provided for the alternatives chosen.  
...”

74. Para. 7.4 of the guidance, which relates to the definition of “Environmental Assessment” in Article 2(b) of the Directive states that:

“This definition clearly states that consultation involved is an inseparable part of the assessment. Further, the results of the consultation have to be taken into account when the decision is being made. If either element is missing, there is, by definition, no Environmental Assessment in conformity with the Directive. This underlines the importance that is attached to consultation in the assessment.”

The claimant’s ground (1)

75. The claimant submits that the defendant breached the requirements of the Regulations in that it failed to set out the reasons for its initial selection of various general areas for possible location of housing. It is common ground that this obligation did not arise in the early stages of the drafting process, from 2006. However, the claimant submits that a key stage in the production of the Core Strategy was reached when the Revised Core Strategy Preferred Options draft was published in October 2008.
76. In support of this contention the claimant relied upon a recent decision by Ouseley J, Heard v Broadland District Council [2012] EWHC 344 (Admin). In particular the claimant relied upon what was known in that case as ground 1, which was considered at paras. 53-72 of the judgment. The claimant emphasised what Ouseley J said at para. 57 of his judgment, that the council in that case had not set out in any document “the outline reasons for the selection of alternatives at any particular stage.”
77. Under ground (1) the claimant submits that the SA/SEA in 2008 failed to identify in outline (or at all) the reasons for the selection of the alternatives to be the subject of assessment in Policy H2. The claimant submits that the SEA must identify in outline the reasons for the selection of alternatives to be the subject of assessment at all and that this is a different order of analysis from the actual assessment and selection of preferred options. The claimant submits that this defect in the 2008 draft was not cured in September 2009, when the pre-submission version of the Core Strategy was published and was accompanied by an SA/SEA.
78. I do not accept this ground of challenge. There is an air of unreality about this ground since, in fact, this claimant’s site was in a general location which was among those selected for further assessment. In any event, in my view, the defendant did adequately explain the basis on which the initial selection of general locations to be considered for housing allocations was made, in particular the environmental reasons in outline terms.
79. I have already quoted the relevant passages in the documents from 2008 and 2009 which set out in outline the environmental reasons why parts of the western area of the district were to be considered for further assessment.

80. In particular, the Technical Report in relation to the SA/SEA in 2008 addressed this at para. 5.10. It was noted there that the “actual locations for growth proposed in the policy are considered to be the most sustainable options available” and that the “policy recognises the distinctive landscape and bio-diversity areas in the District.” It was also noted that the policy “takes an approach to development that minimises impacts on these areas by steering development toward the more developed western side of the District.”
81. Appendix 1 to that Technical Report, at para. 1.8 (which I have already quoted) also cross-referred to the relevant sections of the earlier SA Report which had provided an outline of the reasons for selecting the alternatives chosen and a description of the difficulties encountered in compiling the required information.
82. Furthermore, as I have already indicated, similar passages can be found in the Technical Report for the SA/SEA in respect of the pre-submission draft in 2009.
83. I therefore reject the claimant’s ground (1) that there was a breach of the Regulations in this regard.

The claimant’s ground (2)

84. The claimant observes that the 2008 Revised Core Strategy Preferred Options draft preferred West Rochford as a general location for housing along with 10 other general locations across the District.
85. Under Policy H2 of that draft, East Rochford was identified as an “Alternative Option” to “other Rochford” locations. It was said that:

“It is considered that west Rochford is a more suitable location given its proximity to the train station, town centre and its relationship with areas of significant employment growth potential at London Southend Airport and its environs. Traffic flows from the new development top the east of Rochford would be predominantly through the centre of the town centre resulting in significant congestion.”

86. This was the first time in the Core Strategy process that any general development locations had been preferred and the first time that identified alternative locations had been rejected. Accordingly, submits the claimant, the affected public were entitled (applying the provisions of the Regulations and the Directive) to look to the SA/SEA *accompanying* the draft plan to understand why such a preference was being expressed in relation to reasonable alternatives and to examine the evidence upon which such a preference was based. However, the claimant submits, the SA/SEA which accompanied the Preferred Options document did not allow the public this early and effective engagement.
87. In this context the claimant again placed reliance on what was said by Ouseley J at para. 57 of his judgment in Heard. He found in that case that there was no discussion in an SA, in so far as required by the Directive, of why the preferred options came to be

chosen, and that there was no analysis on a “comparable” basis, in so far as required by the Directive, of the preferred option and selected reasonable alternatives.

88. On that last point, the claimant also emphasised what Ouseley J said at para. 71:

“... it seems to me that, although there is a case for examination of a preferred option in greater detail, the aim of the Directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an *equal examination of the alternatives* which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. ...” [Emphasis added]

89. Taken in isolation, I would be inclined to accept those submissions by the claimant under ground (2). Although the defendant and Bellway argued to the contrary, in my view, the documents from which I have already quoted, in particular the Technical Report for the SA/SEA in 2008, did not set out adequately the reasons for preferring the alternatives that were selected. It was indeed “prudent”, as Enfusion advised the defendant, to undertake a review of the sustainability of the Core Strategy.

90. However, the matter does not rest there, in my view. This is because the claimant’s submission depends on its grounds (3) and (4) relating to the Addendum. If, as the defendant and Bellway submit, the Addendum cured any defects in the earlier stages of the process (ground (3)) and if as a matter of law it was capable of doing so (ground (4)), there would be no merit in ground (2) either. The main plank of the claimant’s case is that the defendant was not entitled to seek to remedy any deficiencies in its procedures by way of the Addendum in July 2011. I therefore turn to those contentions under grounds (3) and (4).

### The claimant’s ground (3)

91. The claimant submits that the Addendum fails to meet the requirements of the Regulations (read with the Directive) in a number of ways.

92. First, the claimant contends that, even if East Rochford was identified as a reasonable alternative, at all material times when East Rochford has been considered it has been considered solely against West Rochford and not against or as an alternative to any other housing location. No explanation even in outline has been given as to why it has been so limited as an alternative. The claimant complains that there was no appropriate comparison done between East Rochford and other locations such as Ashingdon.

93. I do not accept that contention. For example, the passages to which I have already referred, in particular the text of Table 3.1 in the Addendum, noted that location 5 (South East Ashingdon) and location 6 (East Ashingdon) were well located in relation to King Edmund School; location 3 (East Rochford) was not. More generally, in my

view, the Addendum did adequately explain the environmental reasons why location 3 was not a preferred location.

94. Next, the claimant submits that the assessment of alternatives which was undertaken does not constitute a proper assessment on a comparable basis with the preferred locations. In particular, the claimant submits that the environmental effects of the preferred locations were considered in much more detail through the series of SEAs which had been produced since the Revised Preferred Options draft in 2008. The consideration of alternatives in the Addendum was on a wholly different and lower scale (consistent with what is alleged to be an ex post facto justification).
95. I do not accept that contention. Rather, I accept the defendant's and Bellway's submissions that:
- (1) the Addendum was produced by independent consultants who will have been well aware of the fact that (as the inspector herself pointed out before the Addendum was commissioned) it must not be undertaken as an exercise to justify a predetermined strategy;
  - (2) the claimant's assertion that Enfusion were simply asked to "verify" the conclusions already reached by Council Members is emphatically denied by Cllr Hudson (see his witness statement, para. 24);
  - (3) In any event, having considered the Addendum and the submissions made (by the claimant and others) in connection with it, the independent inspector concluded that there was "no compelling reason to question [its] integrity".
  - (4) Further, the inspector had specifically (and at the claimant's request) included within the "Matters and Issues" for consideration at the examination the question: "Are the broad locations identified for the supply of housing most appropriate when considered against all reasonable alternatives?" In that context, she considered whether the reasons advanced in the Addendum were sound and concluded that there was:

"no compelling evidence to dispute the conclusion of the SA that the chosen locations are the most sustainable."

96. On 27 October 2011 the defendant received the inspector's report concluding that, with a limited number of changes, the RCS was sound. The report notes (para. 3) that none of the changes materially altered the substance of the plan and its policies, or undermined the SA/SEA and participatory processes undertaken.
97. The inspector's report confirms her consideration of representations on the SA/SEA Addendum, as follows:

"In June 2011, and following the judgement of the High Court in the case of Save Historic Newmarket Ltd v Forest Heath District Council, the Council published a draft Addendum to the Sustainability Appraisal which was subject

to consultation between 13 June and 11 July 2011 and I have taken account of representations made in preparing my report” (para. 10).

98. At para. 31 of her report, the inspector stated:

“The SA is informed by a comprehensive scoping report and I find no reason to conclude that any significant effects have not been taken into account. The SA Addendum (July 2011) provides a more detailed appraisal of the alternative locations considered, and was subject to public consultation. I have taken into account criticisms that the Addendum was produced after the submission draft plan, but sustainability appraisal is an iterative process”

99. At para. 32 she further stated:

“Overall, there is no compelling reason to question the integrity of the SA as a whole, and no convincing evidence to dispute the conclusion of the SA that the chosen locations are the most sustainable, and therefore the CS is sound in relation to this issue”

100. Further, the inspector concluded at para. 62, in respect of legal requirements, that the SA/SEA is adequate.

101. Following receipt of the inspector’s report, the defendant prepared an SA/SEA Adoption Statement. The SA/SEA Adoption Statement also incorporates an SA/SEA Compliance Review and Quality Assurance, produced by Enfusion. The Compliance Review concludes:

“Having undertaken this review, it is our professional opinion that the SA/SEA of the Rochford Core Strategy (incorporating the Addendum reports of September 2010 and July 2011) is compliant with the SEA Directive and requirements and PPS 12 requirements for Sustainability Appraisal” (para.1.4).

102. On the evidence before the Court, I therefore reject the claimant’s contention that the Addendum was an “ex post facto justification” or a “bolt-on consideration of an already chosen preference” to justify a decision which had already been taken.

103. Furthermore, I reject the contention that the Addendum did not adequately carry out an assessment on a “comparable” basis. I have earlier set out relevant passages from the Addendum. It is clear from the Addendum, in my judgement, that:

- (1) the 2009 SA/SEA had incorporated comments and representations received during public consultation on earlier iterations of the draft RCS and the sustainability appraisal undertaken throughout the plan-making process, since Issues and Options stage (para. 1.1);
- (2) it “...provides a summary of the alternatives considered throughout the production of the plan setting out the reasons for selecting/rejecting those alternatives. It also includes consideration of more detailed housing locations...” (para. 1.3);

- (3) the same method of appraisal using the SA framework of objectives and decision-aiding questions for sustainable development had been used in its production (para. 1.5);
- (4) “A strategic approach was taken - appropriate to the Core Strategy level of plan-making and to minimise pre-empting the preparation of the Site Allocations DPD that will consider sites in more detail” (para. 1.7);
- (5) it incorporates consideration of “...the approach to general locations within each settlement” (para. 1.7);
- (6) it performs a comparative appraisal between locations and settlement areas:
  - findings of “no significant effects identified” were recorded in the Addendum as to denote “...that the development of the location is unlikely to have a significant effect on the SA objective in question...”;
  - any “cumulative issues of significance” were considered in the Sustainability Appraisal Submission report (section 6).

104. In particular the explanation at Table 3.1 adequately explained, in my judgement, the reasons why, on environmental grounds, East Rochford was not considered a suitable general location for housing development and why other locations were preferred.

105. The claimant also submits that the assessment in the Addendum was defective because it failed to take any account of the defendant’s own detailed findings in relation to the sustainable deliverability of the claimant’s own site in East Rochford. The claimant submits that those findings were relevant to which areas are to be preferred because they relate to the ability of the claimant’s large site alone to produce a scale of housing (320 units plus) similar to or greater than that suggested for other preferred broad locations (West Rochford - 450 units by 2015 and East Ashingdon – 100 units). The claimant argues that the acceptance in a formal document issued to the Inspectorate by the defendant (jointly with the claimant) that 326 dwellings at Coombes Farm in East Rochford would be acceptable in flood risk terms and in various other respects was clearly relevant to any comparable assessment but was left out of account.

106. However, I accept the submission by the defendant and Bellway that there is a conceptual difference between development throughout the general location of East Rochford and the development of one or more (non-specified) sites within this general location.

- (1) The plan process and the claimant’s appeal were concerned with two separate things. The plan process was concerned with identifying a broad geographical area within which it might be possible to locate 650 houses. The claimant’s appeal was concerned with an application on a specific site for planning permission for 326 houses. It is not surprising that the consideration of the Coombes Farm application was carried out

at a greater level of detail than the identification of broad areas for development in the RCS. However, whether or not Coombe Farm was suitable revealed nothing about the suitability of the surrounding area. This is particularly relevant, given that the claimant's proposals would only address part of the overall need for Rochford.

- (2) To the extent that it might have been relevant to consider the claimant's particular site, this submission confuses two different issues, namely:
- whether the impacts of developing the claimant's site (whether in terms of traffic, habitats, landscape or any other matter) were sufficiently harmful as to justify refusal of permission for the claimant's site *if that site were considered in isolation*;
  - whether the impacts of developing the claimant's site (whether in terms of traffic, habitats, landscape or any other matter) would be more harmful/less advantageous than those which would arise if development were carried out to the west of Rochford instead.

The claimant's planning appeal was concerned with the former; the RCS process was concerned with the latter. It was for this reason that the 2008 draft of the RCS described west Rochford as being "more suitable" than the other Rochford locations. It did not suggest, nor did it need to, that there were no locations to the east of Rochford where residential development might be acceptable.

- (3) In any event, one of the functions of the statutory process is to give members of the public the opportunity to draw what they perceive to be errors or omissions to the attention of the decision-maker. In the present case, if and so far as the claimant considered that the Addendum was wrong not to refer to the Statement of Common Ground and other material presented at the Coombes Farm planning appeal, it was open to it to draw the inspector's attention to this material in the EiP process. In fact, the claimant had already done this long before the Addendum was produced. This information was again drawn to the inspector's attention by a letter of 24 June 2011. Further detailed submissions were made on 8 July 2011. In the circumstances, there is no basis for the suggestion that the inspector was not properly informed of this matter.

107. Accordingly, I reject the claimant's ground (3) and conclude that, on the facts of the present case, the Addendum was adequate.

#### The claimant's ground (4)

108. The claimant submits that, even if as a matter of fact, the Addendum did comply with the requirements of the Regulations and the Directive, as a matter of law it was incapable of curing the defects in the earlier stages of the process.
109. Both the defendant and Bellway observe, as a preliminary point, that this is not the position which the claimant took when it first wrote to the defendant, drawing its attention to the decision in Forest Heath. Rather, the letter sent on its behalf on 7 April 2011 asked for only a suspension of the process. It stated:
- “We would urge you to suspend any decision to adopt the Core Strategy until such time as the Council has conducted a fully objective and transparent assessment of the effects of the broad housing locations and their consideration against all reasonable alternatives.”
110. They also observe that the claimant's argument that the process on which the defendant embarked was inadequate was not advanced until 13 June 2011, *after* the draft Addendum had been published for consultation. No such argument was advanced when the defendant first announced its intention to review the SA in light of recent developments in the field of sustainability appraisals on 11 May 2011.
111. Under ground (4) the claimant relies, first, upon the language of Regulation 13, which requires “every draft plan... and its accompanying environmental report” (prepared in accordance with the Regulations) to be made available for the purposes of consultation by informing the public “as soon as reasonably practicable” of where the documents may be viewed. However, in my judgement, this does not have the effect contended for by the claimant, that the Addendum was incapable as a matter of law of curing any earlier defects in the process. It means simply that the draft plan, and any accompanying environmental report there happens to be, must be available for public consultation as soon as reasonably practicable. This is a timing provision. It does not prescribe the content of the report. Still less does it have the effect that if, for some reason, the accompanying report is not wholly adequate at that time, it cannot be supplemented or improved later before adoption of the plan, for example by way of the Addendum in the present case.
112. I prefer the submissions that were made by the defendant and Bellway. First, it should be noted that “Strategic Environmental Assessment” is not a single document, still less is it the same thing as the Environmental Report: it is a *process*, in the course of which the Directive and the Regulations require production of an “Environmental Report”. Hence, Article 2(b) of the SEA Directive defines “environmental assessment” as:
- “the preparation of the environmental report, carrying out consultations, the taking into account of the environmental report and the results of the consultations in the decision making and the provision of information on the decision in accordance with Articles 4 to 9”.
113. Furthermore, although Articles 4 and 8 of the Directive require an “environmental assessment” to be carried out and taken into account “during the preparation of the plan”, neither Article stipulates when in the process this must occur, other than to say

that it must be “before [the plan’s] adoption”. Similarly, while Article 6(2) requires the public to be given an “early and effective opportunity ... to express their opinion on the draft plan or programme and the accompanying environmental report”, Article 6(2) does not prescribe what is meant by “early”, other than to stipulate that it must be before adoption of the plan. The Regulations are to similar effect: Regulation 8 provides that a plan shall not be adopted before account has been taken of the environmental report for the plan and the consultation responses.

114. The claimant relied upon several authorities said to support its submissions under ground (4).

115. The first case is a decision of the High Court in Northern Ireland, Re Seaport Investments Limited [2008] Env LR 23, a decision of Weatherup J on equivalent regulations in Northern Ireland which implemented, or purported to implement, the SEA Directive. The applicants in that case contended that the regulations had failed to transpose the Directive correctly in a number of respects. The applicants also contended that there had been a breach of the Regulations and the Directive on the facts of the case.

116. Weatherup J accepted the applicants’ argument in relation to what he called the second transposition issue: see paras. 19 – 23 of the judgment. He then turned to whether there had been a failure to comply with the requirements of the Regulations and Directive.

117. At para. 47 he said:

“The scheme of the Directive and the Regulations clearly envisages the *parallel development* of the Environmental report and the draft plan with the former impacting on the development of the latter throughout the periods before, during and after the public consultation. In the period before public consultation the developing Environmental Report will influence the developing plan and there will be engagement with the consultation body on the contents of the report. Where the latter becomes largely settled, even though as a draft plan, before the development of the former, then the fulfilment of the scheme of the Directive and the Regulations *may* be placed in jeopardy. The later public consultation on the Environmental Report and draft plan *may* not be capable of exerting the appropriate influence on the contents of the draft plan.” [Emphasis added]

118. The claimant emphasised in particular the phrase “parallel development.” However, it is important to read the passage as a whole, in particular the words I have emphasised towards the end of it: they indicate that Weatherup J did not intend to lay down a general and absolute rule but was in truth stressing that whether or not the scheme of the Regulations and Directive is in fact breached will depend on the facts of each case.

119. At para. 49 Weatherup J said:

“Once again the Environmental Report and the draft plan operate together and the consultees consider each in the light of the other. This must occur at a stage that is sufficiently ‘early’ to avoid in effect a settled outcome having

been reached and to enable the responses to be capable of influencing the final form. Further this must also be ‘effective’ in that it does in the event actually influence the final form. *While the scheme of the Directive and the Regulations does not demand simultaneous publication of the draft plan and the Environmental Report it clearly contemplates the opportunity for concurrent consultation on both documents.*” [Emphasis added]

120. At para. 51 Weatherup J concluded on the facts of that case that:

“When the development of the draft plan had reached an advanced stage before the Environmental Report had been commenced there was *no opportunity* for the latter to inform the development of the former. This was not in accordance with the scheme of Articles 4 and 6 of the Directive and the Regulations.” [Emphasis added]

121. I accept the defendant’s submission that, in Seaport, Weatherup J confirmed that as regards the requirement for a ER to “accompany” a draft plan, the Directive and Regulations do not require “simultaneous” publication of a draft plan and the ER.

122. The claimant also relied upon the decisions of Ouseley J in Heard (to which I have already made reference) and Collins J in Save Historic Newmarket Limited and other v Forest Heath District Council, the case which prompted the production of the Addendum. At para. 7 Collins J said:

“The challenge is brought on two grounds. First it is said that there was a failure to comply with the relevant EU Directive and the Regulations made to implement it that the Strategic Environmental Assessment (SEA) did not contain all that it should have contained. This if established would render the policy made in breach unlawful whether or not the omission could in fact have made any difference. That, as is common ground, is made clear by the decision of the House of Lords in Berkeley.... Although Berkeley concerned an EIA, the same principle applies to a SEA. To uphold a planning permission granted contrary to the provisions of that Directive would be inconsistent with the Courts obligations under European Law to enforce Community Rights. The same would apply to policies in a plan.”

123. However, it is important to note what the actual decision in that case was, and the basis for it. At para. 40, Collins J, in accepting the claimant’s first ground of challenge in that case, said:

“In my judgement, Mr Elvin is correct to submit that *the final report* accompanying the proposed Core Strategy *to be put to the inspector* was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified *in the final report*. There was thus a

failure to comply with the requirements of the Directive ...” [Emphasis added]

124. I accept Bellway’s submission that the claimant’s primary argument seeks to extend the principles in Forest Heath and Heard beyond their proper limit. Those were both cases where the Court was satisfied that *no* adequate assessment of alternatives had been produced prior to *adoption* of the plans in those cases. Although they comment (understandably) on the desirability of producing an Environmental Report in tandem with the draft plan, as does Seaport, neither is authority for the proposition that alleged defects in an Environmental Report cannot be cured by a later document.
125. I also consider, in agreement with the submissions by both the defendant and Bellway, that the claimant’s approach would lead to absurdity, because a defect in the development plan process could never be cured. The absurdity of the claimant’s position is illustrated by considering what would now happen if the present application were to succeed, with the result that policies H1, H2 and H3 were to be quashed. In those circumstances, if the claimant is correct, it is difficult to see how the defendant could *ever* proceed with a Core Strategy which preferred West Rochford over East. Even if the defendant were to turn the clock back four years to the Preferred Options stage, and support a new Preferred Options Draft with an SA which was in similar form to the Addendum, the claimant would, if its main submission is correct, contend that this was simply a continuation of the alleged “ex post facto rationalisation” of a choice which the defendant had already made. Yet if that choice is on its merits the correct one or the best one, it must be possible for the planning authority to justify it, albeit by reference to a document which comes at a later stage of the process.
126. As both the defendant and Bellway submit, an analogy can be drawn with the process of Environmental Impact Assessment where it is settled that it is an:

“unrealistic counsel of perfection to expect that an applicant’s environmental statement will always contain ‘the full information’ about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting ‘environmental information’ provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations ... but they are likely to be few and far between.”

See Sullivan J. in R(Blewett) v. Derbyshire County Council [2004] Env LR 29 at para. 41, approved by the House of Lords in R (Edwards) v. Environment Agency [2008] Env LR 34 at paras. 38 and 61.

127. Accordingly, I reject the claimant’s ground (4) and conclude that the Addendum was capable, as a matter of law, of curing any defects in the earlier stages of the process.

### The claimant's ground (5)

128. Under its final ground of challenge, the claimant submits that the inspector unfairly failed to re-open the public hearings on the issue of the Addendum. It observes that it was entitled to appear at all relevant stages of the EiP because it had made representations seeking to change the development plan document by the addition of East Rochford as a development location for housing and had requested that its representations be dealt with by way of hearing.
129. The claimant submits that the inspector's adoption of the written representation process to consider the Addendum meant that the claimant was not able to avail itself of this right in relation to the SA/SEA . This, it is alleged, was unfair and contrary to the provisions of s.20(6) of the 2004 Act.
130. In my judgement, there was no breach of the rules of natural justice or of the 2004 Act in the inspector's approach.
131. As Bellway points out, the claimant had already, in April 2010 (in advance of the EiP hearings), identified to the inspector the material from the Coombes Farm appeal which it considered relevant. That material was therefore available for consideration at the EiP.
132. Although the scheduled hearing sessions had been completed by the time the defendant had sought to undertake the SA/SEA Addendum, the inspector made it plain that she was prepared to contemplate the possibility of further EiP hearings into the SA/SEA Addendum were such hearings considered necessary.
133. This was in accordance with the way in which the defendant also envisaged things might go. On 11 May 2011 the defendant wrote to the Inspector, suggesting that they carry out additional work to the SA/SEA and that issue of the Examination report be delayed, pending this review:
- “In order to enable this additional work to be appropriately fed into the decision-making process, we respectfully request that the issuing of the Inspector's report be postponed. We appreciate that additional work on the SA will necessitate a delay in the examination process to allow for the additional work to be drafted, consulted upon, and the results fed into the plan-making process as appropriate. Furthermore, *we are mindful that the Inspector may wish to hold further hearing sessions to consider the results of the additional SA work.*” [Emphasis added]
134. On 25 May 2011 the defendant suggested two timetables in relation to proceeding with the RCS examination, in order to account for potential scenarios following production of the SA Addendum (i.e. where changes to the RCS would and would not be required as a result of the additional SA work). The suggested consultation period under scenario 2 (i.e. where changes to the RCS would be required) was extended to 6 weeks.

135. As I have already said, the inspector confirmed that she was prepared to consider additional hearing sessions if necessary.
136. On 10 June 2011 the defendant stated:
- “We are mindful that the public consultation period set out in the scenario 2 timetable represents an opportunity to consult not only on any changes that may be required as a result of the SA review, but also on adjustments to extend the Plan period to 15 years.”
137. All material arising in connection with the additional SA/SEA work carried out was published on the defendant’s website, which included all correspondence between the defendant and the inspector about the process being undertaken. The claimant’s representatives were perfectly aware of the timetable being followed and that all documents were being published online, and indicated their satisfaction with this process.
138. The defendant also points out that the claimant did not request a re-opening of the hearings at the time.
139. It is clear on the evidence before the Court that the inspector’s considered view was that such hearings were not, as events turned out, necessary. I do not regard that view as one that was wrong or unfair. Accordingly, as I have indicated, I conclude on this ground that there was no breach of natural justice or the procedural requirements of the 2004 Act.

### Conclusion

140. For the above reasons this application is refused.

# REPRESENTATIONS TO EAST STAFFORDSHIRE BOROUGH COUNCIL'S REVISED SUSTAINABILITY APPRAISAL (DECEMBER 2014)

ON BEHALF OF GALLAGHER ESTATES

## Pegasus Group

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## APPENDICES

- Appendix 1 Plan of Gallagher Estates Land Interests
- Appendix 2 Figure 17 Proposed Development Framework  
Framework Document supplied separately

## 1. INTRODUCTION

- 1.1 We are instructed by Gallagher Estates Ltd to submit representations on their behalf to the Revised Sustainability Appraisal (December 2014). Gallagher Estates Ltd have a controlling interest over a large part of the land that falls within the strategic site included within the Strategic Housing Land Availability Assessment (SHLAA) as *'Site Reference: 125a: Land at Henhurst Hill, Burton Upon Trent'*. A plan showing the location of the Gallagher Estates Ltd land interest is enclosed at Appendix 1.
- 1.2 In early December 2014 the Council were supplied with an evidence base document entitled *"Postern Park, A Framework for Sustainable Development"*. A further copy of this document is provided separately as part of this submission. This provides information about the specifics of the site. The document draws on technical assessments across key disciplines including, in particular, landscape and topographical considerations which have fed into a Development Framework Plan showing how the site could be developed (Figure 17 of the document & attached at Appendix 2). The Framework Plan has been developed in such a way that it can sensibly come forward with the additional land identified as SHLAA site 125a part of which now has planning permission for 300 dwellings (Ref: P/2012/01359: land at Forest Road, Branston).
- 1.3 The Inspector (Hearing Document E.19, part 5b) states in his Interim Findings that the SA is: *"inadequate as submitted and requires further work"*. In paragraphs 7 to 11 of his Interim Findings he sets out, in greater detail, the specific concerns he has stating, in paragraph 9 that it is; *"deficient as a source of evidence in support of the ESPL, both in respect of its technical adequacy and legal compliance"*. He is of the view that it requires; *"significant further work"* (paragraph 9) making the point that it must; *"clearly demonstrate, by way of an explicit audit trail, the reasons for the judgements reached at each stage of the evolution of the ESPL"* (paragraph 11). The Council set out, in a response to the Inspector's findings (Document F.40), what they felt should be the focus of any SA revisions. This includes focusing on the way in which the sites have been selected from the SHLAA for further appraisal and the appraisal of individual sites.
- 1.4 It is noted that further explanation / clarification is provided in the Revised SA through additions made in yellow and bold text. Having considered these we remain concerned that the SA does not provide a reliable piece of evidence. In

particular we do not consider that the assessment of the Land at Henhurst Hill as a reasonable alternative has been given clear or proper consideration.

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## 2. CONSIDERATION OF THE REVISED SUSTAINABILITY APPRAISAL

- 2.1 It is noted that the SA should be applied as an iterative process informing the development of the Plan. In this regard the Inspector noted that the Revised SA of March 2014 was still subject to consultation when the Local Plan was submitted for examination, and thus the Plan as submitted is not strictly legally compliant in this respect.
- 2.2 We have concerns about the timing of the publication of this Revised SA for consultation. This has been published in advance of the Council undertaking further work to address matters raised by the Inspector in his Interim Findings. This includes (as evidenced by the Council in document F.40) the outcome of the Council's additional work to establish the full Objectively Assessed Housing Need (OAHN). It also includes work on clarifying the site selection process and housing land supply. In document F.40 the Council has stated that work on these issues is expected to be completed by mid January 2015 (although not yet published) and therefore after the publication of this most recent iteration of the RSA. In short, this Revised RSA is not capable of taking into account the implications arising from the additional work undertaken by the Council.
- 2.3 The Council has indicated that it does not consider it necessary to find additional housing sites due to recent consents on a number of sites, which they say, will be demonstrated under their as yet unavailable work on OAHN, site selection and housing land supply. The decision of the Council appears to be pre determined in advance of the production of evidence, is not transparent and serves to highlight the fact that the Council have prematurely consulted on the RSA, before the updated evidence has been completed.
- 2.4 Furthermore, it is considered that the Council has not fully taken on board the interim findings of the Inspector. It is unclear at this stage whether the Council has considered the potential for increasing the range of sites to improve overall Plan delivery. Their wording within document F.40 suggests that they will not be considering additional housing sites, due to the volume of recent planning permissions. It therefore appears from the RSA document and the Council's stance as set out in document F.40 that references in the Inspector's interim findings to the Council considering further increases in the number and variety of

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size and location of housing sites to meet the five year supply have not and are not proposed to be acted upon.

- 2.5 With regard to the SA process this potentially raises issues, not least the requirement in law to assess and give reasons for rejecting any reasonable alternatives (Heard v Broadland DC, South Norfolk DC, Norwich CC). The Council's approach appears to be effectively dismissing the consideration of reasonable alternatives capable of delivering housing as suggested by the Inspector.
- 2.6 The Inspector also raised the issue of apparent inconsistencies between site assessments and the need to justify this through more explicit reasoning within the RSA. 2.7 It is noted, however, that the recent RSA explicitly states at para.1.46 that the revisions to the SA do not "*revisit the specific appraisal of sites already subject to SA or appraise any further sites*". It is contended that the interim findings of the Inspector presented a key opportunity to revisit site appraisals, particularly in the light of the Inspector's comments on the need to take a higher figure as the OAHN for the District (Document E.19 para.19). This is particularly pertinent in relation to SHLAA site 125a; Land at Henhurst Hill as discussed in section 3 below.

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3. LAND AT HENHURST HILL, BURTON ON TRENT (SHLAA site 125a)

*The Assessment Process*

- 3.1 The assessment of strategic site 125a as a reasonable alternative is not explained or justified within the revised SA. The revised SA seems to refer only to SHLAA site 125. This is evidenced at paragraphs 131, 7.126 and 7.127 and within the assessment table contained at page 103. This is a concern. SHLAA sites 125 and 125a are very different strategic development site propositions and, as presented, the revised SA provides no evidence that site 125a (incorporating SHLAA sites 45, 65, 71, 79, 80, 125 & 368) which has been known to the Council for a number of years has been subject to sustainability appraisal as a reasonable alternative.
- 3.2 SHLAA site 125 does form part of the larger, comprehensive area of site 125a. Accordingly paragraphs 7.126 and 7.127 of the Revised SA are noted. Two additions have been proposed to the text both of which are of concern. Firstly, it is stated that the site was rejected at Preferred Options of the Local Plan. This was some considerable time ago, back in 2012. Since that time there have been significant material changes to the evidence base relating to land at Henhurst Hill.
- 3.3 Also, and as recognised in footnote 17, land south of Forest Hill now has planning permission for some 300 dwellings. This site (SHLAA site 45) forms part of SHLAA site 125a. Planning permission was granted by the Secretary of State in February 2014. In permitting the scheme the Secretary of State noted that the development would not have significant adverse effects on landscape character or visual amenity. The Secretary of State also concluded that the site is in a sustainable location for housing development. In essence the Secretary of State considered this an acceptable location for development. The Council has not sought to re-appraise the suitability of site 125 / 125a as a reasonable alternative through the iterative SA process even given the knowledge that the land at Forest Hill has permission and will be developed.
- 3.4 In addition to the above the Council has added text to the Revised SA at paragraph 7.126. This states that the site has a very rural character with a variety of topography, differences in field size and enclosures which dominate the landscape. This may have been the Council view in 2012, when site 125 was rejected, however, as set out above, land at Forest Hill now has permission.

Added to this, the Council has been in receipt (since early December 2014) of additional, up to date material relating to the majority of Site 125a in the form of the *'Postern Park – A Framework for Sustainable Development'* which is provided separately as part of this submission.

- 3.5 It is disappointing and arguably wrong that the Council has not reappraised the land at Henhurst Hill (site 125 / 125a) since Preferred Options stage as part of the iterative SA process. As evidenced in Section 4 below, when consideration is given to updated circumstances and material the land at Henhurst Hill performs very well as a reasonable alternative for development.

*Henhurst Hill – A Sustainable Alternative*

- 3.6 The 'Postern Park Framework for Sustainable Development' document promotes, in SHLAA area 125a, a proposal which could deliver some 450 dwellings in Phase 1 as a stand-alone development, with the potential for a further 300 dwellings in a second phase, set within a green infrastructure framework which would respect the character of the landscape.
- 3.7 With regard to the Council's 2014 Strategic Housing Land Availability Assessment (SHLAA) land at Henhurst Hill was identified as site number 125a for 90.9 ha of land, capable of yielding some 2,727 dwellings. The SHLAA identifies the site as being deliverable, developable, available, achievable and suitable, although significant infrastructure investment is identified as being required, but that these constraints could be overcome. In addition the SHLAA identifies potential physical problems on site which would affect residential development. These being: potential risk of contamination on part of the site, access constraints and a brook running along the edge of the site.
- 3.8 The impact of residential development on the surrounding area, given the scale proposed by this site, has been assessed in the SHLAA as leading to the loss of landscape character. However this is based on a potential yield figure of 2,727 dwellings across the entire site, which appears to result from an assumed dph of 30, multiplied by 90.9 ha. This represents a completely different proposition to that promoted by Gallagher Estates which has given very careful consideration to the site's opportunities and constraints.

- 3.9 Further detail has been provided about the site in the form of the updated masterplan and information contained within the framework document. This also includes a Proposed Concept Plan (Figure 15), a Proposed Framework Plan (Figure 16) and a Proposed Development Framework (Figure 17), which demonstrate how the site could be developed which would result in a lower number of dwellings.
- 3.10 In addition mitigation can be implemented to address the constraints identified in the SHLAA as summarised below.
- *Contamination* - ground investigations would take place prior to any planning application on those parts of the site where contamination may exist and any remediation necessary would be implemented.
  - *Access* - The Proposed Development Framework (Figure 17) contained within the Framework Document demonstrates that all types of access can be adequately accommodated. A primary vehicular access is proposed from Postern Road to the north of the National Forest Adventure Farm, with a possible secondary vehicular access indicated further to the north, also from Postern Road. Other access points to the site are also indicated on the Proposed Development Framework (Figure 17) for non-motorised users and possible school access points to serve the potential new secondary school.
  - *Hydrology* - With regard to the identified brook constraint the Proposed Development Framework (Figure 17) contained within the Framework document also demonstrates that the brook on the southern boundary of the site will not be impacted on by development and that new attenuation ponds are proposed in the southern area of the site to assist with surface water drainage.
- 3.11 Despite the Framework Document and latest illustrative masterplan submitted to the Council in December 2014, it is noted that in relation to the assessment for land at Henhurst Hill, Burton, the results (albeit said to apply to SHLAA site 125 only), as set out in the Council's sustainability appraisal, remain unchanged.
- 3.12 In the light of the additional technical evidence contained within the appended Framework Document site 125a is considered below against the Council's sustainability objectives.

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## Economic and Social SA Objectives

- 3.13 In relation to the sustainability objectives of 'Economic Opportunities' and 'Accessibility to Services' the SA has scored site 125 as being likely to have a positive impact on the achievement of sustainability objectives and for the SA objective of 'Housing' the option was assessed as being likely to have a very positive impact on the achievement of sustainability objectives.
- 3.14 Gallagher Estates concurs with the general findings of the Council's appraisal of the Henhurst Hill site for these sustainability objectives, in that the site would:
- deliver a significant amount of the required residential development for the Borough, including affordable housing, with house types and tenures informed by local need and demand, on the edge of Burton, in a sustainable location;
  - generate a substantial number of new residents, requiring access to employment opportunities and stimulating expenditure and growth of the local economy;
  - be in close proximity and have good links to the Centrum 100 Business park, which is located on the edge of Burton to the south of the site;
  - potentially provide a site for a much needed secondary school, together with community facilities and public open space, giving educational, social and recreational opportunities for new and existing local residents.

## Transportation

- 3.15 This falls under both economic and social sustainability appraisal criteria and has been given a negative score within the SA. However it is the case that the development of this site would put in place measures to mitigate the impact of the development on the surrounding road network.
- 3.16 A range of measures to optimise the use of sustainable modes of travel would be implemented, and Gallagher Estates acknowledge that they will need to work with Staffordshire County Council to achieve a modal shift from private to public modes of travel. To assist in achieving this, such measures would include: provision for

pedestrians and cyclists (both on and off-site); new bus routes within the scheme and financial contributions towards local bus services; and making facilities available within the site in order to “internalise” trips. In addition off-site improvements to the local highway network would be funded by the development, where justified and necessary.

- 3.17 The inclusion of a site for a secondary school will help to maximise the opportunities for sustainable travel for both residents of the new development and the existing community. Measures to internalise trips within the development site and to reduce any potential impacts on the surrounding highways network will also be implemented. It is anticipated that overall the land at Henhurst Hill has the potential to assist in achieving a net benefit in terms of reductions in longer distance journeys to education within the wider area.
- 3.18 Accordingly, with the range of measures proposed, it is not justified that this site should be afforded a negative score in relation to this transport criterion. Indeed it must be remembered that this score was based on a different proposition for the site and without the evidence that the Council now has before it.

#### Environmental SA Objectives

- 3.19 The Council’s Sustainability Appraisal includes several environmental sustainability objectives, including: Flood Risk, Countryside and Landscape Quality, Biodiversity and Geodiversity, Historic Environment and Heritage Assets and Local Distinctiveness. The text below considers the Council’s score given in the SA and then takes into account the additional technical evidence contained within the appended Framework Document.

#### Flood Risk

- 3.20 The site lies in Flood Zone 1, where there is a low probability of fluvial flooding. However, there have been incidents of localised flooding due to surface water on parts of the site. The development scheme proposes a range of sustainable drainage systems (SuDS) i.e. swales and on site attenuation ponds which will discharge to existing watercourses.

- 3.21 In relation to Flood Risk the Council's SA has scored this site 0, where the effects would either be not significant or neutral. However, the implementation of measures to alleviate surface water flooding is likely to have a positive impact on the achievement of sustainability objectives.

#### Use of Land

- 3.22 This criterion has been given a negative score within the SA on the basis that the development would extend the built form of the town into sensitive areas of the countryside, and would be visible from the wider area. This assessment is based on the assumption, presumably, that the site being considered would accommodate in the order of 2,700 dwellings. However, it is the case that Phase 1 of the proposals contained within the recently submitted framework document are not sensitive in landscape terms, being located in an area of the site bounded by existing development. In addition the most recent proposals for the site would in effect create a new neighbourhood, accessible to the existing urban area of Burton and services and facilities therein.

#### Countryside and Landscape Quality

- 3.23 The SA has scored the site as a double negative against this criterion. The indicative masterplan for the site includes a Green Infrastructure (GI) strategy which will minimise the potential effects upon landscape character and the visual impact of the development on the surrounding area. The vision for the proposed development aims to promote and enhance the site's existing landscape qualities, by creating a public parkland to its south and east; giving greater accessibility and creating a structured landscape pattern, retaining as much of the trees and hedgerows as possible, so that the development visibly defers to this landscape structure.
- 3.24 The proposal promoted within the Framework Document is therefore sensitive to the environmental constraints of the site, particularly landscape, ecology and drainage, by placing development in locations well related to the existing built form and in the least sensitive environmental locations. It is therefore contended, in relation to this issue, that the Council's scoring is not justified.

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## Biodiversity and Geodiversity

- 3.25 The Sustainability Appraisal scores this site with a '?' as at the time of the original assessment (2013) there was uncertainty or insufficient information on which to determine impact. The SA states that the site is adjacent to Sinai Park and ancient woodland that forms part of the National Forest, in addition to a number of ponds and brooks and that Shobnall Dingle, an SBI, lies to the north of the site.
- 3.26 Gallagher Estates commissioned an ecological appraisal of the site and the area which is assessed in the attached Framework Document. The site does not lie within or adjacent to any statutory or non-statutory wildlife sites and no direct impacts to any such sites are anticipated as a result of the proposed development. Whilst a number of non-statutory wildlife sites are present in the area any potential impacts would be indirect and can be mitigated.
- 3.27 The proposals for the site incorporate substantial structural landscaping and a comprehensive Green Infrastructure (GI) strategy, in accordance with the objectives of the National Forest designation and Pre-Submission Local Plan strategic policies SP23 and SP26. The scheme incorporates the retention of areas of woodland, hedgerows and ponds of local value in the southern portion of the site, alongside an area proposed as future open space and SUDs. Ecological enhancement in line with the aims of the National Planning Policy Framework to take advantage of opportunities to incorporate biodiversity within the proposals will therefore be realised. Thus the development of this site, following the implementation of an appropriate mitigation strategy, would be considered highly unlikely to result in any significant adverse effects on any national or local nature conservation designations.
- 3.28 There is considerable scope in any future proposals for this site to retain the majority of features of elevated value to wildlife which currently provide corridors through/around the perimeter of the site, including hedgerows, woodland, trees, tree lines and ponds. Safeguards could be implemented to ensure that these habitats are fully safeguarded throughout construction and enhancements delivered through implementation of the development, to improve connectivity through the site and beyond.
- 3.29 The framework document demonstrates that the majority of the site is relatively unconstrained in terms of habitat and fauna, with the vast majority of potential

constraints lying at the site margins, which can be readily accommodated within a sensitively designed masterplan. In addition, significant opportunities have been identified which could provide a range of enhancements and associated benefits for wildlife.

- 3.30 The Proposed Development Framework (Figure 17) demonstrates how tree lined hedgerows and individual trees can be incorporated and strengthened successfully into a scheme on this site. Creation of new greenspaces can be provided that will provide local recreational opportunities that integrate with the wider environment.
- 3.31 It is therefore considered that through a number of mitigation and enhancement measures there would be opportunities to create new and enhanced existing habitats, thereby being likely to have a positive impact on the achievement of sustainability objectives.

#### Historic Environment and Heritage Assets

- 3.32 The Sustainability Appraisal scores this site with a '?' as at the time of the assessment there was uncertainty or insufficient information on which to determine impact.
- 3.33 The accompanying framework document notes that there are six Listed Buildings and one Scheduled Ancient monument within 2 kilometres of the site, with the proposed development only relating to one of the Listed Buildings – Postern Farmhouse.
- 3.34 The SA has also highlighted that the development would result in a permanent impact on the setting of a listed building, but that mitigation could help lessen the severity of the impact. The Proposed Development Framework (Figure 17) contained within the Framework Document serves to demonstrate that the development will be located some distance to the north of the listed farmhouse, with a green corridor/rural edge created to the southern boundary of the proposed first phase of the residential development. In addition a number of trees and hedgerows are proposed to be retained and new tree planting also proposed. The masterplan demonstrates that the development is unlikely to harm the significance of the setting of the listed building, but that it will benefit from an enhanced setting by virtue of a parkland entrance providing greater distinction from the built-up area to the north, and a better quality entrance.

- 3.35 With regard to archaeology, a schedule of findings is contained within the framework document, but these are not perceived to be a restriction on development of the site.
- 3.36 In conclusion, there are no heritage issues that would render the site unsuitable for future development. Overall it is considered that the technical information contained within the appended Framework Document would give more certainty with regard to the protection of heritage assets and would not therefore lead to a negative score for this sustainability objective within the SA.

#### Local Distinctiveness

- 3.37 The SA gives the site a single negative score stating that the existing area includes a distinct rural environment with local heritage, biodiversity and open space. Whilst some of the issues of local heritage assets and biodiversity have been dealt with above the Proposed Development Framework (Figure 17) shows that the development would be physically and visually contained within the overall context and landscape setting of Burton upon Trent, and will ensure that the site can accommodate a level and mix of development that can be successfully integrated with a commensurate level of Green Infrastructure (GI) including a variety of diverse landscape resources; open spaces; access links; and recreational value.
- 3.38 Within the open spaces the green infrastructure can seek to enhance those areas of limited landscape quality e.g. through the use of sustainable urban drainage systems; and protect those of some value e.g. by integrating them into the open spaces.
- 3.39 Within the areas of built form, the creation of an attractive public realm can be realised through the delivery of quality streetscapes that can be used to contribute to different levels and types of townscape character within different parts of the development framework; green links and corridors that can also provide the attractive physical thresholds between different uses of built form; play areas and similar nodal points; as well as open spaces for active and passive recreation. The site planning of such elements can also, given the scale of the site, be constructively and creatively used to provide elements of essential mitigation e.g. between the wider site and heritage assets.

3.40 Given its current landscape, townscape and visual baseline it is considered that there is opportunity to provide overall benefits in terms of landscape resources; high quality landscape and townscape character through considered design and a diverse mix of building use and open spaces; whilst at the same time visual amenity will be retained through the introduction of consistent land uses on the existing urban edge, in a visually discrete setting. On this basis, it is considered that the site offers an excellent opportunity to maintain and enhance landscape and townscape quality and thus it is considered that the SA scoring could be more positive to reflect this more accurately.

#### 4. DELIVERABILITY & VIABILITY

##### *i) Deliverability*

- 4.1 Land at Henhurst Hill is deliverable/developable in the terms identified at footnotes 11 and 12 of Paragraph 47 of the NPPF. Gallagher Estates is a major strategic land promotion company operating across the UK with a track record for successfully delivering many large scale developments. The company has a specific focus on the residential sector, and acts as a 'Master Developer' by retaining responsibility through all stages of the development process. The company is not a house builder, but instead facilitates development through the provision of infrastructure and community facilities to enable serviced land parcels to be offered for sale to the house building industry.
- 4.2 Gallagher Estates is appointed by the land owners to exclusively promote this site for a residential led development and have the full support of the landowner whom they have a working relationship with and have a long-term agreement to promote the site.
- 4.3 All identified constraints of the site can be properly taken into account and a development incorporating in the order of 750 homes, a potential site for a secondary school, provision for the retention/re-location of the Adventure Farm, and some 45 hectares of open space can be provided. Phase 1 of the site, which could accommodate in the order of 450 dwellings and a potential site for a secondary school, is available now, offers a suitable and sustainable location for development and there is every prospect that a number of the homes could be delivered on the site in the next five years. The delivery of this site will direct growth in a sustainable manner, in the spirit of the NPPF and its clear presumption in favour of sustainable development.
- 4.4 Gallagher Estates are of a strong opinion that land at Henhurst Hill would be highly desirable from a house buyers perspective, being located within an area well served by a wide range of services and facilities, set within a high quality environment and with good access to public transport and employment opportunities.

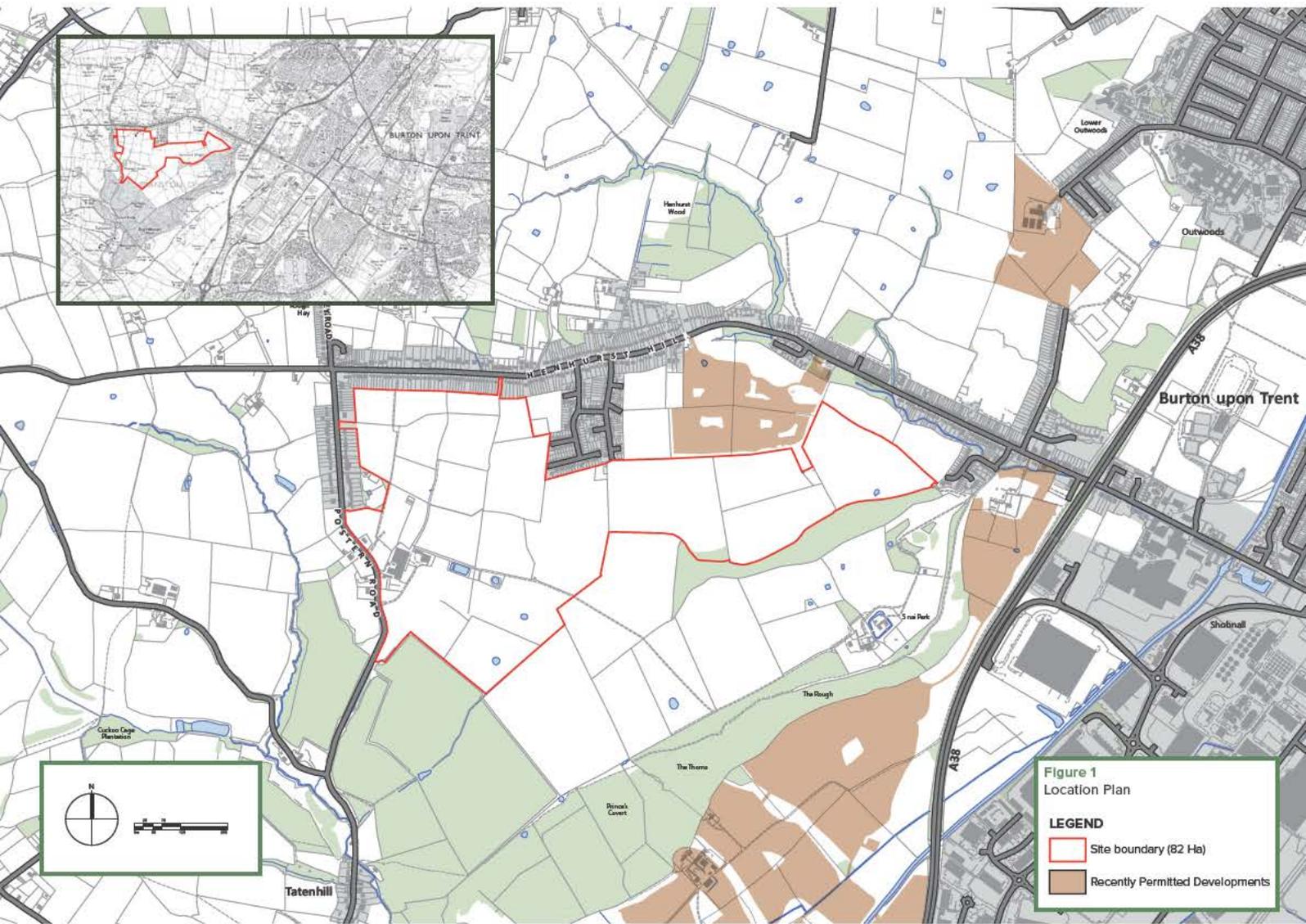
*ii) Viability*

- 4.5 The Harman Report relating to viability recognises that at a Local Plan level, viability is very closely linked to the concept of deliverability. It is noted that the Council has undertaken a report (November 2013) on the viability of development within East Staffordshire Borough to inform the Local Plan and future CIL. This report concluded that greenfield development can be viable within the Borough.
- 4.6 Whilst it is acknowledged that the development of the site at Henhurst Hill would require mitigation to be secured by way of a Section 106 agreement, or CIL charge, Gallagher Estates view is that the development of this site would be viable and deliverable.

## 5. CONCLUSION

- 5.1 Given the points raised in this submission we remain concerned that the SA process is flawed and does not provide a robust piece of evidence at this stage. In particular we are concerned that an assessment of SHLAA site 125a as a reasonable alternative is not evidenced within the SA. The Revised SA clearly shows that Site 125a has not been assessed appropriately as part of the iterative SA process. This is particularly the case given the references to Site 125 only, with no mention of Site 125a and in light of the considerable evidence now before the Council in relation to this area and the change of circumstances since the site was rejected in 2012 including, in particular, the granting of permission for 300 dwellings at Forest Road and the submission of a Framework Document with attendant Development Framework Plan.

# APPENDIX 1



# APPENDIX 2

# VISION





# POSTERN PARK

DECEMBER 2014

A FRAMEWORK FOR SUSTAINABLE DEVELOPMENT



ROLLESTON

BURTON 3

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# INTRODUCTION



*This document forms part of representations made on behalf of Gallagher Estates, and has been prepared to inform the review of the East Staffordshire Borough Council New Local Plan.*



*Henhurst Hill, north of the Postern Park site looking southwards.*



# INTRODUCTION

## 1.1. BACKGROUND

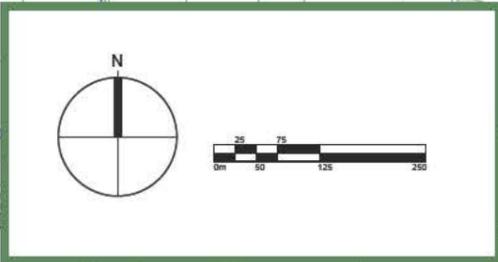
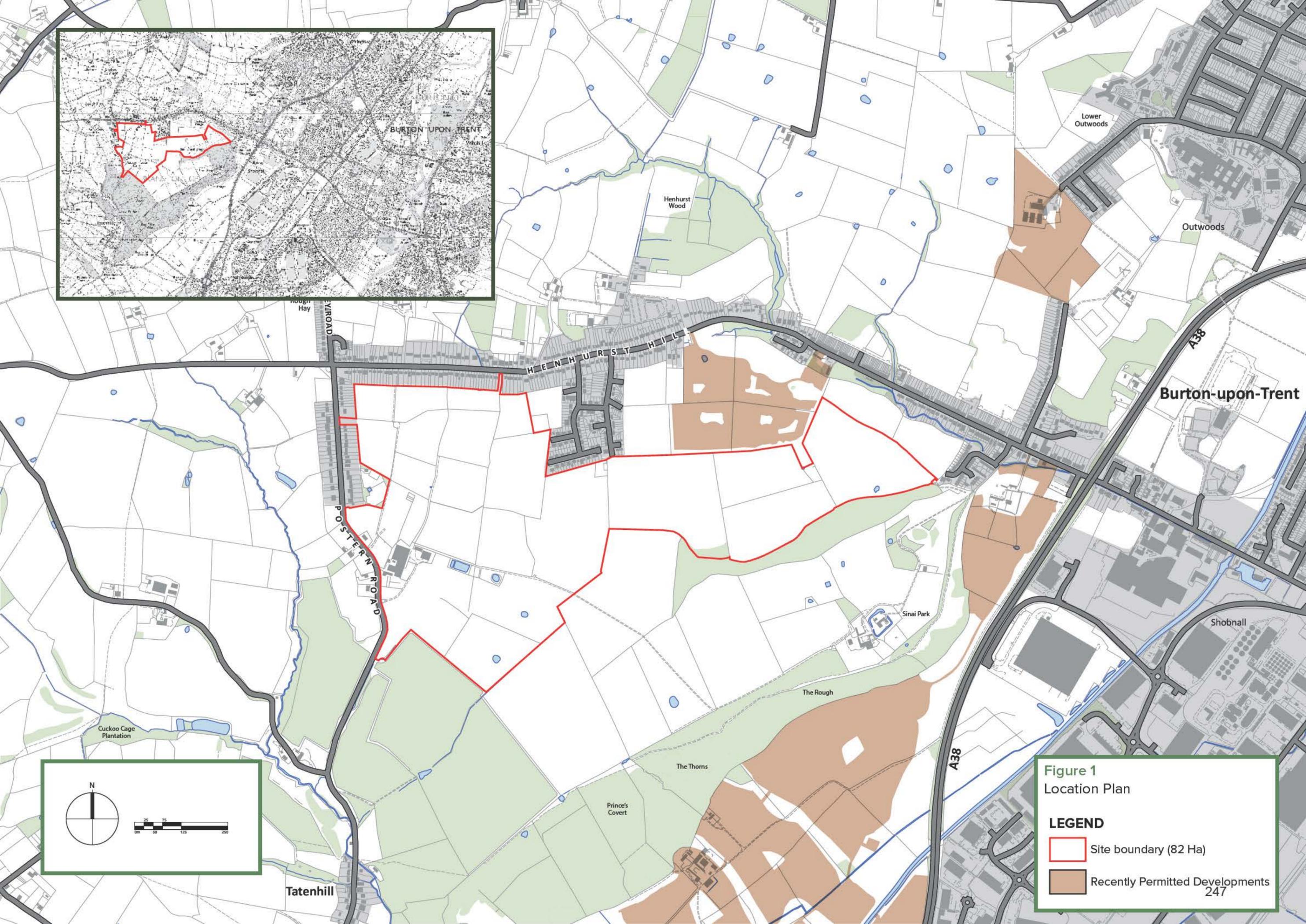
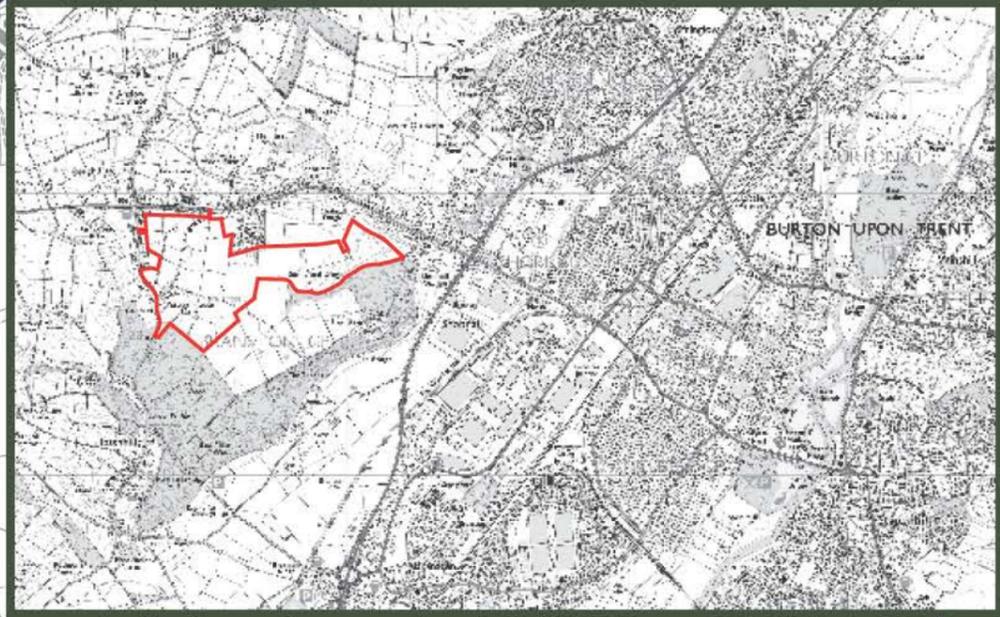
- 1.1.1. This document forms part of representations made on behalf of Gallagher Estates, and has been prepared to inform a review of the East Staffordshire New Local Plan. It specifically demonstrates that land to the east of Postern Farm, hereafter referred to as Postern Park (see Figure 1) can positively contribute to the delivery of housing, as well as provide significant social and environmental benefits in the form of a new secondary school (if required) and public parkland which improves the quality and connectivity of green infrastructure to the west of Burton upon Trent.
- 1.1.2. This document has been prepared by Define with contributions from Pegasus Planning (Planning), CSA (Ecology), iPad (Transport, Drainage and Utilities) and Border Archaeology (Archaeology).
- 1.1.3. This comprehensive project team have researched and reviewed in detail available technical information relating to the site and its context, including the New Local Plan Evidence Base. This has involved visiting the site to ensure familiarity with its features and to input accurately and robustly to the Postern park vision.
- 1.1.4. We consider in section 2 the site's context, going on to assess the site itself in more detail at section 3 and setting out the vision for Postern Park at section 4.

## 1.2. THE FUTURE OF THE WEST OF BURTON UPON TRENT

- 1.2.1. We recognise that land to the west of Burton upon Trent is entering a period of change, and the nature of this change should be understood as the emerging context for Postern Park. This context includes the allocated development of 2500 homes at Branston Locks, as well as planning permissions recently granted for up to 300 homes to the south of Forest Road (Marston's PLC ref 2012\_01359) and up to 250 homes at Lower Outwoods Road (Barwood Strategic Land ref 2013\_01215) - see Figure 3.
- 1.2.2. Land to the west of Burton upon Trent will, as a result, change and grow, and we consider Postern Park to provide essential social and environmental benefits to complement this growth in the form of a Secondary School and significant areas of public parkland and green infrastructure connections.

## 1.3. THE POTENTIAL ROLE OF POSTERN PARK

- 1.3.1. We believe Postern Park will provide a sustainable extension to the existing local community, west of Burton upon Trent, contributing initially around 450 homes and a Secondary School, and potentially up to a further 300 homes as part of a future phase to the east.
- 1.3.2. Moreover, a very significant amount of Green Infrastructure is provided in the form of a public park. The local area contains significant woodland and rural access land, but has limitations in respect of access to this land via public routes. As a result, Postern Park has the potential to 'stitch together' land to the west of Burton upon Trent into a comprehensive and co-ordinated future form, with enhanced public access. This co-ordinated form supports the land's potential future role as a community hub, with the capability to contain a 10 hectare site for a secondary school (5 forms per year for years 11 through to 18), as well as outdoor sports provision with community access, and further community space and convenience shopping provision and play facilities, together working to deliver this community hub.



**Figure 1**  
Location Plan

**LEGEND**

- Site boundary (82 Ha)
- Recently Permitted Developments 247

# CONTEXT



*Understanding a site's context is critical to ensure that change takes place in a way that complements and 'fits into' its setting. The following pages demonstrate the planning, settlement, landscape and visual, movement, archaeological and local facility context of Postern Park.*



NEWBOROUGH 4½

MARCHINGTON  
7½

ABBOTS  
BROMLEY 8

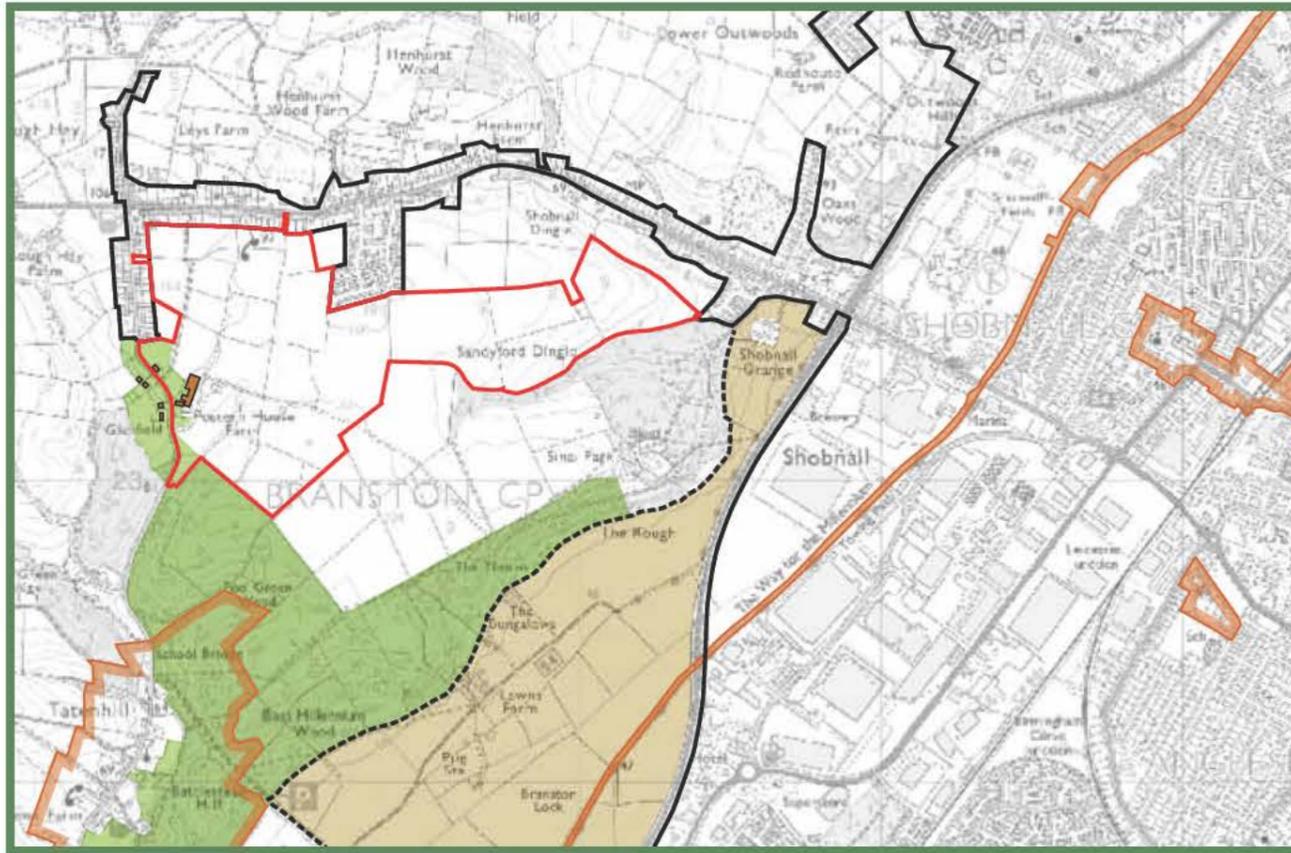
UTTOXETER 11

FOSTER ROAD

Takenhill Ln  
Rushmore Ln

Adventure  
Park

# CONTEXT



## 2.1. PLANNING CONTEXT

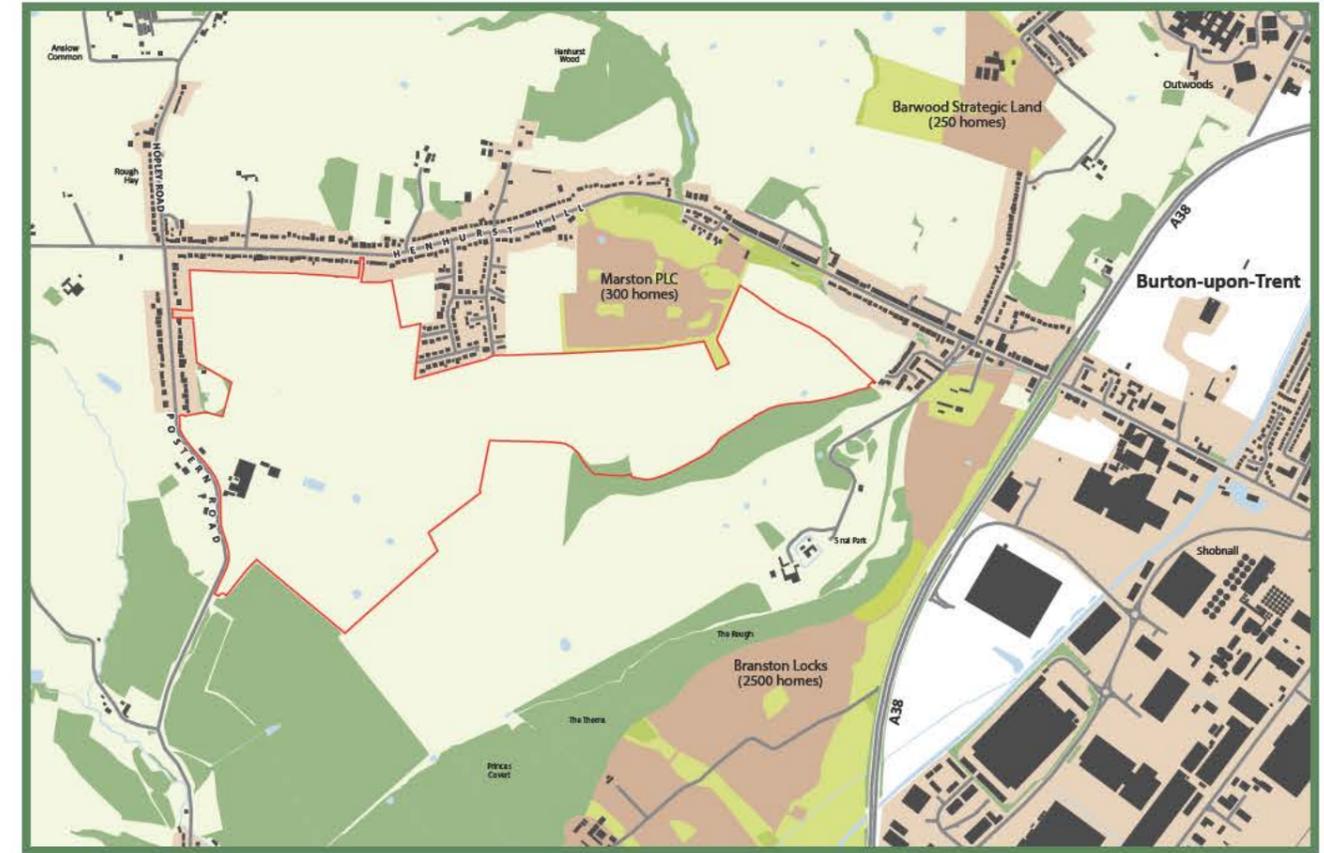
2.1.1. The site is located outside of the existing settlement boundary of Burton upon Trent, and is wrapped to the south by a proposed Strategic Green Gap, which aims to separate the settlements of Burton upon Trent and Tatenhill. This includes land that currently includes buildings, and so we suggest that Postern Park should make a clear statement in respect of separation between settlements, through the use of a well defined entrance and open space creating a green setting for the existing farmhouse.

Figure 2  
Adopted / Emerging Local Plan Proposals Map

### LEGEND

-  Site boundary
-  Settlement boundary
-  Proposed settlement boundary extension
-  Conservation Area
-  Strategic Green Gap
-  Consented Sites (Branston Locks)
-  Building in the Strategic Green Gap

The whole map area is within the National Forest



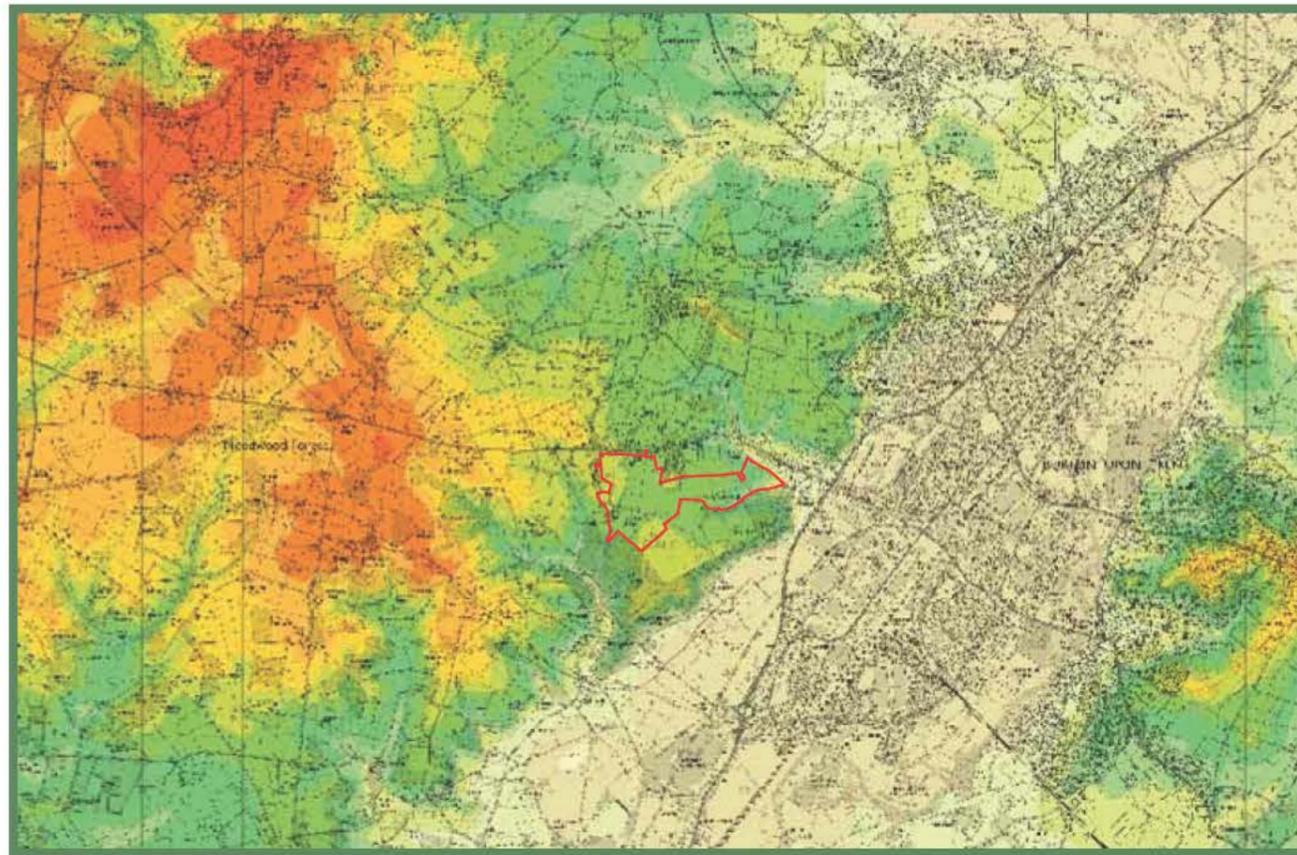
## 2.2. SETTLEMENT PATTERN AND LAND USE

2.2.1. Land to the west of Burton upon Trent, to the west of the A38, is principally residential, with some community / institutional use and agricultural. The settlement pattern is, at present, predominantly linear in form. However, recent planning permissions, as identified at 1.2.1 and as shown on Figure 3 will fundamentally change this settlement pattern, as development will extend beyond its existing ribbon pattern, to a more comprehensive form.

Figure 3  
Settlement plus other sites

### LEGEND

-  Site boundary
-  Buildings
-  Woodland
-  Built up area
-  Agricultural
-  Permitted development
-  Public open space

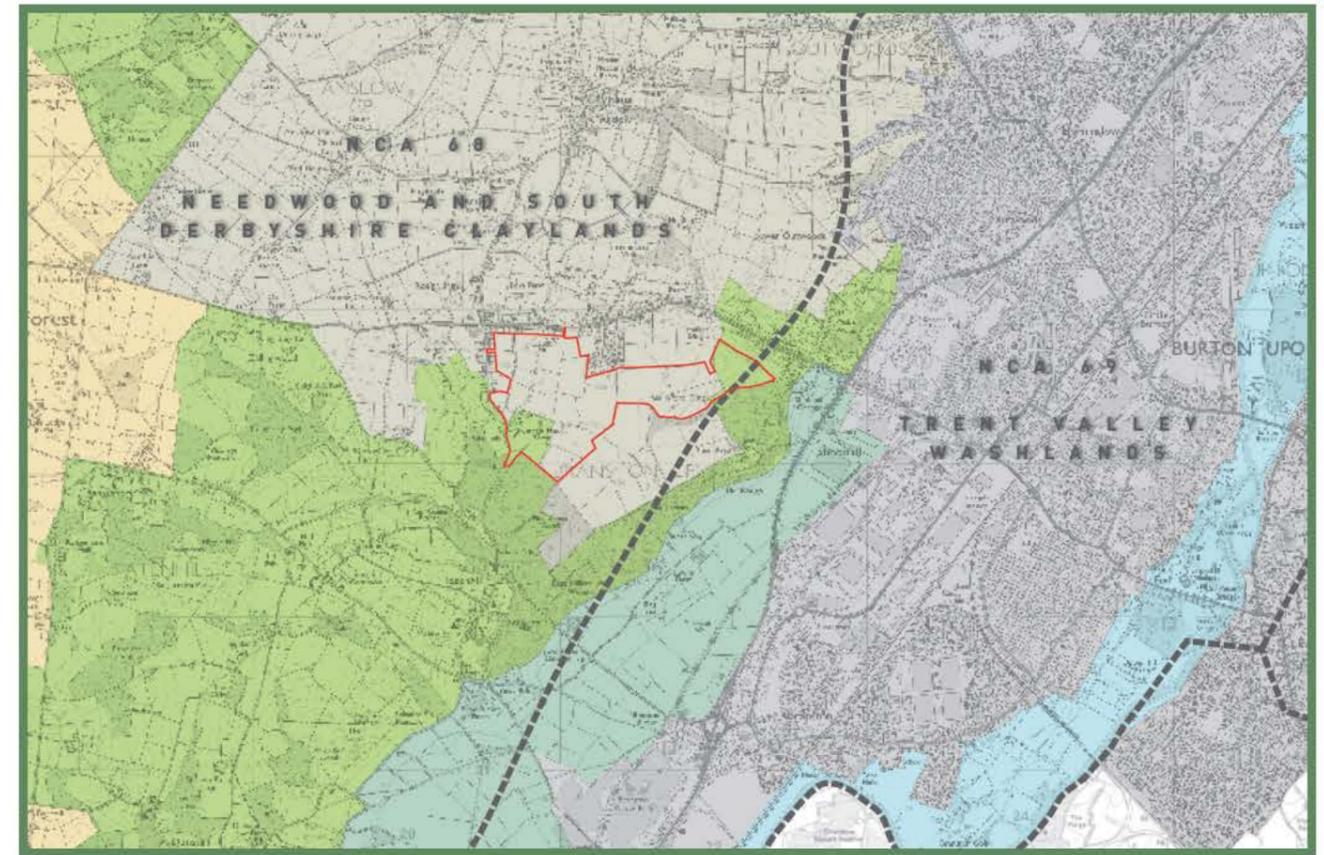
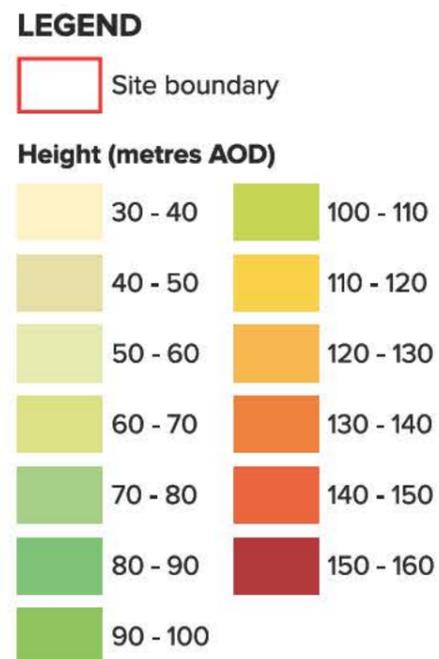


### 2.3. LANDSCAPE CHARACTER, VISUAL AMENITY AND GREEN INFRASTRUCTURE

2.3.1. Land to the west of Burton upon Trent has a varied and interesting topography with the town itself being located within the Trent valley, at a height of less than 50m AOD. Land rises to the east, and particularly to the west, towards Needwood Forest to a height of around 140m AOD.

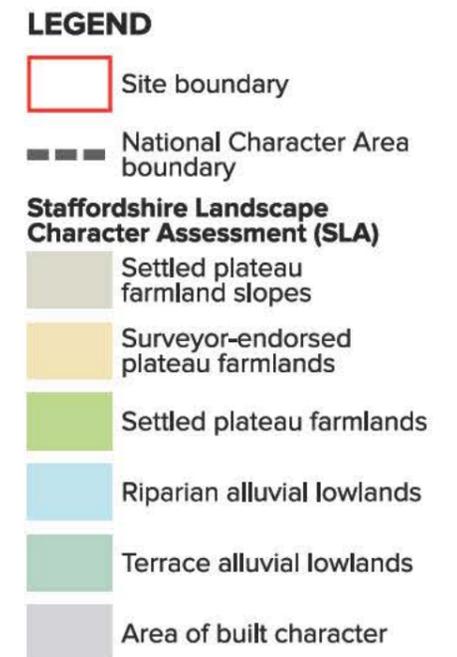
2.3.2. The site is principally located within the 'Settled Plateau Farmland Slopes' Landscape Character Area (LCA) at a County level (Staffordshire Landscape Character Assessment). The most critical factor which currently limits landscape quality is the relatively poor survival of characteristic semi-natural vegetation (i.e. ancient woodland, heathland and ancient hedgerows).

Figure 4  
Wider topography

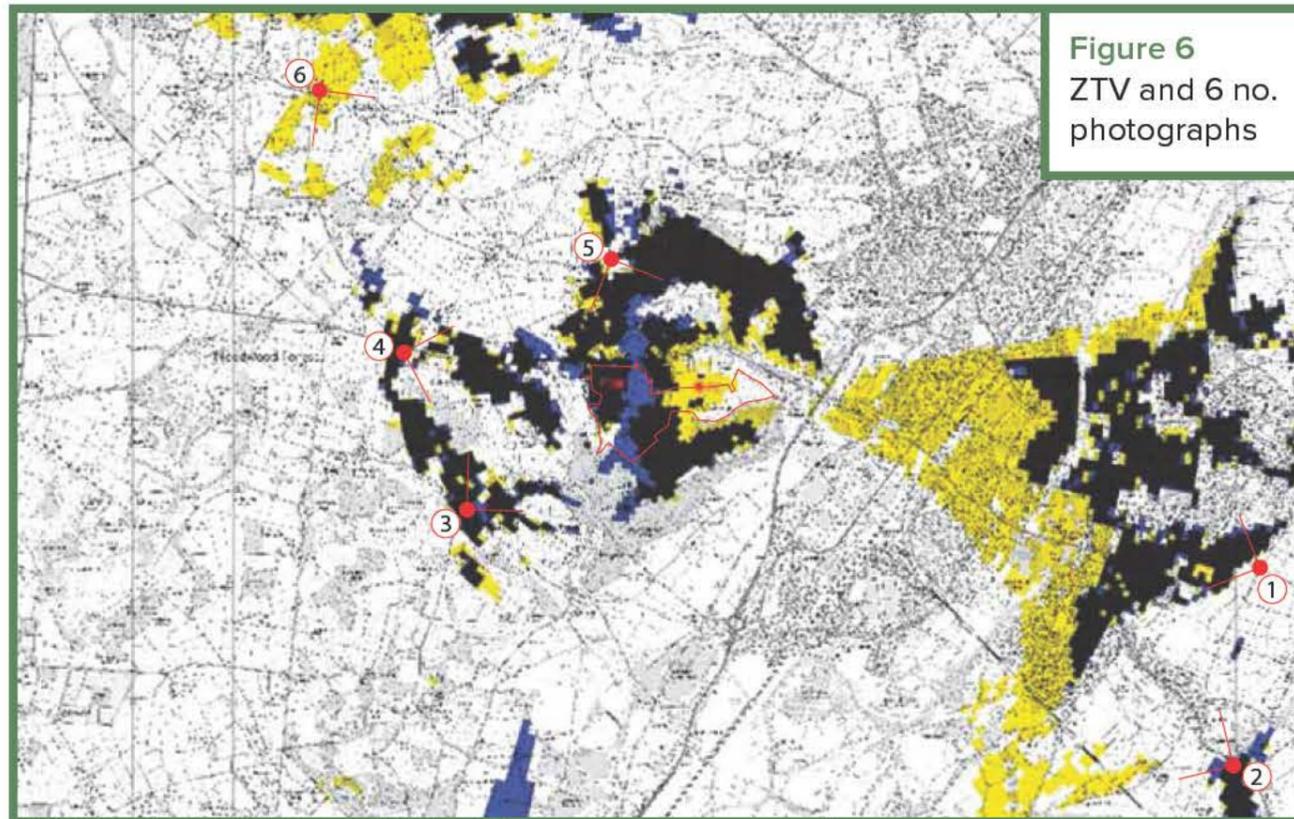


2.3.3. Essential to a sensitive response to this LCA, therefore, will be the retention and enhancement of existing field patterns and existing trees/ significant hedgerows to structure development within the existing and enhanced landscape pattern. Moreover, the Rural Access Land (Figure 10) and woodland to the south of the site is a significant asset with limited public accessibility. There is an opportunity to form a new public parkland and publicly accessible farmland as a key part of Postern Park (over 50% of the site area), which will significantly enhance the Settled Plateau Farmland Slopes landscape character, building on the appearance of Sinai Park, increasing woodland cover, and having the potential to 'stitch together' the wider Green Infrastructure network, which is recognised as a minor Green Infrastructure Corridor on the ESBC GI Network.

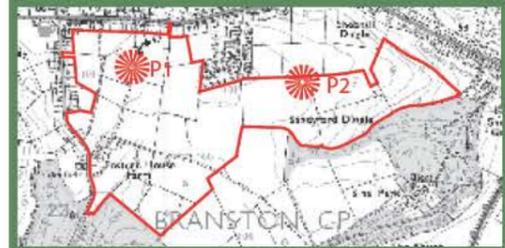
Figure 5  
Landscape Character & GI



# CONTEXT



**Figure 6**  
ZTV and 6 no.  
photographs



**East and west light source locations**

## LEGEND

-  Site Boundary
  -  Zone of Theoretical Visibility of development in west of site
  -  Zone of Theoretical Visibility of development in east of site
  -  Zone of Theoretical Visibility of development to both east and west of site
  -  Light source to test visibility of development (8.5m high) to west
  -  Light source to test visibility of development (8.5m high) to east
  -  Viewpoint location
- 
- VP1 PROW near Brizlincote Hall Farm
  - VP2 Woodland Road
  - VP3 Tatenhill Common
  - VP4 B5234
  - VP5 Anslow
  - VP6 Woodend

2.3.4. We have tested in detail the potential visibility of development at Postern Park, with land to the west and east of the site tested separately. This separate testing is due to land to the west perceived to be the principal form of development, with potential future development to the east.

2.3.5. Overall, land that is largely contained by existing housing fronting onto Henhurst Hill, Postern Road and the western edge of Henhurst Ridge is considered to be of low sensitivity to development (and therefore of high landscape capacity). Land further to the east of the site is considered medium sensitivity and medium capacity, and land to the south and far east is considered to be of high sensitivity and low capacity for development.

**Viewpoint 1** Postern Park is not recognisable in this distant, panoramic view.



**Viewpoint 2** Postern Park is not recognisable in this distant view.



**Viewpoint 3** Postern Park has filtered visibility from Tatenhill Common, with a backdrop of the settlement.



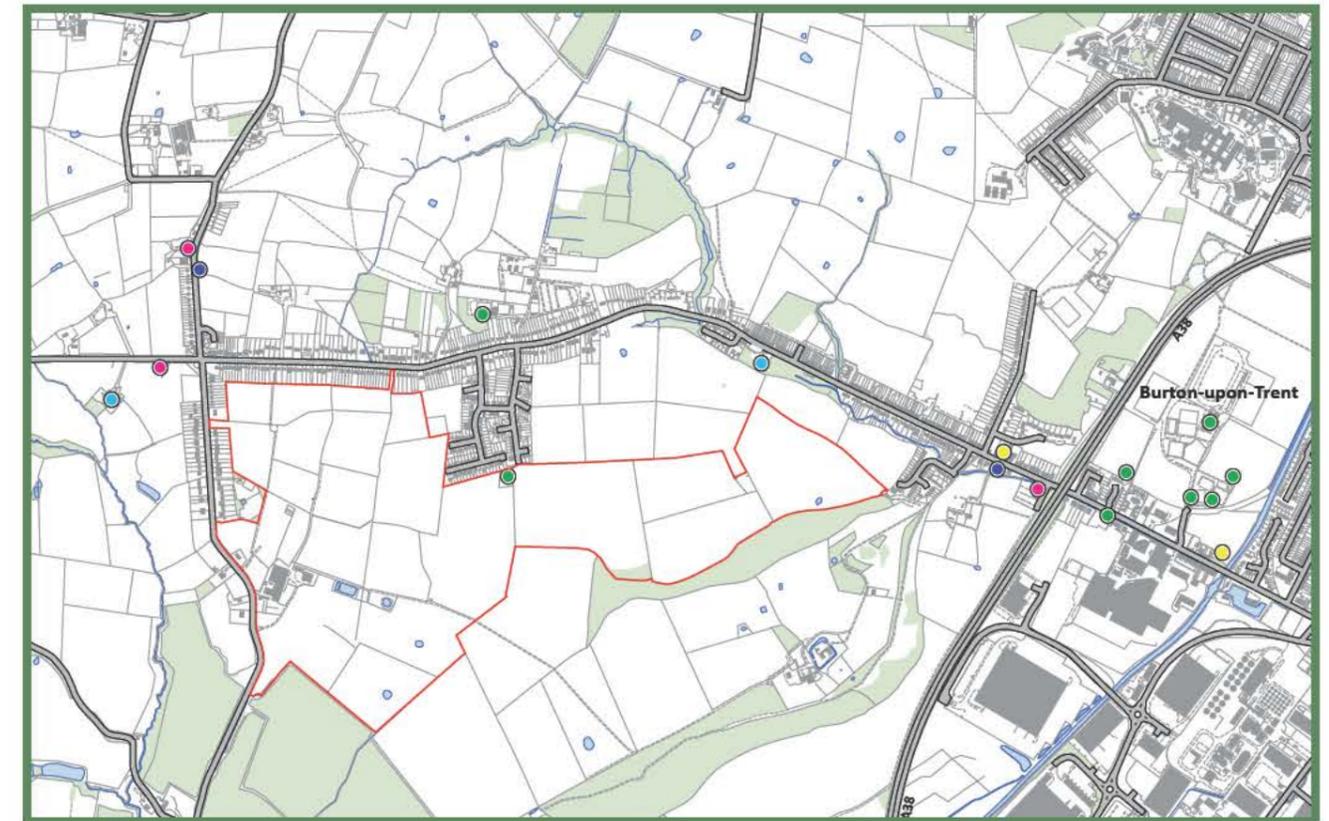
**Viewpoint 4** Postern Park is not visible when approaching from the west. Some filtered views of the existing settlement form are possible.



**Viewpoint 5** Views of Henhurst Hill is possible, but this built form screens views of Postern Park from the north.



**Viewpoint 6** Some filtered views of rooftops of housing to the west of Burton upon Trent is visible, but views of Postern Park is unlikely.



## 2.4. FACILITIES

2.4.1. A wide range of facilities are located within Burton upon Trent, approximately 2 kilometres to the east, however more immediate facilities, particularly leisure and community, exist.

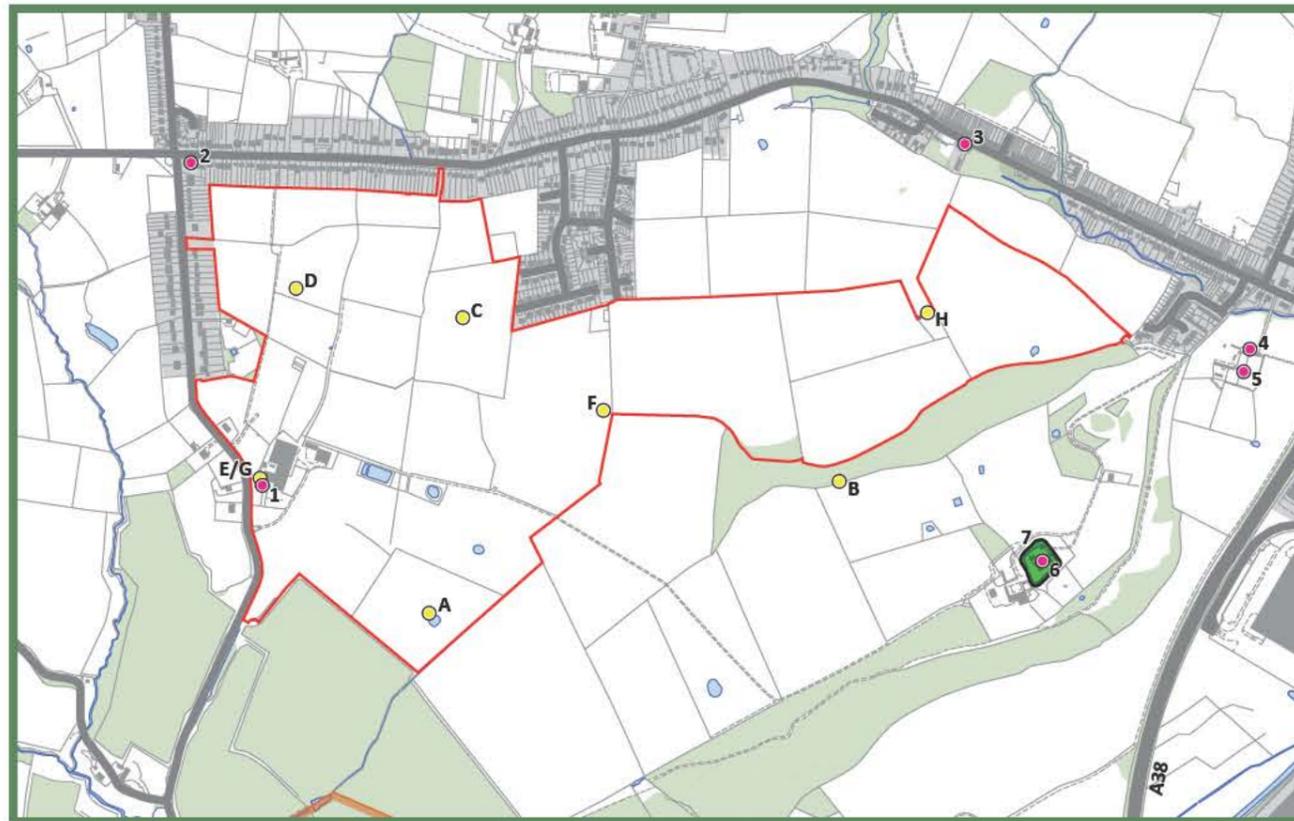
2.4.2 An opportunity arises to provide some limited convenience retail within Postern Park for the benefit of existing and future residents, and to provide a new Secondary School for the wider area.

**Figure 7**  
Local Facilities

### LEGEND

- Site boundary
- Community centre/hall
- Place of worship
- Public house
- Leisure facility
- Primary school

# CONTEXT



## 2.5. HERITAGE ASSETS AND ARCHAEOLOGY

2.5.1. There are six Listed Buildings and one Scheduled Ancient Monument within 2 kilometres of the site, as shown on Figure 8. The proposed development only relates to one of the Listed Buildings, which is Postern farmhouse. This building will benefit from an improved setting by virtue of a parkland entrance providing greater distinction from the built up area to the north, and a higher quality entrance. The farmhouse will remain untouched, as will the farm buildings, and the Adventure Farm is likely to be re-located to a less prominent position and more appropriate access position to the south of the existing farm buildings.

2.5.2. Archaeological findings are also listed on Figure 8. These are not perceived to be a restriction on development of the site.

Figure 8  
Archaeology /  
Heritage Assets

### LEGEND

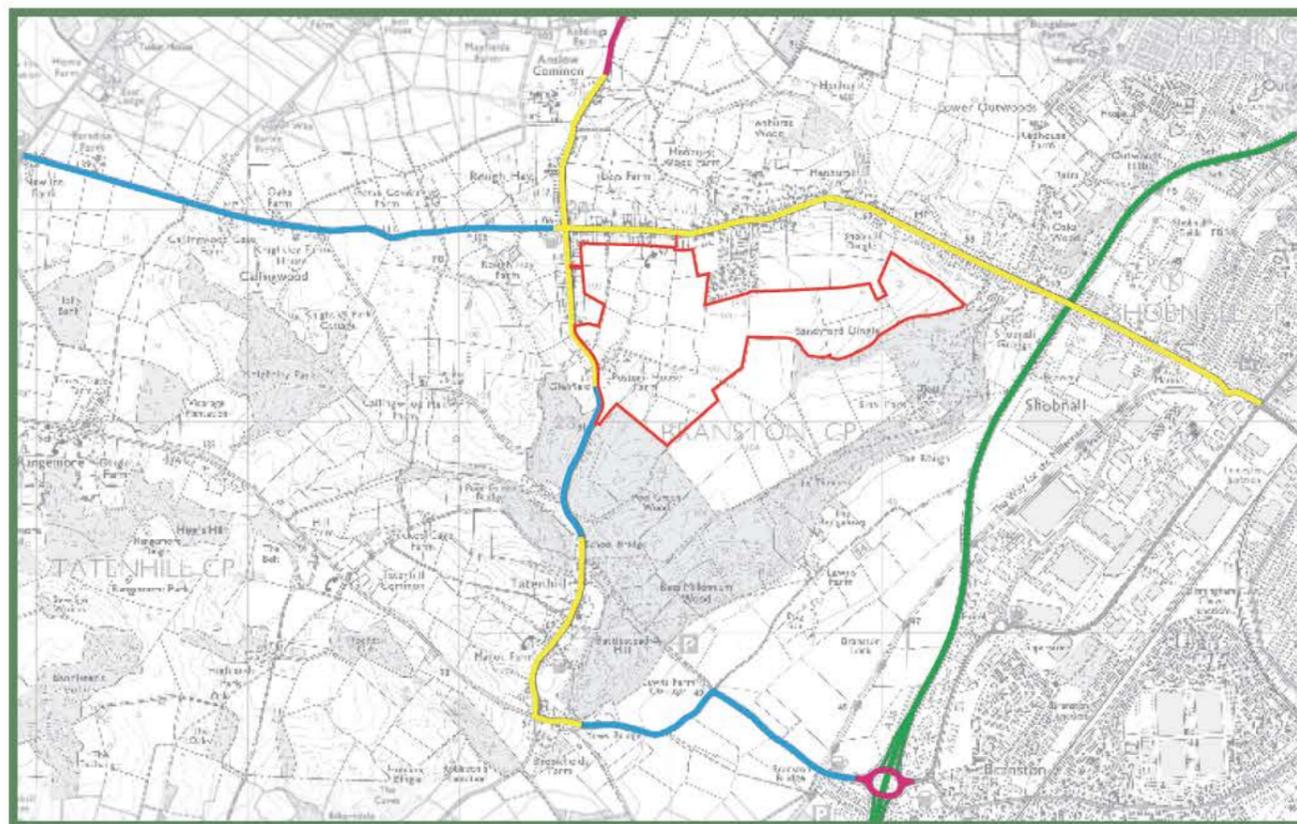
- Site boundary
- Conservation Area
- Scheduled Monument
- Archaeological site
- Listed building

## LISTED BUILDING SCHEDULE

No.	Name	Type
1	Postern Farm	Grade II
2	Milepost	Grade II
3	Milepost	Grade II
4	Shobnall Grange	Grade II
5	Shobnall Grange Gate Piers	Grade II
6	Sinai Park	Grade II*
7	Sinai Park Moated Site	Scheduled Monument

## ARCHAEOLOGY SCHEDULE

SMR No.	Name	Type	Date
A	Findspot of two late Iron Age coins	Findspot	Iron Age
B	Sinai Park - Medieval Deer Park	Deer Park	Medieval
C	Ridge and Furrow, south of Henhurst Hill, Branston	Ridge and Furrow	Medieval
D	Possible Park Pale Sinai Deer Park	Park Pale	Medieval
E	Postern House Farm	Farmstead	C18-C19
F	Outfarm NW of Sinai Park	Outfarm and Field Barn	C19
G	Postern House Farmhouse	Farmhouse	C19
H	Outfarm south of Henhurst Farm	Outfarm	C19



**Figure 9**  
Road Speed Limits

**LEGEND**

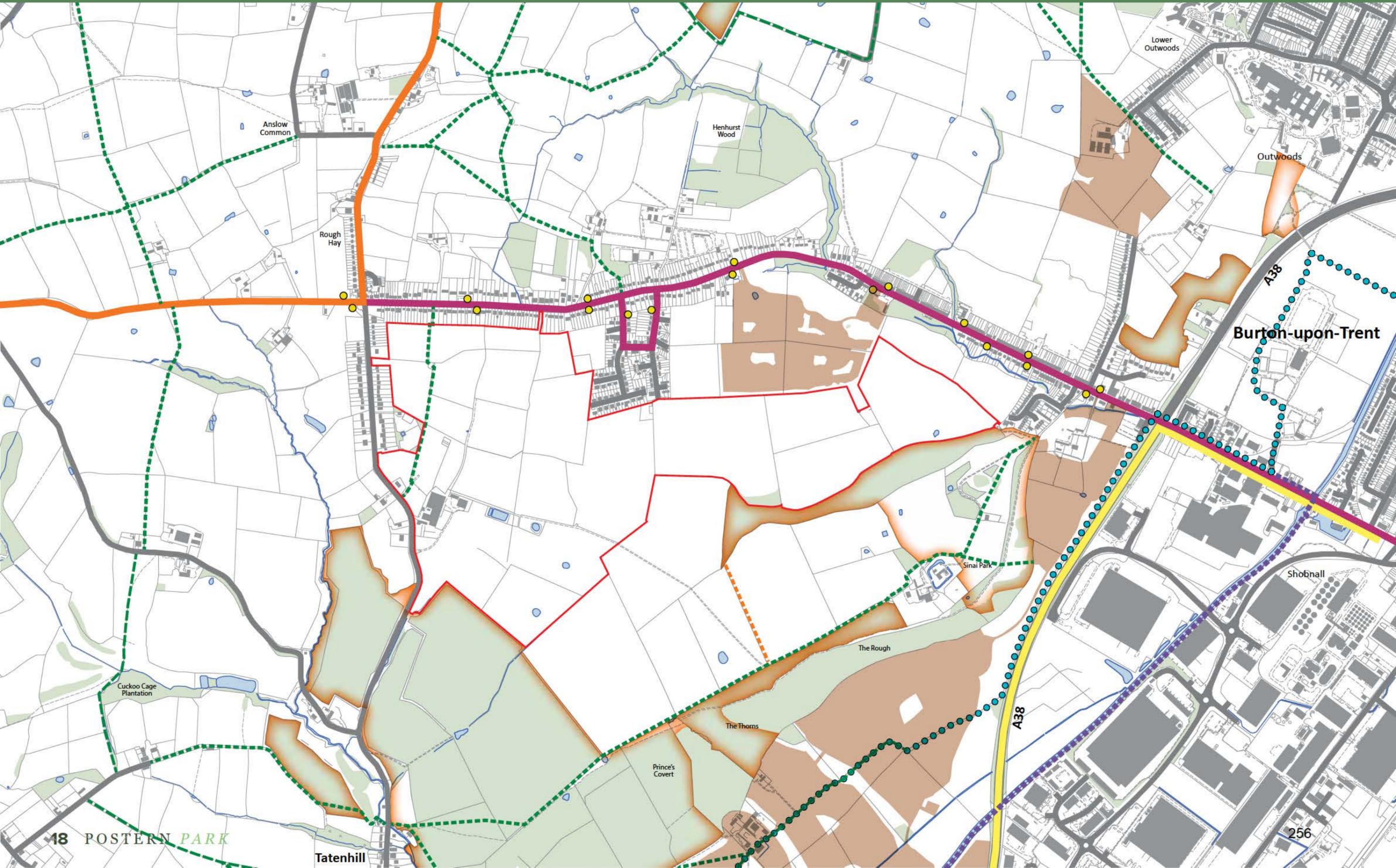
- Site boundary
- 30mph
- 40mph
- 60mph
- 70mph

**2.6. MOVEMENT**  
**EXISTING SURROUNDING HIGHWAYS**

- 2.6.1 The two key corridors that border the site are Postern Road that runs in a north-south axis immediately to the west of the site, and the B5017 Henhurst Hill that runs in an east-west axis to the north of the site.
- 2.6.2 These two roads meet at a staggered crossroads priority junction with Hopley Road located in the north western corner of the development site. This junction effectively marks a point of road character change, being a marker of the western extremity of the Burton upon Trent urban area.
- 2.6.3 To the west of the junction, the B5017 is of rural character with no street lighting or footways and is subject to a 60 mph national speed limit; to the east of the junction, the route (known locally as Henhurst Hill) is more suburban in character with residential frontage, pedestrian footways, lighting, and is subject to a 30 mph speed limit.

- 2.6.4 Postern Road is broadly rural in nature along its entire length with the exception of the northern end between the junction with the B5017 where there are existing properties and its southern section that routes through the existing village of Tatenhill.
- 2.6.5 Postern Road is subject to 30mph speed limits with the interconnecting section being 60mph National Speed (see Figure 9 above). Postern Road represents the most suitable point of access/ egress to and from the development site for vehicular traffic.

# CONTEXT



**Figure 10**  
Movement & Rural  
Access Land

**LEGEND**

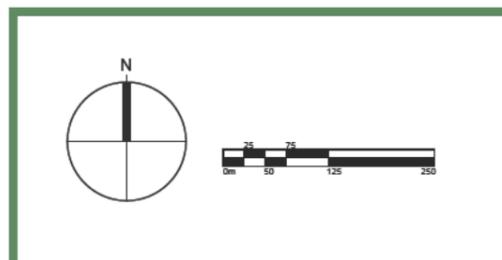
-  Site boundary
-  Recently Permitted Developments
-  Footpath
-  Bridleway
-  Permissive footpath
-  The Way for the Millennium (long distance footpath)
-  National Cycle Route 54
-  Rural Access Land
-  Bus stop
-  Bus route 10
-  Bus route 403
-  Bus route X12

**EXISTING PUBLIC TRANSPORT PROVISION**

- 2.6.6. The site is currently served by bus based public transport. Bus service number 10 route operates between Burton town centre and terminates at the junction of Henhurst Hill/Postern Road. Another public transport corridor is located on B5017/B5234. The services which operate along this route are 402A/403, those routes operate between Burton town centre and Uttoxeter.
- 2.6.7 The walking distance from Burton bus station to Burton-on-Trent train station is 0.6 miles that takes approximately 12 minutes. There can also be found several bus services which connect these stations, such as; 1E, 2, 2A, 2E, 3, 4, 9, 10, 19, 19A, 402, 402A, 402X, 403, V1 and V2, in a 7-9 minutes bus journey.

The frequency and routes of existing buses services operating immediately adjacent to Postern Park is presented within the following table.

BUS Service	BUS Route	Frequency	Journey time: 210 Henhurst Hill to Burton train Station
10	Burton / Railway Station / Shobnall Road / Forest Road / Henhurst Hill / Acorn Inn	9 buses per day (4 of them at peak times)	13 min (3 walk + 10 bus)
402A/403	Burton / Railway Station / Queen's Hospital / Beam Hill / Uttoxeter	5 buses per day (2 of them at peak times)	12 min (3 walk + 10 bus)



# SITE

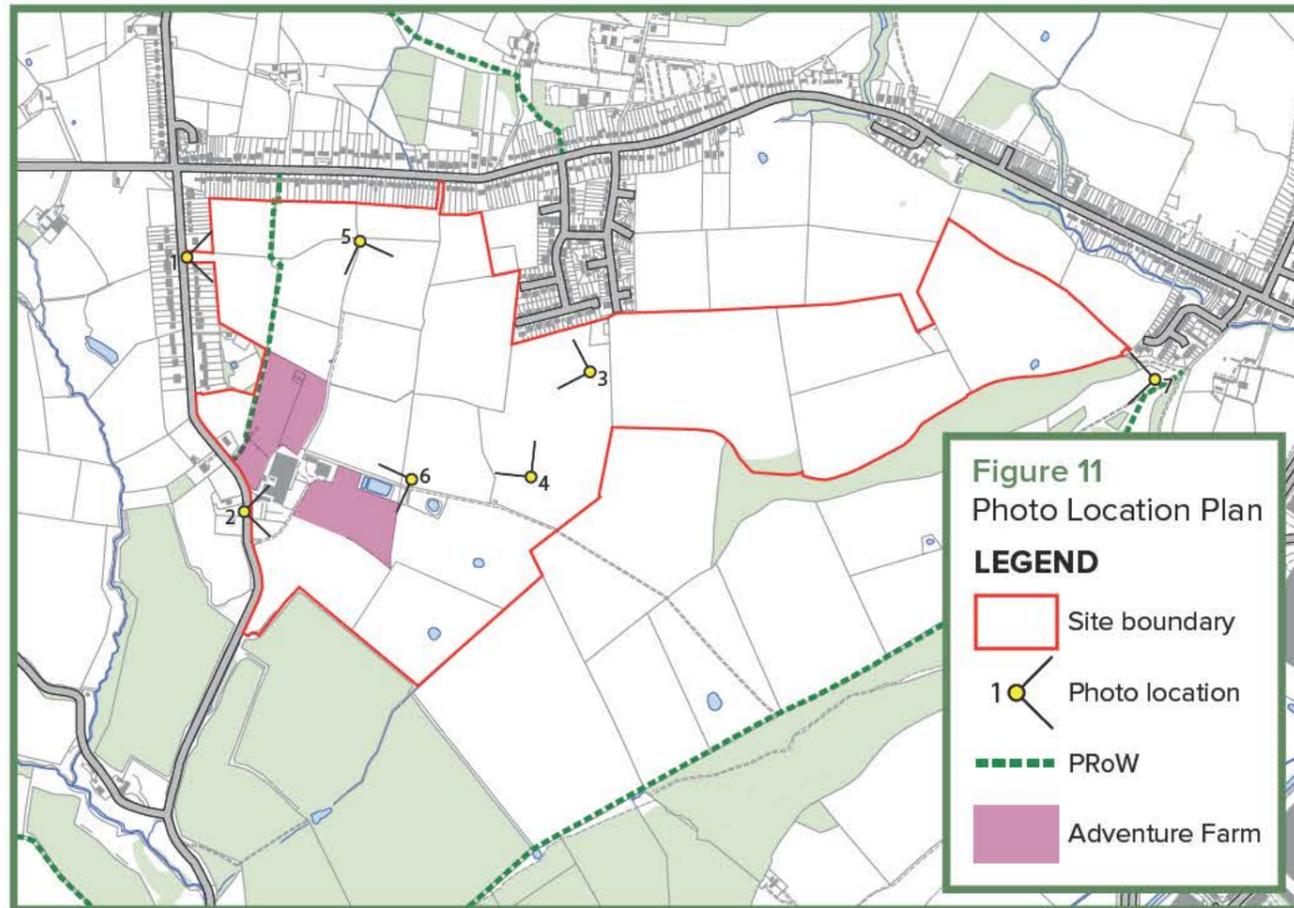


*The vision for Postern Park can only be realised successfully through detailed knowledge of the site's features, constraints and opportunities. The following pages consider the site's landuse, edges, hydrology, topography, vegetation, and ecology.*





# SITE



## 3.1. LAND USE, BUILDINGS AND SITE EDGES

- 3.1.1. The site currently has agricultural use, principally pasture, but also an Adventure Farm, which has a hard surface car park, play area and animal enclosures, accessed north of Postern Farmhouse, off Postern Road. The existing Grade 2 Listed farmhouse is only visible from a narrow stretch of Postern Road to the south, and is wrapped by existing farm buildings.
- 3.1.2. A surfaced access track leads from the existing farm buildings to the rural access land to the south, whilst the site also adjoins the rural access land to the south west and south east. A public footpath links Henhurst Hill with Postern Road through the site and the existing residential properties fronting Postern Road, Henhurst Hill, Henhurst Ridge and Aviation Lane back on to the site. The site should ensure these boundaries are protected whilst maintaining appropriate physical separation to meet privacy requirements.

Photo 1 This photo shows the potential site access position off Postern Road.



Photo 2 Postern Farmhouse is principally viewed from the south west. A potential access point to Postern Park exists some 100 metres to the north (where the existing Adventure Farm Access exists).



Photo 3 This photo shows the rather abrupt and harsh existing urban edge.



Photo 4 The existing field boundaries filter views of the urban edge only one field step away.



Photo 5 A number of green corridors are found within the site. The most well vegetated can be seen on Figure 12 and includes a number of mature trees.



Photo 6 The Adventure Farm sits to the north/east of Postern Farm.



Photo 7 The eastern part of the site has steeply sloping gradients and a low capacity for development, but high potential for improved public access.





## 3.2. TOPOGRAPHY AND VEGETATION

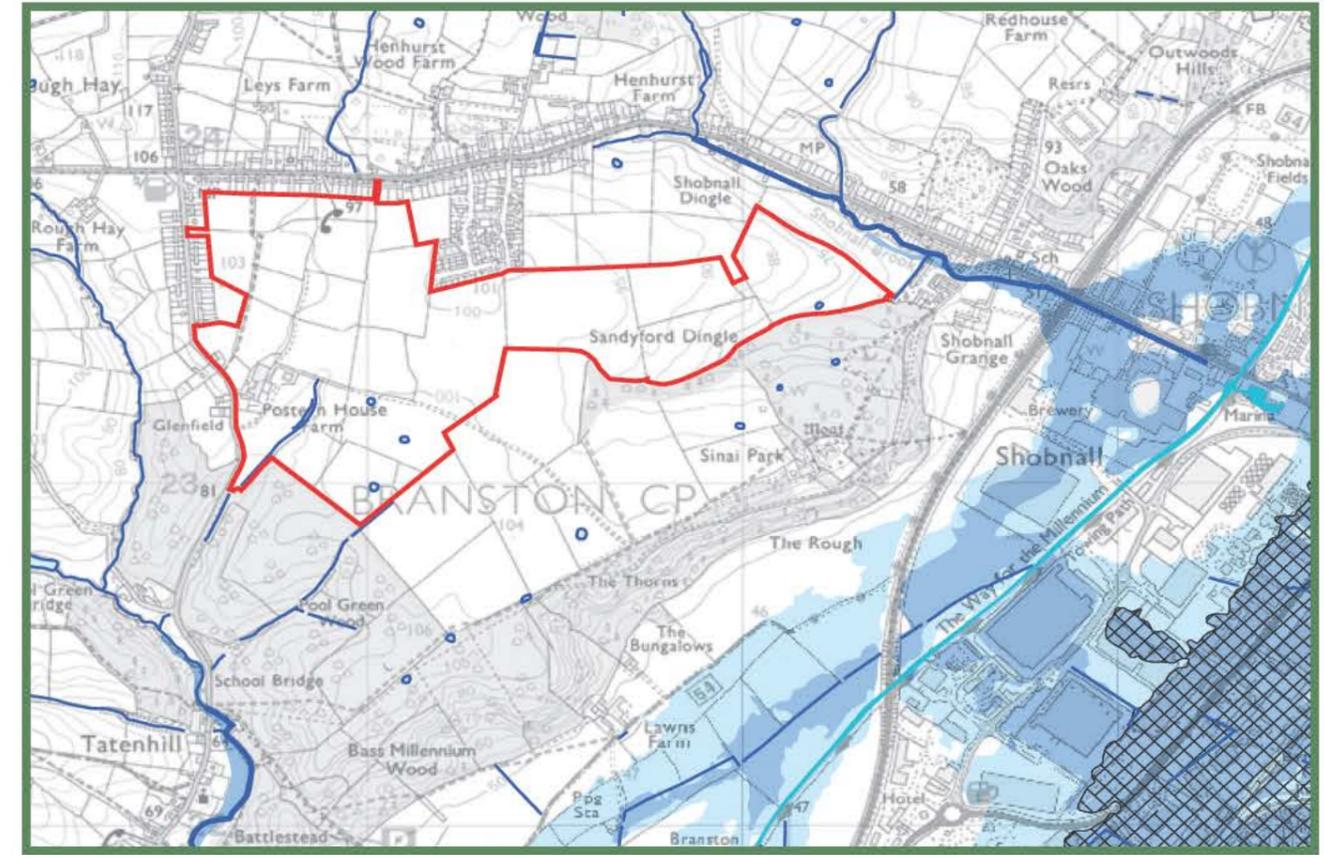
3.2.1. The site has varied topography with a fall in land to the east and similarly to the south west. Land enclosed by the rear of existing properties on Postern Road, Henhurst Hill and Henhurst Ridge is reasonably level, as is land immediately east of the southern point of Aviation Lane. Beyond these platforms, land falls, in some locations steeply, to the east, and less steeply to the south west.

3.2.2. Vegetation is limited to existing hedgerows containing standard (predominantly) Oak and Ash trees to the land enclosed by Postern Road and Henhurst Hill. Beyond the site boundary to the south (east and west) is a large native woodland of mixed structure.

Figure 12  
Site and immediate context with 2m contours

### LEGEND

-  Site boundary
-  Vegetation
-  Contours (2m)



## 3.3. HYDROLOGY

3.3.1. The Environment Agency web site shows that the site is not at risk from flooding from Rivers (previously known as Flood Zone 1). It does show that there have been incidents of flooding due to surface water. The site is therefore not at risk by flooding events.

3.3.2 Postern Park will include a range of sustainable drainage systems (SuDS) i.e. swales and onsite attenuation ponds to achieve greenfield run-off rates.

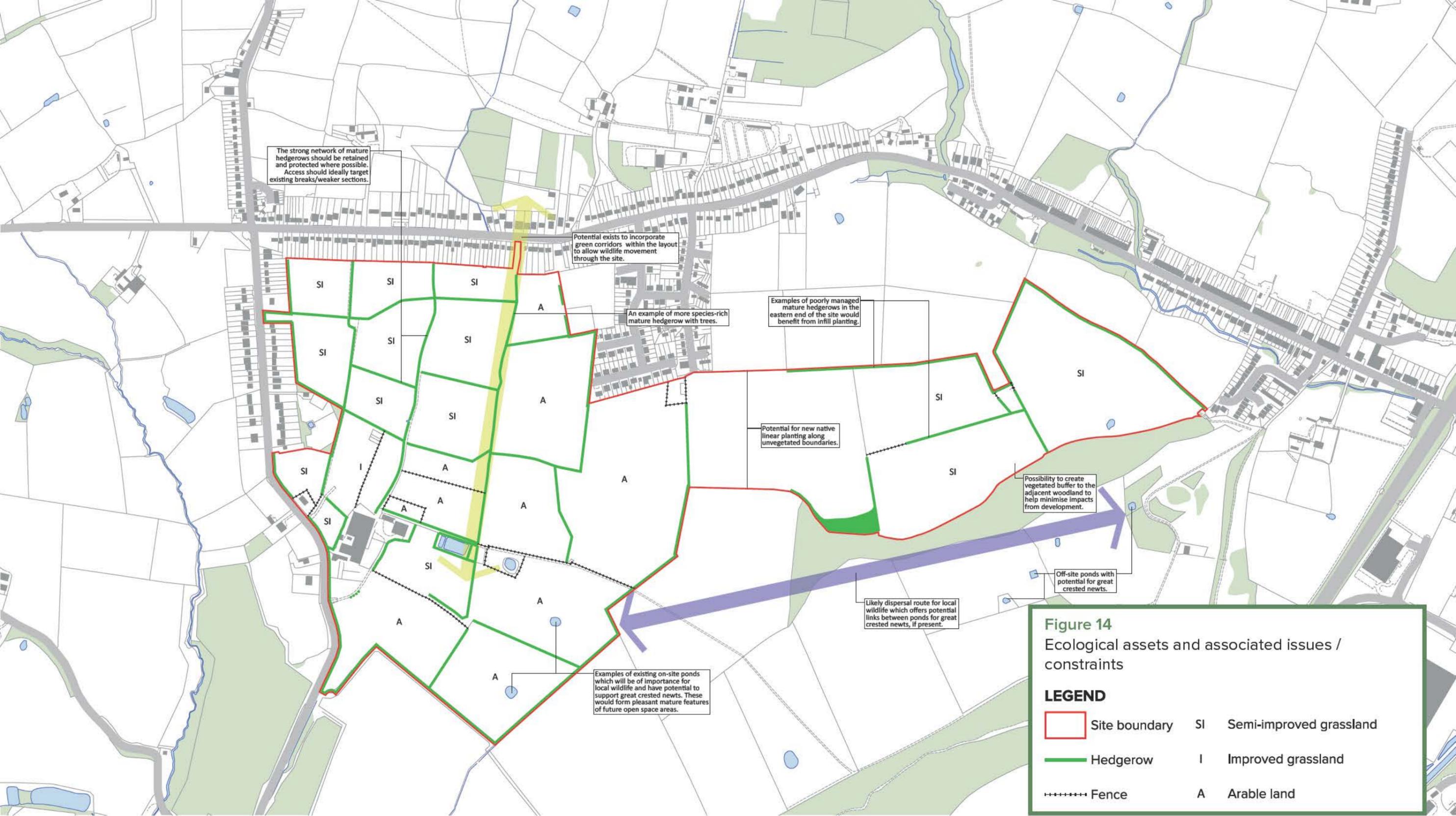
3.3.3 Water will be contained on site using attenuation ponds that will discharge to existing water courses at a rate agreed by the Environment Agency and the Local Planning Authority, and include Swales in locations to assist with the historic flood incidents.

Figure 13  
Hydrology

### LEGEND

-  Site boundary
-  Flood Zone 3
-  Flood Zone 2
-  Benefitting from flood defence
-  Trent and Mersey Canal
-  Main river
-  Other river, stream or pond

Information from the Environment Agency



**Figure 14**  
Ecological assets and associated issues / constraints

**LEGEND**

	Site boundary	SI	Semi-improved grassland
	Hedgerow	I	Improved grassland
	Fence	A	Arable land

### 3.4. ECOLOGY

3.4.1. The site does not lie within or adjacent to any statutory or non-statutory wildlife sites and no direct impacts to any such sites are anticipated as a result of the proposed development. The majority of the site is considered to support

habitat of ecological value at no more than the Site level. Features such as the network of native hedgerows, mature trees and ponds are of value at the Local level and will be protected and enhanced as part of the site's development as far as possible

3.4.2 Further survey work will be undertaken throughout 2015 to establish the presence or not of protected species in or within the vicinity of the site

# VISION



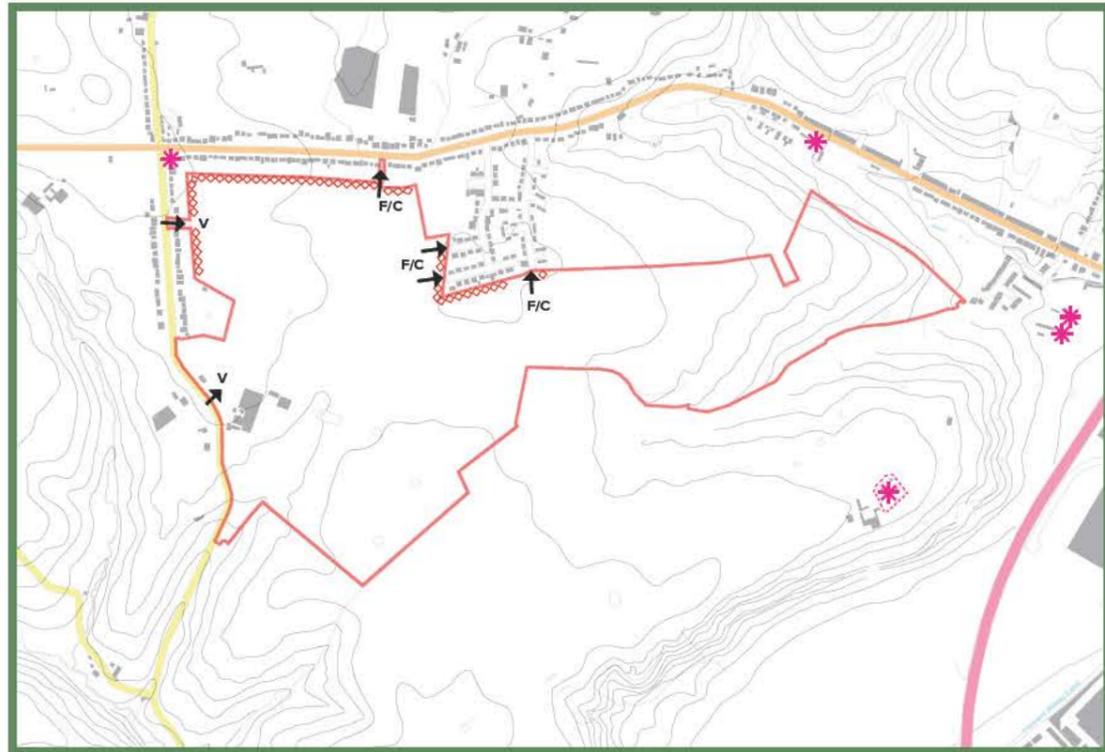
*Postern Park creates a naturalistic parkland, with greatly increased accessibility for existing and future residents to the surrounding landscape, both through public rights of way and with connections into the wider Rural Access Land. It therefore establishes a very significant green infrastructure resource, with well over half of the land retained for this purpose. High quality housing (around 450 homes, and potentially up to 750 homes), community and convenience facilities and a new Secondary School (11 - 18) are placed sensitivity to the wider landscape, existing residential community and current site features (largely trees and hedgerows).*



POSTERN ROAD

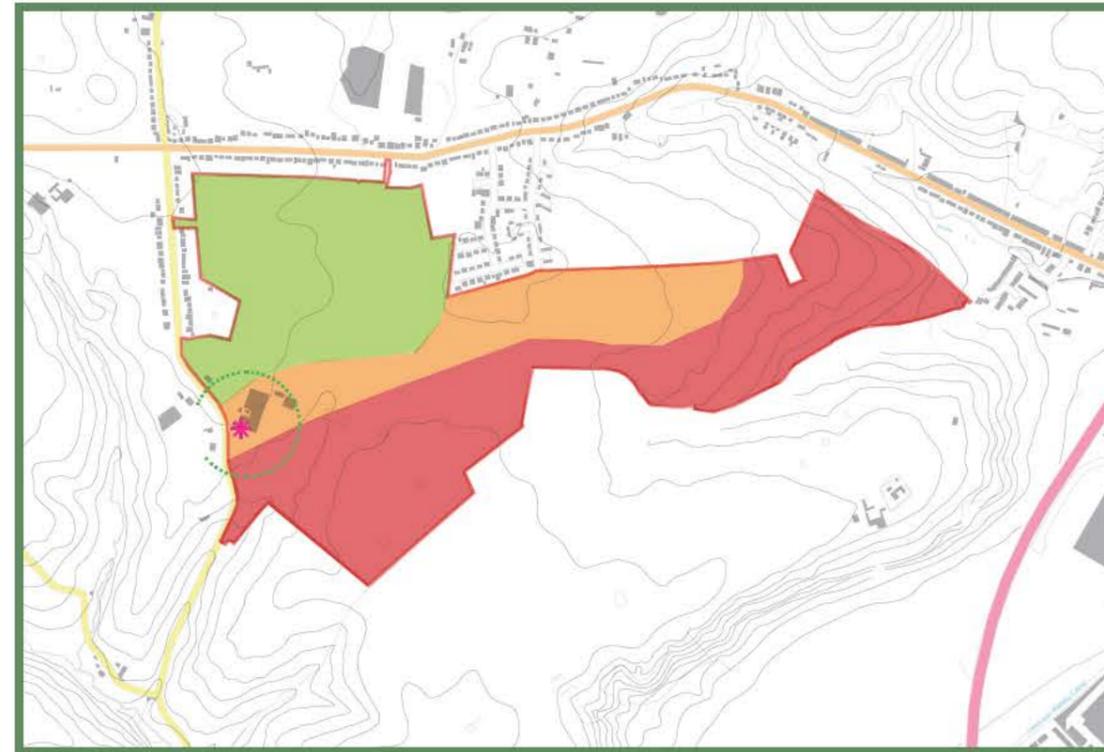
# ANALYSIS

## Site Edges, Access and Listed Buildings



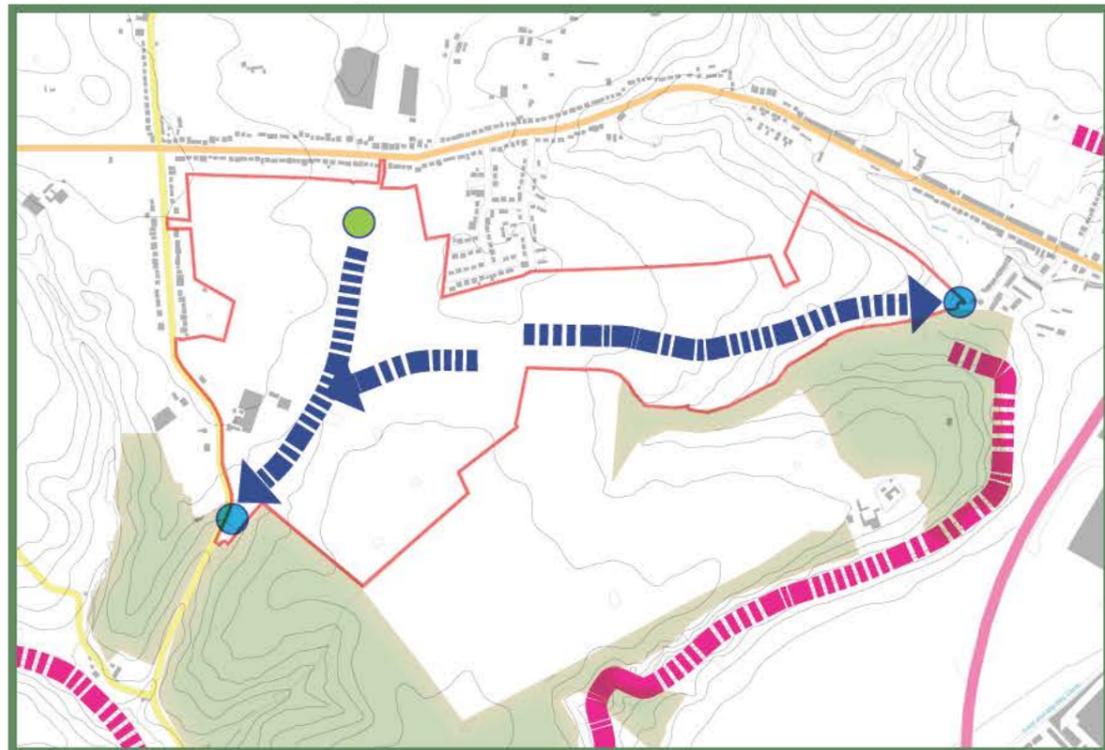
-  Exposed back gardens
-  Potential footpath /cycle link
-  Potential vehicular link

## Landscape Capacity



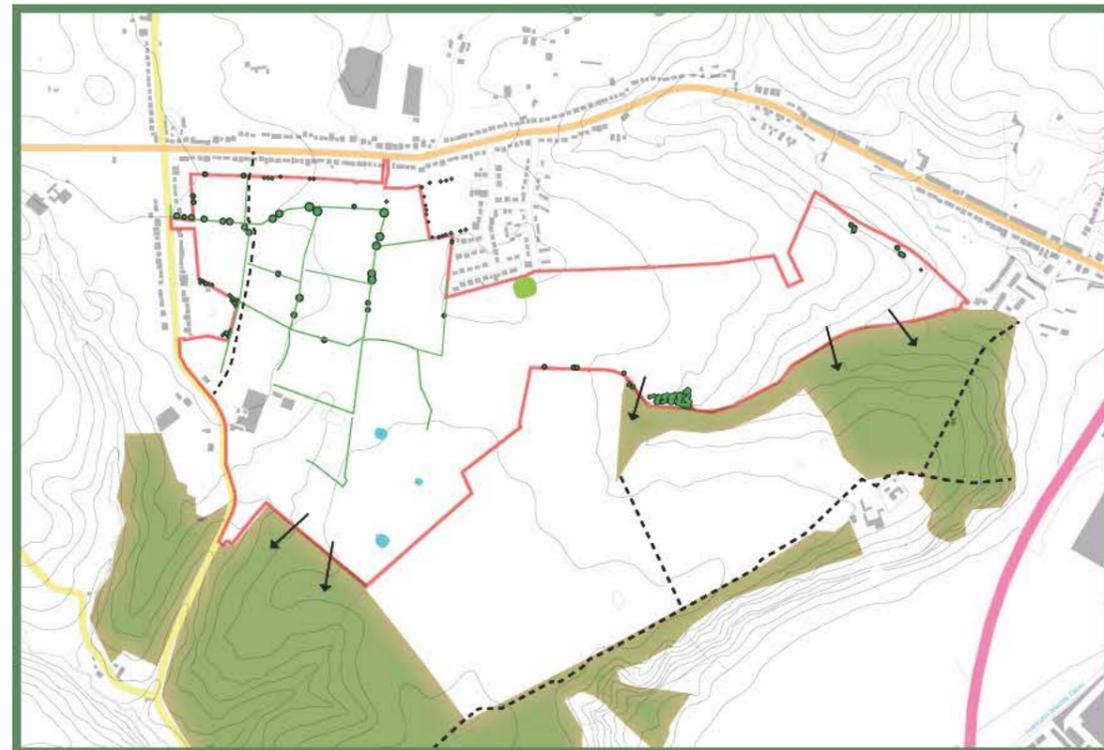
-  High
-  Medium
-  Low
-  Listed Building/ Scheduled Monument
-  Green setting to Listed Building

## Land Form and Drainage



-  Notable ridge outside the site
-  Notable gradient within the site
-  Potential drainage outfalls
-  Potential drainage improvement

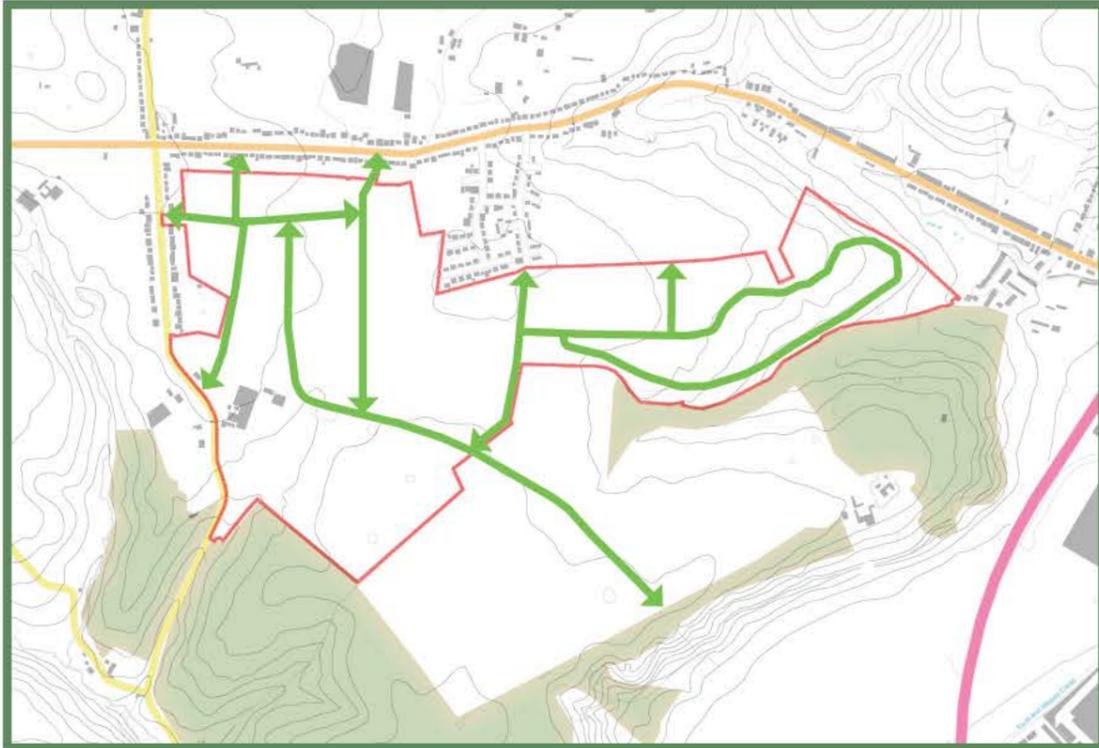
## Existing Vegetation and Wider Connections



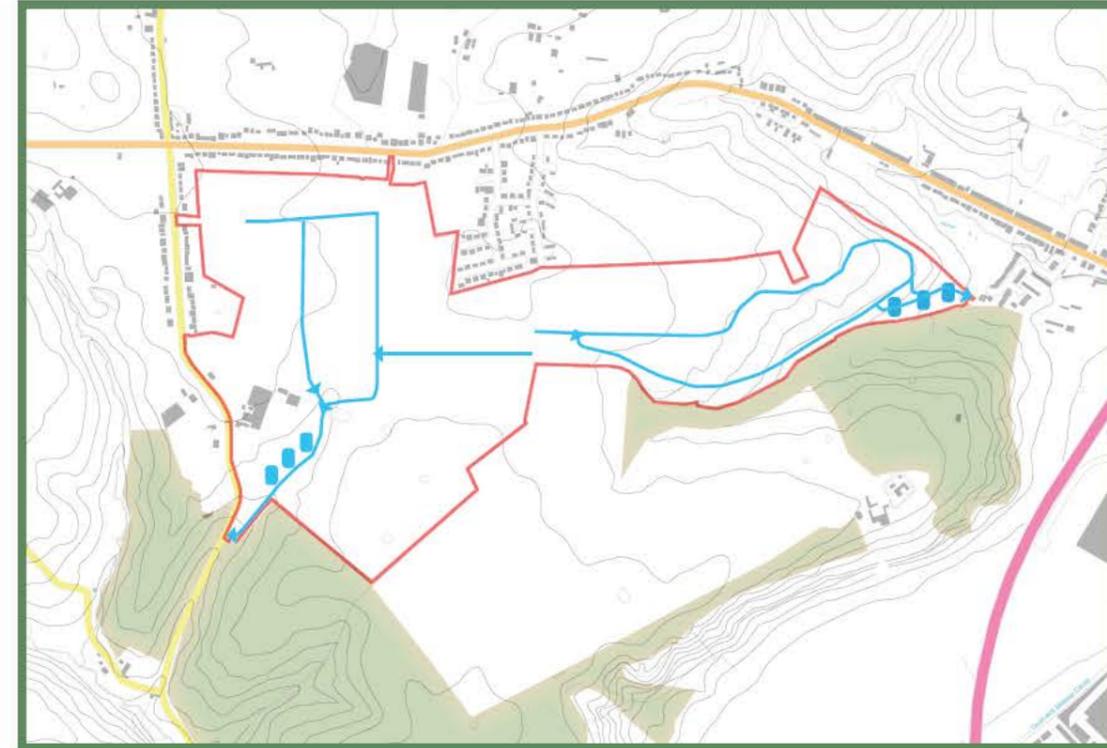
-  Existing Hedge/Tree
-  Existing Woodland
-  Existing Pond
-  Rural Access Land
-  Existing Play Area
-  Public Footpath
-  Potential Wider Connections

# VISION

1. Retain existing vegetation

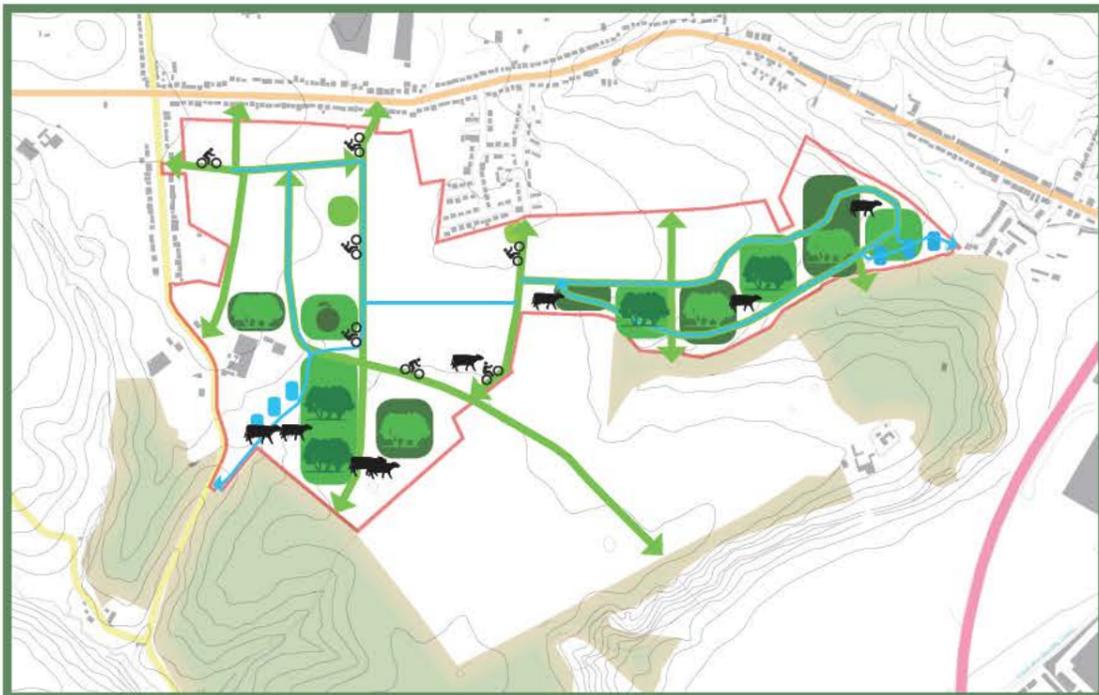


2. Establish naturalistic SUDS strategy



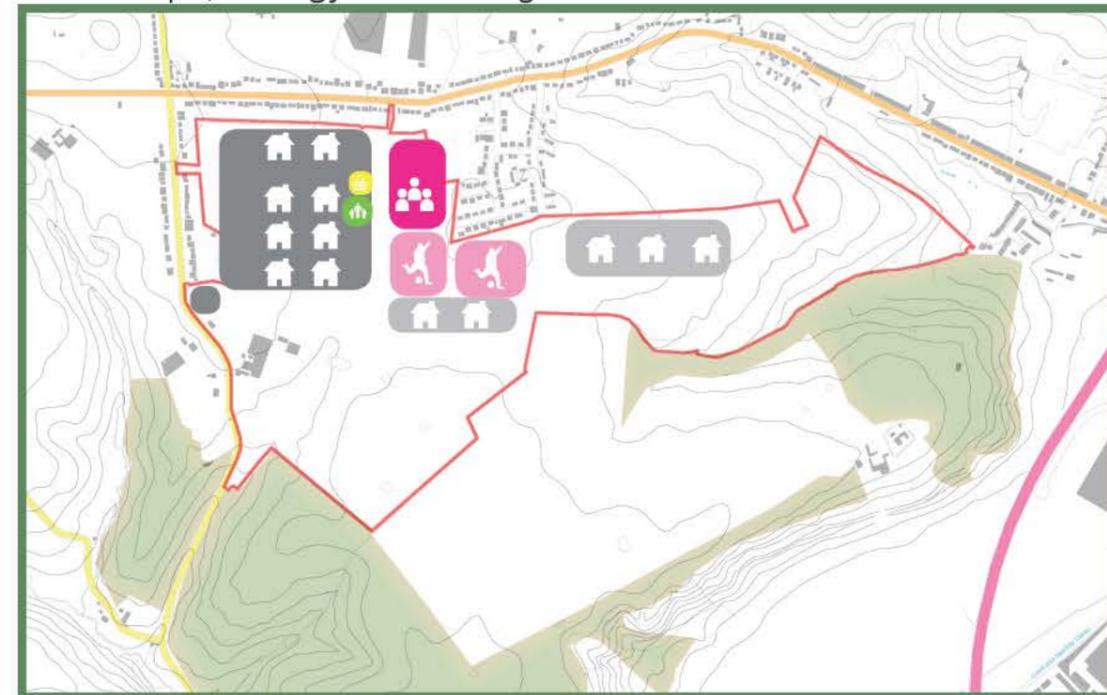
SUDS Corridors  
 Drainage Pond

3. Create strong green infrastructure network



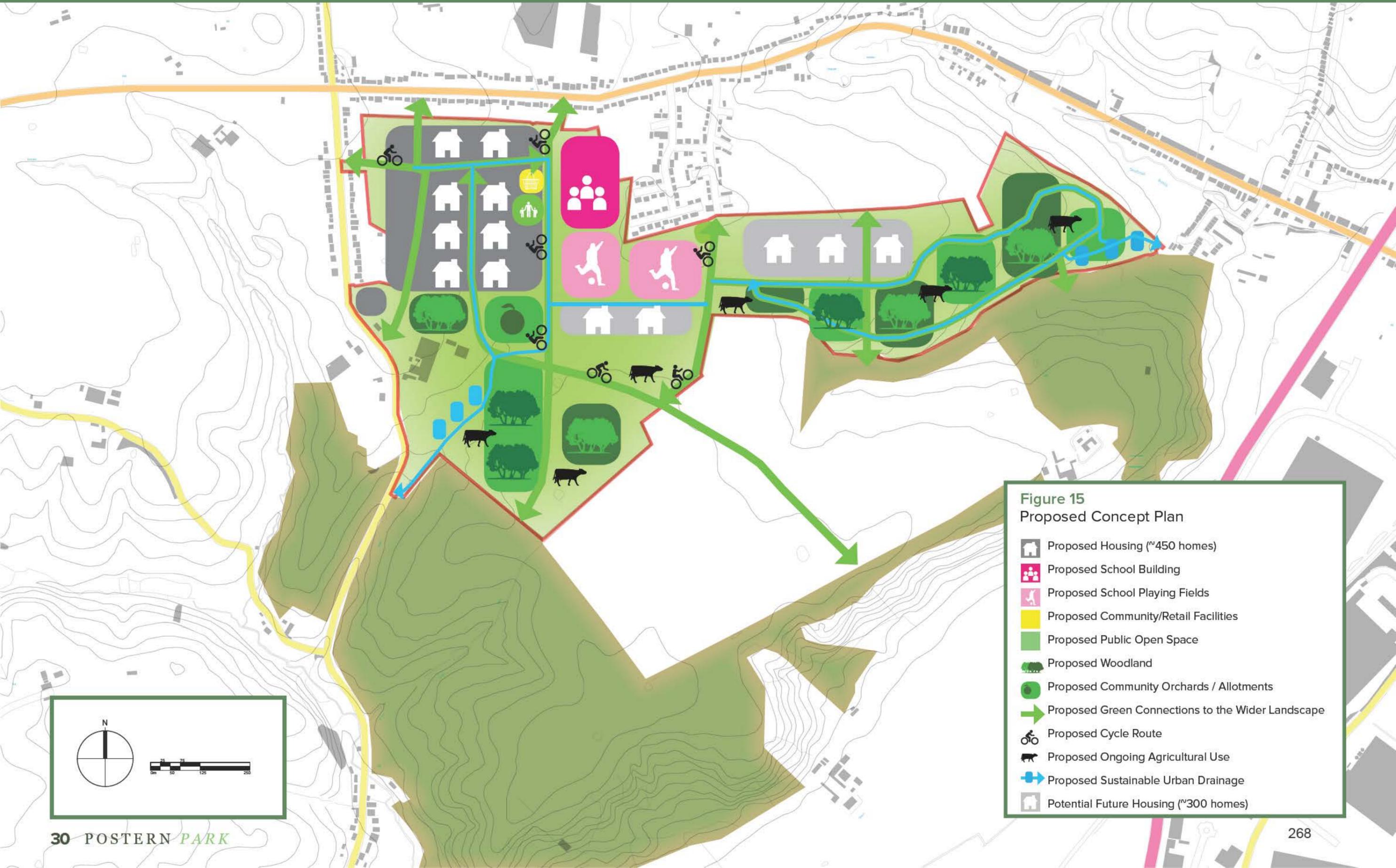
Parkland /Woodland  
 Productive Landscape  
 Cycling Route  
 Agricultural Land

4. Place development in locations well related to the existing built form and in least sensitive environmental locations, responding to the landscape, ecology and drainage constraints.



Housing (Proposed)  
 Housing (Potential Future)  
 Secondary School  
 Playing Fields  
 Retail/ Community  
 Formal Open Space

# CONCEPT



**Figure 15**  
**Proposed Concept Plan**

- Proposed Housing (~450 homes)
- Proposed School Building
- Proposed School Playing Fields
- Proposed Community/Retail Facilities
- Proposed Public Open Space
- Proposed Woodland
- Proposed Community Orchards / Allotments
- Proposed Green Connections to the Wider Landscape
- Proposed Cycle Route
- Proposed Ongoing Agricultural Use
- Proposed Sustainable Urban Drainage
- Potential Future Housing (~300 homes)

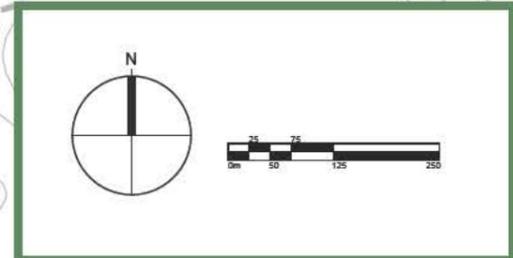




Figure 16  
Proposed  
Framework Plan  
(to compare with  
Figure 15)

# VISION



Figure 17  
Proposed  
Development  
Framework

**LEGEND**

 Site Boundary

**Land Use**

-  Proposed Residential Block (low-medium density ~30dph)
-  Proposed Residential Block (medium density ~35dph)
-  Potential Future Residential Block
-  Secondary School Site/Building
-  School Drop-off/Parking
-  Retail/ Community Use
-  Existing Farm Building/Yard
-  Potential Relocated Adventure Farm
-  Listed Building

**Movement**

-  Main Vehicle Route
-  Potential Future Vehicle Route
-  Existing Public Footpath
-  Existing Track
-  Proposed Footpath
-  Vehicle Access Point (precise details/ location subject to detailed design)
-  Pedestrian/ Cyclist Access Point
-  Potential Vehicle Access Point
-  Potential Pedestrian/ Cyclist Access Point

**Landscape**

-  5m Contours
-  Parkland - full public access
-  Parkland - limited public access and potential ongoing agricultural use
-  Formal Public Open Space
-  Existing Woodland
-  Rural Access Land
-  Existing Play Area
-  Proposed Play Area (LEAP)
-  Proposed Attenuation Pond
-  Proposed Swale
-  Retained Tree/Hedgerow
-  Proposed Trees/ Woodland

Site Boundary - 82.0 ha

Proposed Developable Area - ~450 units @ ~32.5 dph

Potential Future Developable Area - ~300 units @ ~30 dph

Secondary School - 10.0 ha

Adventure Farm - 3.0 ha

Public Open Space (Including SUDS) - 18.5 ha

Potential Agricultural Land - 24 ha

} ~52% of the Site

**4.2 DEVELOPMENT FRAMEWORK**

4.2.1. Figure 17 communicates the proposed development framework for Postern Park. It demonstrates how the development of around 450 homes (and potentially a further 300 homes) could sit comfortably within the landscape and ecology framework of the site, whilst providing greatly improved access to green infrastructure for existing and future residents. It also establishes a parkland setting for Postern Farmhouse, whilst also providing meaningful ongoing agricultural use of the land to the south and the potential re-positioning of the Adventure Farm.

# CONCLUSION



*Postern Park provides the opportunity for sustainable development comprising 450 homes (and potentially a further 300 homes) and associated community facilities, including a secondary school and public open space. It provides joined up thinking to establishing a green infrastructure resource for the local area, which is 50% of the site dedicated to this purpose.*



## 5.0. CONCLUSION

- 5.1.1. Postern Park is a vision for land to the east of Postern Lane. The site is in a highly sustainable location with good access to a range of existing services and facilities. It is an area of land that has varied characteristics. Land to the north west is sheltered, and relates well to the surrounding community. Land to the south and far east is a rolling landscape which feels part of countryside and abuts Rural Access Land.
- 5.1.2 This vision aims to promote and enhance the site's existing landscape qualities, by creating a public parkland to its south and east and allowing potential access into the Rural Access Land in a way that 'stitches together' the wider Green Infrastructure, allowing greater access and enjoyment from this countryside. A new community of 450 homes (with potential for a further 300 homes) and a secondary school are placed in the part of the landscape that has low sensitivity for such uses. It retains and enhances as much of the existing trees and hedgerows as possible, that together create a well structured landscape pattern, in such a way that development visibly defers to this landscape structure.
- 5.1.3 Postern Park builds on the existing nearby facilities with the provision of a Secondary School and associated facilities.
- 5.1.4 The site has the potential to be highly permeable. A pedestrian/cyclist movement strategy has been developed that will work sympathetically with the surrounding highway, footpath and cycleway networks and enable good accessibility for all these modes.
- 5.1.5 The extensive greenspace available within the development will ensure comprehensive SuDS drainage facilities can be implemented to give a high quality surface drainage solution.
- 5.1.6 Postern Park preserves and enhances the setting of the Grade 2 Listed Postern Farmhouse and allows for ongoing agricultural use of the land to the south and east (with controlled public access). It also identifies a location for a re-positioned Adventure Farm.
- 5.1.7 It is therefore considered that the Postern Park vision is highly sustainable; it is structured by retained and enhanced environmental assets, it provides essential social infrastructure, and it provides key economic improvements associated with development, and the approach to retaining on site agriculture and associated businesses.

# GALLAGHER



## POSTERN PARK



Define | Unit 6  
133-137 Newhall Street | Birmingham | B3 1SF  
T: 0121 2371914 W: [www.wearedefine.com](http://www.wearedefine.com)

*Sinai Park - Parkland Tree Planting  
(beyond the south east boundary of Postern Park)*





**REPRESENTATION ON BEHALF OF BDW TRADING LTD.**

**Rep 10**

**EAST STAFFORDSHIRE LOCAL PLAN (EXAMINATION) REVISED SUSTAINABILITY  
APPRAISAL REPORT**

**BROOKHAY VILLAGES AND TWIN RIVERS PARK**

**January 2015**

**Wardell Armstrong**

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**January 2015**



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ENERGY AND CLIMATE CHANGE  
ENVIRONMENT AND SUSTAINABILITY  
INFRASTRUCTURE AND UTILITIES  
LAND AND PROPERTY  
MINING AND MINERAL PROCESSING  
MINERAL ESTATES AND QUARRYING  
WASTE RESOURCE MANAGEMENT

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## **APPENDICES**

APPENDIX 1 – SUSTAINABILITY APPRAISAL OF BV&TRP AND COMPARISON TO ESBC EVALUATION

## 1 INTRODUCTION

1.1 The Planning Inspector has published his Interim Findings on the East Staffordshire Local Plan. As part of these Interim Findings the Inspector considered that the Revised Sustainability Appraisal (RSA) on the East Staffordshire Local Plan was inadequate as a source of evidence in support of the plan. The Inspector outlines a number of fundamental flaws associated with the RSA. These include;

- *“As the Revised SA (RSA) was still subject to public consultation when the ESLP was submitted for examination, the ESLP as submitted is strictly not legally compliant in that aspect of procedure*
- *the RSA has inevitably not taken into account proposed changes (potential Main Modifications - MMs) published since the ESLP was submitted for examination,*
- *the 16 sustainability criteria identified at the scoping stage and applied to strategic options in the RSA are not carried forward to the consideration of the selection and assessment of sites for development, where a reduced and reformulated set of 11 criteria is substituted, apparently without explanation,*
- *although the several options for the overall spatial strategy are considered, the chosen ‘hybrid’ version of Options 2c and 2d does not appear to be properly tested against the assessment criteria,*
- *the selection of sites from the Strategic Housing Land Availability Assessment (SHLAA) for further appraisal and SA is apparently undocumented and therefore not articulated in the RSA, and*
- *there are apparent inconsistencies between site assessments which, whilst necessarily subjective, justify more explicit reasoning.”*

1.2 It was also stated that the significant weaknesses associated with the RSA sustainability work should not be regarded as seeking to retrospectively justify modifications to the ESLP for adoption.

1.3 The above weaknesses have been previously referenced in representations by BDW Trading Ltd at both the consultation stages of the Pre-Submission Sustainability Appraisal (**Ref: Rep LP241**) and the Revised Sustainability Appraisal (**Ref: Rep RSA13**).

- 1.4 This representation draws attention to the continuing significant flaws to the Local Plan (Examination) Revised Sustainability Appraisal – December 2014 in the context of the assessment of the Twin Rivers site, and the reasons why BDW Trading Ltd considers the SA process to still be legally deficient.
- 1.5 Review of this 'further SA' compounds the fact that the SA process overall is unsubstantiated in that the flaws identified in previous BDW representations still stand (see representations highlighted in 1.2). The apparent attempt to retrofit the SA process during its passage is evident in the inadequate and non-transparent way that representations have been materially used and how they have been not been positively or properly used in site analysis.
- 1.6 The assessment of 'the Twin Rivers site' remains flawed, despite formal consultation submissions with evidence in September 2012, 28 November 2013 (pre-submission SA) and 2 May 2014 (revised SA) and submissions to the Inquiry by way of the Project Information Timeline and the Project Prospectus, which has set out the substantive information required during the SA process .
- 1.7 The level of inconsistency, lack of reference to information provided and highly subjective analysis demonstrates that the SA process cannot be considered credible, robust or justified and is not fit for purpose in making well-reasoned consideration of the most appropriate strategy.
- 1.8 The contention remains, consistent with the representations to the Revised SA of March 2014, that the levels of inconsistency, lack of reference to evidence in favour of unsubstantiated commentary, and lack of objectivity and justification leaves the RSA process deficient as a reliable source of evidence in support of the plan in respect of its technical adequacy.
- 1.9 It is expected that the resumed Examination will again assess the Sustainability Appraisal in the context of the Local Plan, and question how the procedure promoted at 1.45 and 1.46 of the further revised SA the subject of this representation has and will subsequently deal with the substantive matters raised by the Inspector.

## 2 THE SUSTAINABILITY FRAMEWORK

- 2.1 The Revised Sustainability Appraisal Report (RSA) indicates at **Par 5.22** *‘The 16 objectives overall cover all of the SEA topics and were derived in consultation with external consultants. However upon early appraisal of the sites it was apparent that several of the objectives were not suitable for using to assess sites, or would not help to differentiate between sites due to their broad strategic nature. It was decided to identify in the Interim SA that a different framework would be used for assessing specific sites. This would allow a more meaningful assessment to take place and identify key site specific effects. The sites sustainability appraisal framework is identified below. The table below has been amended to clearly show how the sites criteria relate to the 16 SA criteria and also demonstrate that the SEA Topics’.*
- 2.2 The SA Framework used for the assessment of strategic sites is therefore still different to the SA Framework set out in the subsequent Scoping Report, which was issued for consultation.
- 2.3 Only 11 Sustainability Objectives continue to be used. As before, objectives removed include:
- Climate Change, Energy and Air Quality - To reduce the causes and impacts of climate change, improve air quality, promote energy efficiency and encourage the use of renewable energy
  - High Quality Design and Sustainability - To encourage sustainable design and practice and create a high quality built environment
  - Green Infrastructure and Open Space - To protect, enhance and provide new Green Infrastructure assets
  - Town Centre - To sustain the vitality and viability of Burton and Uttoxeter town centres
  - Rural Communities - To sustain vibrant rural communities
  - Natural Resources - To ensure the prudent use of natural resources and the sustainable management of existing resources
  - Quality of life - To improve the quality of life, including the health, safety and wellbeing of those living and working in the borough

- Water Quality - To protect and enhance water quality of the Borough's rivers whilst maximising their carrying capacity through achieving sustainable water resource management

2.4 In addition the following objectives have been added and they include;

- Countryside and Landscape Quality - To protect, maintain and enhance the character and appearance of the landscape and townscape quality, maintaining and strengthening local distinctiveness and sense of place.
- Accessibility to Services - To provide access to services and facilities
- Local Distinctiveness - Creating a sense of place, incorporating high quality design and quality of life, contributing to existing settlement character
- Existing Settlements - To sustain the vitality and viability of existing settlements

2.5 There remains no adequate justification or explanation for such changes in the Revised Sustainability Appraisal process and how it has been transparently taken forward in to decision making. Matters put forward in sections 5.16 to 5.23 do not adequately explain the issue raised by the Inspector in point 8C of his Interim Findings of 11 November 2014. It is considered that the Section 5.22 assertion that 'all the SEA topic areas and 16 SA objectives are covered' is inadequate justification for the matters exposed at Plan Examination.

2.6 Those SA objectives which have been removed through the SA process can be applied to specific sites and have in fact been applied to BV&TRP. Our previous submission to the Pre-Submission Sustainability Appraisal (**Ref: Rep LP241**) has successfully applied all 16 SA objectives to the

### 3 THE OVERALL SPATIAL STRATEGY

3.1 It is clear from the Planning Inspector's Interim Findings that the SA process has not previously tested the Plan's preferred spatial strategy. Therefore Option 2d has not been properly assessed from a sustainability perspective. Therefore, in this key area, the SA process still has not properly influenced the emerging Local Plan and has not outlined the relative sustainability benefits and weaknesses of the chosen spatial strategy.

3.2 No additional SA work has been undertaken with regard to the proper assessment of this preferred spatial option. Therefore the weaknesses identified by the Planning Inspector still stand. Our previous conclusions on the representations made on the Pre-Submission and Revised Sustainability Appraisals also still stand.

3.3 It remains unclear why Option 2d should be the preferred option with no clear and justified sustainability reasons been put forward to support this conclusion.

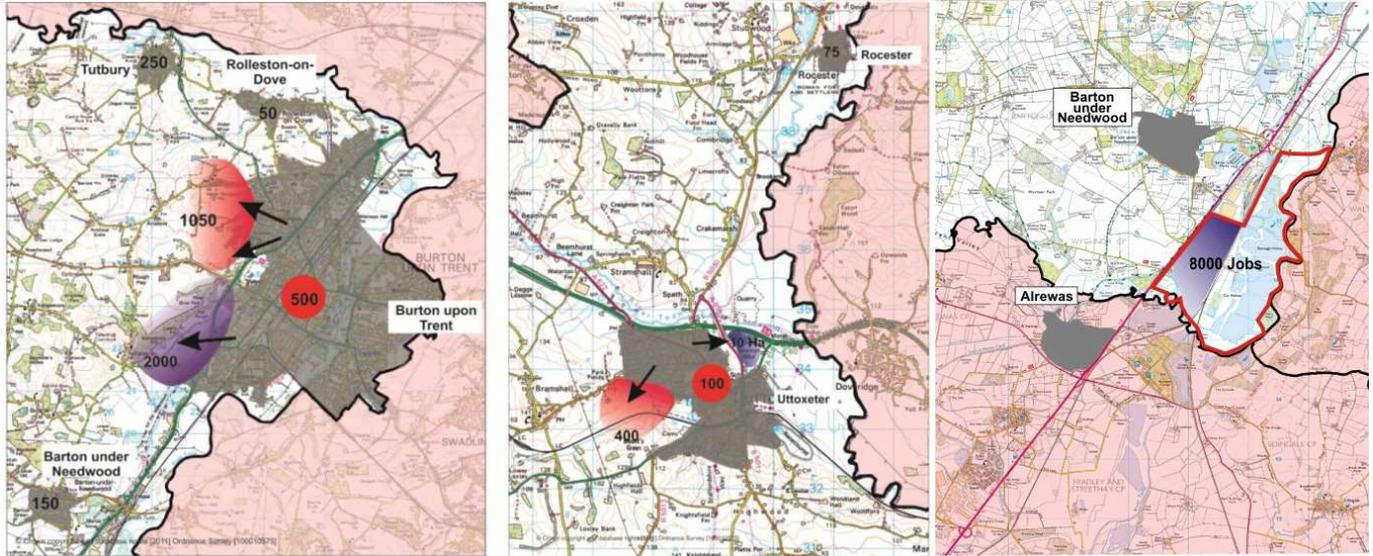
The purpose of a SA is clear. Its role is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives. Therefore, the SA must fully consider reasonable alternatives.

#### **Proposed Option 2e – Concentrating Growth in the South of Burton and some development in the west of Uttoxeter, strategic villages and Twin Rivers**

3.4 This option would include the proposals contained within option 2d but would also include the employment and leisure proposals contained within the Twin Rivers project which along with many other sustainability measures would provide further economic and social and environmental benefits to both ESBC and Lichfield District in addition to option 2d. This amended spatial option would provide flexibility to the spatial strategy and would secure significant cross-boundary benefits.

3.5 It is recommended that in the required SA re-assessment this reasonable alternative be properly assessed in light of other spatial options proposed, not least to recognise its strategic economic benefits. The figure below outlines proposed Option 2e.

Figure 1: Proposed Spatial Option 2e



## 4 REVIEW OF BROOKHAY VILLAGES AND TWIN RIVERS SA ASSESSMENT

4.1 The amendments made to the RSA and the amendments made to the appraisal of Strategic Sites, in particular the assessment that relates to BV&TRP (**para. 8.31 to 8.36**) have been reviewed. The amendments put forward rely on the SA carried out as part of the Lichfield Plan. This is not an effective basis for undertaking a compliant and sound SA as part of the East Staffordshire Local Plan. The weaknesses that have been previously highlighted in the previous representations are still valid and can be summarised as follows;

- The assessment does not appropriately reflect the information provided through submissions and representations
- There are no links to evidence to support the assumptions made.
- Inaccurate assessments of the proposal are made which cannot be relied upon
- The findings of a number of submitted assessments are not recognised.

4.2 In addition there is no mention of the following specific issues in relation to the strategic cross-boundary site:

- The development proposed
- The significant transport (strategic road and rail) infrastructure proposals - (double negative score given)
- Inadequate reporting of potential benefits
- Inadequate reporting of proposed mitigation
- No reference to Local Plan policies that will manage development

### **BV&TRP Assessment**

4.3 There have been no meaningful attempts to correct anomalies within the SA assessment since the pre-submission SA.

4.4 The pre-submission SA, the results given in Table 7.4 (p.125) of the RSA and that in Table 8.5 Appraisal of alternative sites (P. 150-151) and Appendix G (P. 176-180) all

give exactly the same assessment. The only change within the latest SA is the addition of further text on Twin Rivers on P. 156-157, comprising Sections 8.34 – 8.36.

- 4.5 An accurate SA of BV&TRP as previously submitted in representations to both the Pre-submission and Revised SA's is included in Appendix 1

#### **Lichfield Local Plan Context**

- 4.6 The Inspector's report of 16<sup>th</sup> January sets a strong context, which identified anomalies and inconsistencies in the current Examination SA beyond any necessarily subjective matters in to those of principle and erroneous judgements.
- 4.7 The Inspector at Para 177 states 'The settlement would include housing, retail, leisure, health, sports, recreational and employment uses together with the construction of two new rail stations, major junction improvements on the A38 and improved bus services and cycle/footpath links.' And at Para 178 'It is common ground that the site is developable' At Para 180 he states 'The evidence is that Brookhay Villages would be a sustainable proposal and there is no evidence to suggest that it would face insurmountable technical or environmental objections'.
- 4.8 The Inspector at Para 184 acknowledges the development as 'a strategic matter of importance' and sets out a wider context.

#### **Twin Rivers (Para 8.31 – 8.36 of the RSA Report)**

- 4.9 Paragraphs 8.31 to 8.33 inclusive remain unaltered and illustrate clearly that despite the Project Information Timeline clearly setting out the submission of further information since that outdates and renders inappropriate a significant number of matters.
- 4.10 The matters in 8.34 to 8.36 are appropriate to Lichfield and do not portray an effective or realistic analysis, in particular the wholly unrealistic statements regarding 'a standalone scheme without delivering any of the associated infrastructure' and 'not considered suitably advanced or certain to be progressed as a comprehensive scheme'. The Plan Inspector has recently set the accurate context.

- 4.11 Paragraph 8.36 of the RSA accepts ‘many positive effects for the development’ but also refers to ‘the additional information provided by the site promoters there are many negative and uncertain effects identified in the appraisal’.
- 4.12 A substantial number of important points of assessment continue to have been dealt with in an erroneous way, as set out in Appendix G – Task B Strategic Sites Appraisal. Twin Rivers is dealt with at P. 176 – 178. The following comments are a demonstration of how unspecific and inaccurate the Appraisal undertaken remains, even after extensive interpreted information being submitted at previous stages of engagement in the SA process.
- 4.13 **Economic opportunities** - The RSA correctly accepts that the proposal will provide a very positive impact in terms of providing economic opportunities (see Table 8.5 of the RSA). However, it would appear that in order to justify exclusion of BV&TRP from the Local Plan the ESBC have claimed that the BV&TRP scheme would undermine other employment areas in Burton on Trent and Lichfield District. There is no evidence that the supply of employment as part of the BV&TRP scheme would undermine other employment areas in Burton on Trent and Lichfield District. Notwithstanding the above, it is clear that such a consideration is not a SA objective.
- 4.14 The economic objective of the SA is to provide economic opportunities for local residents. The BV&TRP strongly adheres to this objective and is likely to have a very positive impact. The proposal will assist in promoting choice in terms of well accessed employment land on the A38 Trunk road. The scheme is focused on specific economic sectors including sport and leisure and Hi-Tech industry.
- 4.15 The East Staffordshire Employment Land Strategy recognises the scheme’s ambition to diversify and improve the current narrow based economic offer.
- 4.16 **Housing opportunities:** The RSA correctly accepts that the proposal will provide a very positive impact in terms of housing (see Table 8.5 of the RSA). However, in order to justify exclusion it is indicated that “there remain a number of issues which mean that there would be concerns with this option as the short term deliverable solution the Council is currently required to produce in order to gain a ‘sound’ plan”.
- 4.17 The Revised Sustainability Appraisal is not a test of plan soundness. It is a sustainability assessment of reasonable alternatives. The RSA housing objective “is to provide a suitable mix of decent housing available and affordable to everyone.” The BV&TRP will strongly meet this SA objective.

- 4.18 **Transportation:** The RSA assessment of BV&TRP from a transport perspective is contradictory. Paragraph 8.32 indicates that “There will be significant improvements to transport infrastructure with improved choice and accessibility, but the proposal is likely to increase demand for road space on the A38 and promote commuting to/from other settlements.” Paragraph 8.33 indicates that “The Sustainability Appraisal carried out to support the Lichfield Local Plan shows the proposal scoring reasonably well given that its size would allow for delivery of a range of services and facilities including public transport and rail access.”
- 4.19 Despite the above, the RSA indicates that the scheme will perform very poorly from a transport perspective (see Table 8.5). It is completely unclear as to how this conclusion is reached.
- 4.20 The SA of BV&TRP is included at Appendix 1. It is clear that both East Staffordshire and Lichfield suffer from poor levels of self-containment in comparison to other areas of the West Midlands. That is there are high numbers of residents commuting to other areas for employment. The BV&TRP seeks to address this by providing local employment opportunities helping to reduce the need for as much travel to other major employment destinations including Birmingham.

**Table 1: Commuting Patterns**

Local Authority Area	Level of Residents Self Containment
Birmingham	81%
East Staffordshire	66%
Lichfield	47%

**Source:** A study of commuting patterns in Great Britain based on the Annual Population Survey 2008

- 4.21 A detailed strategy for strategic highway improvements including 3no upgraded junctions to the A38, an A38 Traffic Management Strategy, and other matters approved in principle by the Highways Agency and the Highways Authority have been provided to ESBC. The scheme also includes two new rail stations; one Parkway station within the Twin Rivers area including Commercial / major outdoor sports facility.
- 4.22 The BV&TRP will therefore have a very positive impact in transport terms.

- 4.23 **Countryside / Landscape Quality:** The RSA indicates that the scheme will perform very poorly from a Countryside & Landscape Character (see Table 8.5 of the RSA). No evidence or commentary has been put forward as to how this conclusion has been reached.
- 4.24 The SA of the BV&TRP is included at Appendix 1 which includes a clear consideration of the proposal appropriately using this SA objective. The proposal is likely to have a positive impact.
- 4.25 **Historic Environment and Heritage Assets:** The RSA indicates that from a historic environment and heritage assets perspective the proposal will have uncertain impacts and that the “area is rich in historic assets”. However, the assessment continues to ignore the fact that that both English Heritage and the County Council have approved a strategy for retention, enhancement of setting and site wide interpretation of the existing Scheduled Ancient Monuments.
- 4.26 The proposal is likely to have a positive impact on the Historic Environment and Biodiversity.

## 5 SUSTAINABILITY APPRAISAL BV & TRP - COMPARISON TO ESBC SCORES

5.1 A robust Sustainability Appraisal of BV&TRP (See Appendix 1) has already been carried out and submitted under previous representations. Despite the weaknesses identified above with regard the RSA, this has then been compared to East Staffordshire Borough Council appraisal of the Strategic Site Allocations Appraisal – Uttoxeter and Strategic Villages (RSA Table 9.6 page 167-168).

5.2 What is evident from this comparison is that BV&TRP is either as sustainable or more sustainable than those Strategic Site allocations that have been put forward for inclusion as allocations in the Local Plan. The main findings with regard the BV&TRP include;

- **Housing** - The BV&TRP site outperforms many Strategic Site Allocations including Stone Road, Dove Way/Derby Road Employment Site and Land South of Rocester.
- **Economic Opportunities** - The BV&TRP site outperforms many Strategic Site Allocations including Hazelwalls, Brookside, College Fields Rolleston and Land South of Rocester.
- **Transportation** - The BV&TRP site outperforms many Strategic Site Allocations including Stone Road, Hazelwalls, Brookside, Dove Way/Derby Road Employment Site, College Fields Rolleston, Efflinch Lane Barton, Land south west of Tutbury and Land South of Rocester.
- **Flood Risk** - The BV&TRP site outperforms all the Strategic Site Allocations.
- **Countryside & Landscape** - The BV&TRP site outperforms most Strategic Site Allocations including Uttoxeter West, Stone Road, Hazelwalls, Brookside, Dove Way/Derby Road Employment Site, College Fields Rolleston, Efflinch Lane Barton, Land south west of Tutbury and Land South of Rocester.
- **Historic Environment and Heritage Assets** - The BV&TRP site outperforms all Strategic Site Allocations except College Fields Rolleston.
- **Accessibility to Services** - The BV&TRP site outperforms some Strategic Site Allocations including Hazelwalls, Dove Way/Derby Road Employment Site, College Fields Rolleston, Efflinch Lane Barton and Land South of Rocester.
- **Local Distinctness** - The BV&TRP site outperforms some Strategic Site Allocations including Hazelwall, Dove Way/Derby Road Employment Site and College Fields Rolleston.

## 6 CONCLUSIONS

- 6.1 The position remains that despite the matters contained in the Local Plan (Examination) Revised Sustainability Report, the SA process remains flawed and partial. Primarily, the partial and evidently defective approach to assessment cannot be considered the most appropriate, resulting in a lack of objectivity and justification.
- 6.2 This further review of the SA continues to illustrate that the majority of the flaws pointed out in the consultation representation on the pre-submission SA still stand. Robust reasoning and sound technical evidence is still inadequate to clearly demonstrate reasons for a wide range of judgements, pointed out in this representation.
- 6.3 This representation promotes a further more sustainable and robust spatial strategy option which is most appropriate when properly tested against the assessment criteria, after correcting inaccurate and inconsistent results. The site assessment process put forward remains deficient in terms of its technical adequacy. The assessment of the Twin Rivers site is still inaccurate; the required corrections pointed out through two sets of representations and through the Plan Examination process. Further 'commentary' provided in this latest SA revision is inconsistent with the findings of the Lichfield Plan Inspector, and the lack of objective and accurate assessment is contrary to regulations and guidance.
- 6.4 BV&TRP perform as a sustainable site. There is therefore no demonstrable reason why it should not be taken forward as a Strategic site Allocation.
- 6.5 The revised SA cannot be considered credible, robust or justified and remains flawed in that it still fails to provide a clear audit trail of the proper consideration and assessment of strategic options. The revision does not bring the required level of change to provide adequacy, but can be read as an attempt to retrospectively seek to justify the lack of objectivity within the SA process in properly informing the Plan.

## **APPENDIX 1 – SUSTAINABILITY APPRAISAL OF BV&TRP AND COMPARISON TO ESBC EVALUATION**

**Sustainability Appraisal**  
**BV&TRP SA & Comparison to ESBC Strategic Site Allocations**

Sustainability Objective	Detailed Criteria
1. Housing - To provide a suitable mix of decent housing available and affordable to everyone.	Size of site: the larger the site the more opportunities to deliver different housing choices
2. Economic Opportunities - To provide access to economic opportunities for local residents	Provision of employment on site  Access to existing employment sites
3. Transportation	Location of site

**BV&TRP - Sustainability Assessment**  
**Entries Below Derived from Representations Made**  
**September 2012**

Details	Score
Up to 7,500 dwellings, of well designed development along village principles and a mix of housing types, tenures, sizes and styles including affordable housing, with extensive employment, local services, sport & leisure, creates a demonstrably sustainable settlement. Nationally accepted threshold for internalisation of trips and achievement of a step-change in sustainability is 5,000 dwellings.  A small number of dwellings (up to 200) are proposed in a cluster adjacent to the Parkway Station and commercial centre on the northern site. These homes would be primarily aimed at key worker homes etc. in an urban environment, on the basis of good rail and bus links.	✓✓
Up to 2.5m sq. ft. of employment & commercial uses as Twin Rivers Park would generate of the order of 8,000 jobs ( <i>the HCA Employment Densities Guide 2010 suggests this might be as much as 19,000 Full Time Equivalents</i> ). The watersports site would create jobs also, and this is identified in the Specialist Reports.  Approx. 35,000 sq. m. of employment and commercial would be provided within Brookhay Villages, which would generate up to 1,500 Full Time Equivalent jobs ( <i>source; HCA guide</i> ). <i>The site is referenced in the Employment Land Review Update 2013 where the direct spin-off potential from the sports facility is recognised and should not be treated as general land supply. It should rather be treated as land to support growth and innovation</i> .  Access to other employment sites is excellent; Fradley Park is approx. 350m from the nearest point on Brookhay Villages. The northern site would bound the existing Branston Industrial Estate, containing Argos & Bombardier plus other businesses.	✓✓
The site is located on the east of the A38 opposite the settlements of Alrewas, Fradley and Fradley South, and is approximately 7km from north to southern extremities.	✓✓

**Existing ESBC RSA**

**Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages**

Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effinch Lane Barton	Land south west of Tutbury	Land South of Rocester
✓✓	✓	✓✓	✓✓	✓✓	0	✓✓	✓✓	✓✓	✓
✓✓	✓✓	✓	0	✓✓	✓✓	0	✓	✓	?
✓✓	✓	-	✓	✓✓	✓	0	✓	✓	✓

Sustainability Appraisal BV&TRP SA & Comparison to ESBC Strategic Site Allocations	
Sustainability Objective	Detailed Criteria
To reduce the need to travel, encourage more sustainable modes of transport and make best use of existing transport infrastructure	Proximity to key routes  Connectivity to town centre
<b>4. Flood Risk</b>  To reduce and manage the risk of flooding which would be detrimental to the public well-being, the economy and the environment	Flood zone location (2 and 3 score negatively)

BV&TRP - Sustainability Assessment Entries Below Derived from Representations Made September 2012	
Details	Score
<p>The site (both north and south components) straddle rail lines where services will be implemented/upgraded to provide a step-change in rail provision. The site also abuts the A38 Trunk Road, which would have a major upgrade implemented in terms of junction improvements, corridor speed reduction and safety measures implemented in accordance with emerging HA Objectives. There would also be substantial bus service improvements creating linkages with the rail hubs, all parts of the development plus local settlements and business parks.</p> <p>Good connections would be provided for sustainable travel to Lichfield, Burton Birmingham New Street by rail, and the development would have good bus services along the A38 corridor. Substantial increase in cycling and walking opportunities. Electrical vehicle charging points would be included in commercial areas as appropriate. Full Transport Assessment and Travel Plans will be provided.</p> <p>Train times to Burton on Trent, Lichfield City and Birmingham New Street from the southern Halt Station would be approx. 12min, 7min &amp; 40min respectively. Times from the Parkway to the same destinations would be 8min, 12min &amp; 23min (via Tamworth) respectively.</p>	
<p>Northern Site - none of the commercial/industrial land would be affected by flood plain and would all be in Flood Zone 1. The National Angling Centre proposals would be in a mixture of Flood Zones 1, 2 &amp; 3 and would be agreed with the EA. A small area of land to the south is in Flood Zone 3, but this would be utilised for open sports/leisure uses and/or landscape mitigation. Flood Plain</p> <p>Southern Site - none of the residential/commercial/employment uses would be in flood plain, and would be entirely Flood Zone 1 following flood plain compensation works, already agreed in principle with the EA. There would be an increase in the available flood volume and hydraulic improvements that will reduce flood risk in the vicinity. The environmental mitigation land to the east of the development including the proposed SANG would be in a mixture of flood zones 1, 2 &amp; 3.</p>	✓

Existing ESBC RSA Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages									
Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effiinch Lane Barton	Land south west of Tutbury	Land South of Rocester
0	0	0	-	-	0	0	0	?	?

**Sustainability Appraisal**  
**BV&TRP SA & Comparison to ESBC Strategic Site Allocations**

Sustainability Objective	Detailed Criteria
<p><b>5. Use of Land</b></p> <p>To deliver more sustainable use of land in more sustainable locations, utilising brownfield land.</p>	<p>Brownfield (positive)</p> <p>Greenfield (negative)</p>
<p><b>6. Countryside &amp; Landscape Character</b></p> <p>To protect, maintain and enhance the character and appearance of the landscape and townscape quality, maintaining and strengthening local distinctiveness and sense of place</p>	<p>Landscape character</p> <p>Location</p>
<p><b>7. Biodiversity &amp; Geodiversity</b></p>	<p>Identification of BAP species on site</p>

**BV&TRP - Sustainability Assessment**  
**Entries Below Derived from Representations Made**  
**September 2012**

Details	Score
<p>Northern site - Approx 80% of the total area is fully worked gravel extraction and can be considered as the equivalent of brownfield, and 20% is agricultural land where the archaeology and other constraints makes extraction economically only feasible at modest scale in certain defined locations. This can be achieved within subsequent development phasing.</p> <p>Southern site - Approx 80% of the total area is or will shortly be worked gravel extraction and can be considered as the equivalent of brownfield, and 20% is agricultural land where there are no significant gravel deposits.</p> <p>Overall, the site is 80% completed or soon to be completed gravel worked, and therefore cannot be considered as greenfield. Thus a positive impact might be appropriate, but can be no worse than neutral. Agricultural Land Classification - the majority is Classes 3a, 3b &amp; 4, plus a small element of Class 2.</p>	0
<p>The southern site is largely devoid of quality landscape, being currently large arable fields and gravel workings. The northern site does have one small block of woodland (to be retained) but is otherwise also large arable fields and impending gravel workings.</p> <p>Considerable landscape enhancement is proposed that will add, not detract, from landscape character. There will also be considerable environmental mitigation including a proposed SANG of the order of 170ha.</p>	✓
<p>Comprehensive ecological assessments have been undertaken across the site and surroundings and have scoped the habitats and potential impact of protected species. There will be no significant loss or loss or adverse impact upon any significant ecological resources requiring any off-site compensation.</p>	-

**Existing ESBC RSA**

**Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages**

Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effinch Lane Barton	Land south west of Tutbury	Land South of Rocester
✓	-	-	✓	✓	-	-	-	-	✓
0	0	-	0	✓✓	0	0	✓	0	?
?	0	-	?	✓	0	0	✓	0	?

**Sustainability Appraisal**  
**BV&TRP SA & Comparison to ESBC Strategic Site Allocations**

Sustainability Objective	Detailed Criteria
To promote biodiversity and geodiversity through protection, enhancement and management of species and habitats	Biodiversity opportunities on site
<b>8. Historic Environment and Heritage Assets</b>	HER records on site
To protect and enhance designated and undesignated heritage assets and their settings. To protect and enhance historic buildings, archaeological sites and cultural features of importance to the community. And to protect and maintain all vulnerable assets (including built and historic)	Historic Environment characterisation assessment and associated sensitivity
<b>9. Accessibility to services</b>	Location & size

**BV&TRP - Sustainability Assessment**  
**Entries Below Derived from Representations Made**  
**September 2012**

Details	Score
<p>The majority of habitats within the site are heavily impacted by a combination of intensive agriculture and mineral working activity. The majority of habitats within these areas are hereof of generally low biodiversity value. The proposed mitigation works, much of which will be created in advance or in conjunction with development, will provide strategic green infrastructure connected to other naturalised features including a Site of Alternative Natural Greenspace. This is a significant contribution toward offsetting any impacts on the Cannock Chase SAC. The overall Biodiversity offer will support a positive uplift in potential to support protected species and wildlife diversity.</p>	
<p>Northern Site - has a number of Scheduled Ancient Monuments (SAM) on the commercial/industrial area, and these will be protected and their setting enhanced in agreement with English Heritage/SCC Archaeologist (liaison ongoing). The proposed watersports area has been fully worked for gravel and there are no remaining significant SAMs</p>	✓
<p>Southern Site - Any previously existing SAMs have been removed by gravel extraction, and there will be no significant archaeology remaining on the site prior to commencement of the development.</p> <p>The overall effect on historic environment and heritage assets will be positive, as the very important SAMs (wood henge and sunburst henge) will be preserved in-situ and protected and their setting enhanced with special landscape areas plus visitor facilities and interpretive assistance to aid visitor appreciation of the assets.</p>	
<p>The development is of a scale and that enables a full range of services to be integral within the development and does not rely on outward movement for facilities and service requirements.</p>	✓✓

**Existing ESBC RSA**

**Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages**

Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effinch Lane Barton	Land south west of Tutbury	Land South of Rocester
0	0	?	0	?	0	✓	?	0	?
✓✓	✓✓	0	✓✓	✓✓	✓	?	✓	✓✓	✓

<b>Sustainability Appraisal</b> <b>BV&amp;TRP SA &amp; Comparison to ESBC Strategic Site Allocations</b>	
Sustainability Objective	Detailed Criteria
To provide access to services and facilities	Distance to existing services & facilities  Provision on site  Settlement hierarchy
<b>10. Local Distinctiveness</b>  Creating a sense of place, incorporating high quality design and quality of life, contributing to existing settlement	Site specific judgement  Location  Size
<b>11. Existing Settlements</b>	Site specific judgement  Size  Provision of other community benefits  Settlement hierarchy

<b>BV&amp;TRP - Sustainability Assessment</b> <b>Entries Below Derived from Representations Made September 2012</b>	
Details	Score
<p>For a wider range of services, the local towns will be within easy travel distance by rail and bus, so as to ensure maximum possible sustainability. There will be extensive provision of cycling and walking facilities, plus major rail and bus service enhancements.</p> <p>The ethos behind the development proposals is that the development will be largely self sustainable, and both the northern and southern components will have a wide range of relevant services located physically within the site. The southern residential site will have full primary and secondary school provision and complimentary community facilities.</p>	
<p>The whole project will provide a unique distinctiveness both within itself and by enhancing the existing cluster of important regional and sub-regional assets including The National Memorial Arboretum and St Georges Park.</p> <p>The development location is driven by the existing rail/road infrastructure and open water areas, but is chosen for its extremely high overall level of inherent sustainability.</p> <p>The scale of the development would ensure that it developed a substantial level of local distinctiveness, and be of national and regional importance.</p> <p>To respect the sensitivity of both the BV&amp;TRP sites, in terms of planned development, best practice Design Codes will be utilised to ensure appropriateness of development, setting, landscape context, buffering etc. in relation to built form.</p>	✓
<p>Both north and south components will have minimal negative impact on local communities. The sites will not be readily visible from residents in settlements to the west of the significant barrier of the A38 highway which currently heavily restricts any east-west</p> <p>The development would be considerably larger than the settlements to the west of the A38.</p> <p>A wide range of community benefits will be delivered by the project, especially in terms of sport and leisure.</p> <p>There will be enhanced linkage as requested, through public involvement/consultation responses to the draft scheme.</p>	0

<b>Existing ESBC RSA</b> <b>Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages</b>									
Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effinch Lane Barton	Land south west of Tutbury	Land South of Rocester
✓✓	✓	-	✓	✓✓	0	?	✓	✓	✓
✓✓	✓	✓✓	✓	✓✓	✓	?	✓	✓	✓

<b>Sustainability Appraisal</b> BV&TRP SA & Comparison to ESBC Strategic Site Allocations	
Sustainability Objective	Detailed Criteria

<b>BV&amp;TRP - Sustainability Assessment</b> Entries Below Derived from Representations Made September 2012	
Details	Score

<b>Existing ESBC RSA</b> Table 9.6 Strategic Site Allocations Appraisal - Uttoxeter and Strategic Villages										
Uttoxeter West	Stone Road	Hazelwalls	Brookside	JCB	Dove Way/Derby Road Employment site	College Fields Rolleston	Effiinch Lane Barton	Land south west of Tutbury	Land South of Rocester	

Note:

The BV&TRP Scheme is taken as its totality, as it is a single entity proposal, even though it straddles the LPA boundaries; thus it is residential, industrial, commercial, leisure and sport

**BV&TRP SA Score 11**

11	?	?	?	?	?	?	?	?	?	?
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**From:** [jane.field@environment-agency.gov.uk](mailto:jane.field@environment-agency.gov.uk)  
**To:** [LPConsultation](#)  
**Subject:** Environment Agency Response to: UT/2007/100681/SE-03/FS1-L01  
**Date:** 30 January 2015 14:21:59  
**Attachments:** [PlanningProposal.rtf](#)

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The Local Development Document has been reviewed and I enclose the Environment Agency's comments on:  
SA/SEA

East Staffordshire Borough Council

SA/SEA

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Ms Amanda Willis  
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DE14 2JJ

**Our ref:** UT/2007/100681/SE-  
03/FS1-L01  
**Your ref:**  
**Date:** 30 January 2015

Dear Ms Willis

**LOCAL PLAN (EXAMINATION)**

**REVISED SUSTAINABILITY APPRAISAL (DECEMBER 2014)**

Thank you for referring the above consultation which was received on 18 December 2015.

The Environment Agency has reviewed the revisions made to the March 2014 Sustainability Appraisal (SA) Report and considers them adequate to address the issues 8C-F raised by the inspector in his Interim Findings document E.19, following hearings 1-4.

We understand any changes made to the plan as Main Modifications will undergo separate SA once the hearings have been completed.

Yours sincerely

**Miss Jane Field**  
**Planning Specialist**

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