



Department for
Communities and
Local Government

Mr Michael Robson
Cerda Planning Ltd, Unit 322
Fort Dunlop,
Fort Parkway
BIRMINGHAM
B24 9FD

Our Ref: APP/K2420/A/13/2208318
Your Ref: 13/039

18 November 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RAINIER PROPERTIES LIMITED
AT LAND SURROUNDING SKETCHLEY HOUSE, WATLING STREET,
BURBAGE, LEICESTERSHIRE
APPLICATION: 13/00529/OUT DATED 24 JUNE 2013**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, D R Cullingford BA MPhil MRTPI, who held a public local inquiry on 25-28 February and 24-27 June 2014 into your client's appeal against a decision of Hinckley and Bosworth Borough Council (The Council) to refuse outline planning permission for the demolition of Nos.11 and 13 Welbeck Avenue to create vehicular and pedestrian access and redevelopment of the site to provide up to 135 dwellings, public and private open space together with landscaping and associated infrastructure (all matters reserved except for the point of access) in accordance with application 13/00529/OUT, dated 24 June 2013 which was refused by notice dated 6 October 2013.
2. On 5 June 2014, 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 on the grounds that it involves proposals for residential development of over 150 units or on sites of over 5 hectares, 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 planning permission granted, subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his

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

Procedural Matters

4. The Secretary of State is in receipt of a post inquiry representation from the occupier of 39 Brockhurst Avenue which was received by the Planning Inspectorate too late to be considered by the Inspector. The Secretary of State has given careful consideration to this representation but, as it does not raise new matters that would affect his decision he has not considered it necessary to circulate to all parties. However, copies may be obtained, on written request, from the address at the foot of the first page of this letter.

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.
6. In this case the development plan consists of the adopted Hinckley and Bosworth Core Strategy (2009)(CS) and the 'saved' policies of the Hinckley and Bosworth Local Plan (2001)(LP). The Secretary of State agrees with the Inspector's assessment of the most appropriate policies at IR4.2-4.11 and that those that are of most relevance in this decision are policy 4 of the CS and NE5 & BE1 of the LP. The Secretary of State has also had regard to the Inspector's assessment of the emerging Site Allocations and Development Management Policies DPD at IR4.13-4.15 but, as this document has not yet reached examination, he gives it little weight.
7. It is also noted that Burbage Neighbourhood Area has been designated as a Neighbourhood Plan area (IR9.5). However, as there has been no evidence of progression beyond designation of the area in early 2014, the Secretary of State has not given it any weight in this decision.
8. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework, March 2012) and the associated guidance issued in March 2014. He has also taken into account the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Main issues

9. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR11.2.

A full and objective assessment of housing need

10. The Secretary of State agrees with the Inspector, for the reasons he gives at IR11.4-11.9, that no significant alteration to the housing requirement identified in the CS is warranted (IR11.6-11.7& 11.9).

The 5-year housing land supply

11. The Secretary of State agrees that a 5-year housing land supply cannot be identified (IR11.10) and with the Inspector's assessment at IR11.11-11.13 that it would be inaccurate to denote the failure to deliver housing as 'persistent'. However, he also agrees with the Inspector that there has been a failure to deliver housing in accordance with the CS (IR11.14), that the failure to implement mechanisms to meet the housing target exacerbates the shortfall (IR11.15-11.16), but that if the current shortfall were made up in the plan period then provision would meet the full objectively assessed needs for market housing (IR11.17).
12. The Secretary of State agrees with the Inspector's assessment at IR11.18 that, as policies could be brought 'up-to-date' with the identification of additional housing land, they cannot be considered inherently outmoded or redundant as they would come back up-to-date with the appropriate identification of housing land supply (IR11.18). Nevertheless, the Secretary of State agrees with the Inspector that the lack of a 5-year housing land supply is an important material consideration. Therefore he also agrees with the Inspector at IR11.19 that, rather than negating relevant policies in the Development Plan, the Framework establishes a new balance in the weight to assign to these policies in decision making and that it is that balance that is crucial.

Affordable Housing

13. For the reasons given at IR11.20-IR11.23, the Secretary of State agrees with the Inspector's findings in relation to affordable housing, and with his conclusion at IR11.23 that the need for affordable housing is acute and warrants the provision offered by the appeal proposal.

The impact of the scheme

14. For the reason given by the Inspector at IR11.25, the Secretary of State agrees that the additional traffic generated would likely disperse evenly and represent modest traffic flows which would not significantly alter the quiet and safe character of the streets. Like the Inspector, the Secretary of State acknowledges the concerns of residents on the anticipated upheaval during the construction period, but considers that this does not warrant the refusal of planning permission. The Secretary of State agrees with the Inspector at IR11.26 that the volume of traffic, the noise it might generate or the use of the access road would be unlikely to have an unacceptable impact on residents.
15. The Secretary of State has had regard to the impact of the scheme on landscape at IR11.27-11.29 and accepts that a limited amount of harm would be caused by the development of this greenfield site which would be outside of the settlement boundary as defined in the LP. He agrees with the Inspector's conclusion at IR11.29 that the low density and landscaping of the development would ameliorate the harmful impact of the scheme on the character of Burbage.
16. The Secretary of State has had regard to the potential impacts on agriculture and agrees with the Inspector at IR11.30-11.31 that, through the application of

conditions, the scheme would not seriously impinge on the operations at Sketchley Grange Farm.

17. Turning to the impact of the scheme on ecology, the Secretary of State agrees with the Inspector at IR11.32-11.35 that, though disputed by local residents, the site is not inherently valuable for nature conservation (IR11.32) and the overall ecological impact would be limited, particularly by the incorporation of measures to increase biodiversity.

The merits of the scheme

18. The Secretary of State agrees with the Inspector at IR11.41-11.42 that the scheme, as illustrated in the proving layout, illustrative layout and Design and Access Statement, would represent good design with regard to layout, housing type, the provision of affordable housing, green infrastructure and location.

The planning strategy

19. The Secretary of State agrees with the Inspector that, although being in the countryside beyond the edge of Burbage would bring the proposal into conflict with saved policies of the LP (IR11.36), for the reasons given at IR11.36-11.40 it would achieve the aims set out in CS4 by using part of the countryside that is well contained within recognisable limits, and the impact of the development would be limited. The Secretary of State also notes the identification of the appeal site in the emerging Site Allocations DPD and that objections to its allocation over concerns regarding access have been removed by securing access via Welbeck Avenue (IR11.38).

The planning balance

20. The Secretary of State agrees with the Inspector's overall conclusions at IR11.43-11.47. Like him, The Secretary of State concludes that the scheme would largely comply with the CS in bringing forward development in a location beside part of the sub-regional centre; being largely in accord with CS4; and satisfying the requirements of BE1. The Secretary of State also agrees that, although the proposal would be contrary to policy NE5 the environmental impact would be limited and well confined. Having regard to paragraph 14 of the Framework, the Secretary of State shares the Inspector's view that there are no adverse impacts in this case that significantly and demonstrably outweigh the benefits of the development (IR11.46).

Conditions

21. The Secretary of State has considered the Inspector's comments at IR11.48-11.53 on the proposed planning conditions, the conditions he recommends in Annex 1 of the IR, and national policy set out in the Framework. The Secretary of State is satisfied that the conditions set out in Annex A to this letter are reasonable and necessary and would meet the other tests at paragraph 206 of the Framework.

Obligation

22. The Secretary of State has considered the terms of the planning obligation submitted at the inquiry and considered by the Inspector at IR11.54-11.57; and he agrees with him at IR11.57 that these contributions meet the Framework test and comply with CIL regulations.

Overall Conclusions

23. The Secretary of State concludes that, as a 5-year housing land supply cannot be identified, the decision falls to be made in the context of the presumption in favour of sustainable development as outlined at paragraph 14 of the Framework. The limited environmental and residential amenity harm identified would not be sufficient to significantly and demonstrably outweigh the benefits of the provision of up to 135 dwellings, 40% of which would be affordable, to be delivered in a sustainable location close to the sub-regional centre. The Secretary of State finds that the open space provision and diversity of housing type would add further weight in favour of the proposal. Overall he is satisfied that the scheme amounts to sustainable development and that planning permission should be granted.

Formal Decision

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission in outline for the demolition of Nos.11 and 13 Welbeck Avenue to create vehicular and pedestrian access and redevelopment of the site to provide up to 135 dwellings, public and private open space together with landscaping and associated infrastructure (all matters reserved except for the point of access) in accordance with application 13/00529/OUT, dated 24 June 2013 at land surrounding Sketchley House, Watling Street, Burbage, Leicestershire, subject to the conditions set out at Annex A to this letter.
25. An applicant for any consent, agreement or approval required by condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
28. Copies of this letter have been sent to Hinckley and Bosworth Borough Council, Leicestershire County Council and The Police and Crime Commissioner for

Leicestershire. A notification 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

Planning Conditions

- 1) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 18 months from the date of this permission.
- 2) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) The following details (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development begins:
 - i. The layout of the site including the way in which buildings, routes and open spaces are provided and the relationship of these buildings and spaces to areas outside the development.
 - ii. The scale of each building proposed in relation to its surroundings.
 - iii. The appearance of the development including details of the measures employed to create a defining identity for the buildings and spaces of the scheme.
 - iv. The landscaping of the site including the treatment of private and public spaces to enhance or protect the site's amenity through hard and soft landscaping.

The development shall be implemented in accordance with the approved details. There shall be no amendments or variations to the approved details unless otherwise agreed in writing by the Local Planning Authority.

- 4) The development hereby permitted shall be carried out along the lines indicated in the Proving Layout PR/001, dated 30 January 2014 for about 127 dwellings, subject to the details to be submitted to, and approved in writing by, the Local Planning Authority in condition 3 above.
- 5) The existing vehicular access to the A5 shall be permanently closed to all vehicular traffic except that to and from Sketchley House in accordance with a scheme that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented within one month of the new access to the site from Welbeck Avenue being brought into use.
- 6) The scheme referred to in condition 5 above, shall also include measures to prevent all vehicular traffic from the site or the proposed development from entering the bridleway along the eastern boundary of the site.
- 7) Before first occupation of any dwelling hereby approved, a scheme to provide visibility splays of 2.4m by 43m at the junction of the site access with Welbeck Avenue (along the lines indicated in Leicestershire County Council's 6Cs Design Guide) shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include measures to prevent any object or vegetation above 0.6m from being positioned within the visibility splays.
- 8) Before any dwelling is first occupied, car parking shall be provided for that dwelling, hard surfaced and made available for use. For a dwelling with up to 3 bedrooms, 2 car parking spaces shall be provided: for a dwelling with 4 or more bedrooms, 3 car parking spaces shall be provided. The parking spaces so provided shall thereafter be kept permanently available for the parking of cars.

- 9) Any garage provided must have minimum internal dimensions of 6m by 3m; the garage shall, thereafter, permanently remain available for car parking.
- 10) Before first occupation of any dwelling hereby approved details of a Residential Travel Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Plan shall address the full travel implications of the approved scheme and set out the facilities and measures, together with the associated measurable outputs and targets designed to:-
 - a) reduce single occupancy vehicle use, vehicular travel at peak traffic times and vehicle emissions for journeys made for all purposes to and from the development site;
 - b) increase the choice and use of alternative transport modes for any journeys likely to be made to and from the development site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel;
 - c) manage the demand by all users of the developed site for vehicle parking within, and in the vicinity of, the developed site.

The Plan shall also specify:-

- d) the on-site implementation of the Plan and management responsibilities, including the identification of a 'travel plan coordinator';
- e) the arrangements for undertaking regular travel behaviour and impact monitoring surveys and for reviews of the Plan covering a period extending to at least one year after the last approved dwelling is occupied or a minimum of 5 years from first occupation, whichever is the longer;
- f) the timescales for delivery of the specified outcomes and targets to be achieved through the implementation of the Residential Travel Plan; and,
- g) the additional facilities and measures to be implemented if monitoring shows that the outcomes and targets specified in the Residential Travel Plan are unlikely to be met, together with clear criteria for invoking those measures.

The Plan shall be implemented in accordance with the approved details, and it shall include provision of at least annual reports on its progress and effectiveness, to include information from the travel behaviour and impact monitoring surveys, to be submitted to the Local Planning Authority.

- 11) The development, hereby permitted, shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) issue 3 (dated 24 June 2013, Ref: AAC5034, undertaken by the RPS Group) and the following mitigation measures indicated within the FRA shall be implemented in accordance with a detailed drainage scheme to be submitted to and approved by the Local Planning Authority before development commences:
 - 1) measures to limit the discharge rate and to provide facilities for the storage of surface water run-off from the site so that for a rainfall event with a probable recurrence of up to 1:100 years and with a 30% addition (for climate change) surface water run-off will not exceed that from the undeveloped site and, thereby, not increase the risk of flooding elsewhere, as indicated in sections 4.3-4.4, 5.4 and 6.4 of the FRA.
 - 2) finished floor levels shall be set no lower than 150mm above external finished ground levels, as indicated in sections 5.2-5.3 of the FRA.

The mitigation measures shall be fully implemented prior to the occupation of any dwelling or in accordance with timing and phasing arrangements set out in the approved scheme.

- 12) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
The scheme shall include:-
 - a) measures and on-site storage facilities to limit the surface water run-off from the site generated by a rainfall event with a probable recurrence of up to 1:100 years and with a 30% addition (for climate change) so that surface water run-off will not exceed that from the undeveloped site and, thereby, not increase the risk of flooding elsewhere;
 - b) the provision of on-site storage facilities sufficient to limit the surface water run-off to that from the undeveloped site in the event of a critical rainstorm with a probable recurrence of 1:100 years plus 30% (for climate change);
 - c) detailed designs (plans, cross-sections, long-sections and calculations) in support of the submitted surface water drainage scheme, including details on any attenuation system, and the outfall arrangements;
 - d) details of how the on-site surface water drainage system shall be maintained and managed after completion and for the lifetime of the development.
- 13) The development hereby permitted shall not commence until a scheme for the disposal of foul sewerage has 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 first occupation of any dwelling on the site.
- 14) Notwithstanding the proposals contained within the noise impact assessment (SRL Technical Report ref: C/30501/R01v2/RM, 14 June 2014) development shall not begin until a scheme for protecting the proposed dwellings from traffic noise emanating from the A5 has been submitted to, and approved in writing by, the Local Planning Authority.
- 15) Prior to the removal of any trees identified in the ecological report prepared by FPCR dated June 2013, a bat survey shall be conducted (with appropriate mitigation measures), to be submitted to, and approved in writing by, the Local Planning Authority.
- 16) Prior to the commencement of any development a lighting scheme for the site that minimises light intrusion into bat foraging areas, in accordance with the principles set out at paragraph 4.29 of the submitted Ecological Appraisal (Rev A), October 2013 prepared by FPCR, shall be submitted to, and approved in writing by, the Local Planning Authority.
- 17) Prior to the commencement of development and the removal of any trees, 20 bat boxes and 20 bird boxes of varying designs (but including a range of bat boxes suitable for Leisler's bat) shall be provided on the retained trees, in areas not subject to light intrusion or disturbance. Those bat and bird boxes shall be provided in accordance with a scheme to be submitted to, and approved in writing by, the Local Planning Authority.
- 18) Prior to the commencement of any development, an updated badger survey shall be undertaken and its results, together with a scheme for appropriate mitigation measures derived from those results, shall be submitted to, and approved in writing

by, the Local Planning Authority. The mitigation measures shall be carried out in accordance with the approved details.

- 19) Prior to the occupation of any dwelling, hereby approved, a 'Landscape and Landscape Management Plan', including long term objectives and management responsibilities, together with maintenance and planting schedules for all landscaped areas (other than small privately owned domestic gardens), shall be submitted to and approved in writing by the Local Planning Authority.
- 20) All planting, seeding or turfing comprised in the approved 'Landscape and Landscape Management Plan' shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and 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 give written approval to any variation.
- 21) No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority details indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable to be agreed in writing with the Local Planning Authority before the first occupation of any dwelling, hereby permitted. Development shall be carried out in accordance with the approved details.
- 22) No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority details of the landscaping, boundary treatment and measures to maintain security at the dwellings adjacent to the new access (Nos.9 and 15 Welbeck Avenue). The approved details shall be completed in accordance with a timetable to be agreed in writing with the Local Planning Authority before construction of the access commences.
- 23) In this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the first occupation of any dwelling, hereby approved.
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS3998:2010 (Tree Work).
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the

ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.

- 24) The plans and particulars submitted in accordance with the condition 19 above shall include:
- i. a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
 - ii. details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;
 - iii. details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
 - iv. details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree;
 - v. details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (i) above.

- 25) Before construction of the access commences, an Arboricultural Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority specifying the method of construction to be employed for any part of the access within, or within 5m of, the identified 'root protection area' of any 'retained' tree, including specification of:
- i. the extent of the relevant 'root protection areas';
 - ii. the installation and removal of tree protection measures;
 - iii. supervision by a suitably qualified arboriculturalist and arrangements for monitoring;
 - iv. methods of excavation and the areas to be hand dug only;
 - v. ground levels;
 - vi. the storage of plant and equipment.
- 26) No demolition or development shall commence until a programme of archaeological work, commencing with an initial phase of trial trenching and subsequent appropriate mitigation, has been detailed within a Written Scheme of Investigation, to be submitted to, and approved by the Local Planning Authority in writing. Thereafter no demolition or development shall commence other than in accordance with the Written Scheme of Investigation. The scheme shall include an assessment of the archaeological significance of the site and of any archaeological remains identified and indicate potential lines for further research. The scheme will also include:
- a) the programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
 - b) the programme for post-investigation assessment;

- c) the means of securing provision for analysis of the site investigation and recording;
- d) the means of securing provision for publication and dissemination of the analysis and records of the site investigation;
- e) the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f) the nomination of a competent person, persons or organisation to undertake the works set out within the Written Scheme of Investigation.

The Written Scheme of Investigation (WSI) must be prepared by a suitably qualified archaeologist.

- 27) Development shall not begin until a 'Construction Traffic Management Method Statement' has been submitted to, and approved in writing by, the Local Planning Authority. The 'Construction Traffic Management Method Statement' shall include provisions for construction vehicle routing, the management of junctions and crossings of any public right of way. The 'Statement' shall aim to prevent any construction traffic from using Newstead Avenue and to minimise the number of construction vehicles using Brockhurst and Beechwood Avenues. As far as reasonably possible, the details listed in the 'Construction Traffic Management Method Statement' shall be carried out as approved.
- 28) No development shall take place, including any works of demolition, until a Construction Method Statements have been submitted to, and approved in writing by, the Local Planning Authority. One Statement shall deal with the construction of the access from Welbeck Avenue to a point aligning with the western edge of the bridleway: another separate Statement shall deal with the construction works required everywhere else. The approved Statements shall be adhered to throughout the construction periods. The Statements shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling or disposing of waste resulting from demolition and construction works.
- 29) Except for the construction of the access, construction works and traffic movements to or from the site associated with the construction of the development, hereby permitted, shall not take place other than between the hours of 08.30hrs and 18.00hrs on weekdays and 09.00 hrs and 13.00 hrs on Saturdays and not at all on Sundays and Bank Holidays, except that emergency works may be carried out at any time provided that the developer retrospectively notifies the Local Planning Authority of the emergency works.
- 30) Works for the construction of the access to the site from Welbeck Avenue and traffic movements to or from the site associated with the construction of that access, shall not take place other than between the hours of 09.00hrs and 17.00hrs on weekdays and not at all on Saturdays, Sundays and Bank Holidays, except that emergency works may be carried out at any time provided that the developer retrospectively notifies the Local Planning Authority of the emergency works.



Report to the Secretary of State for Communities and Local Government

by **D R Cullingford BA MPhil MRTPI**

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

Date 22 September 2014

Town and Country Planning Act 1990

HINCKLEY & BOSWORTH BOROUGH COUNCIL

Appeal

by

RAINIER PROPERTIES LIMITED

Inquiry held on 25-28 February and 24-27 June 2014

An accompanied site visit was undertaken on 26 June and unaccompanied visits were made on 26 February and 25 June 2014

Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire

File Reference: APP/K2420/A/13/2208318

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File Ref: APP/K2420/A/13/2208318

Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire

- This appeal is made under sections 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is by Rainier Properties Limited against the decision of the Hinckley and Bosworth Borough Council.
- The application (ref: 13/00529/OUT and dated 24 June 2013) was refused by notice dated 6 October 2013.
- The development proposed is described as an outline application for the 'demolition of Nos.11 and 13 Welbeck Avenue to create vehicular and pedestrian access and redevelopment of the site to provide up to 135 dwellings, public and private open space together with landscaping and associated infrastructure (all matters reserved except for the point of access)'.

Summary of Recommendation: ~ That the appeal be allowed and planning permission granted, subject to conditions.

1. Procedural Matters

1.1 I held an inquiry between 25 and 28 February and between 24 and 27 June 2014 at the Council Chamber, Hinckley Hub, Rugby Road, Hinckley into an appeal made by Rainier Properties Limited under sections 78 and 79 of the Town and Country Planning Act 1990. I undertook an accompanied site inspection on 26 June 2014 and unaccompanied inspections of the site, its surroundings and land to the east of Burbage on 26 February and 25 and 26 June. During the adjournment the Secretary of State directed that he should determine this appeal himself in the letter dated 5 June 2014.

The proposal in outline

- 1.2 The appeal site lies beside the south western edge of Burbage, a 'village' adjoining Hinckley. It is about 7.3ha of degraded 'Edwardian parkland' wrapped around the curtilage of Sketchley House, a gaunt red brick villa in the midst of this parkland pasture and beyond an avenue of majestic lime trees astride a bridleway¹.
- 1.3 The scheme is submitted in outline with all matters reserved for subsequent approval except for the actual point of access from Welbeck Avenue². The creation of that access would require the demolition of the 2 semi-detached houses at Nos.11 and 13 Welbeck Avenue and the felling of 2 lime trees to the rear³. The application is for 'up to 135 dwellings', although the illustrative 'proving layout' accommodates just 127 homes, together with swathes of public and private open space, landscaping and the many retained trees⁴. The intention is to provide a mixture of 1, 2, 3 and 4 bedroom houses, flats and bungalows together with, initially, 30% of the units as affordable dwellings (up to 40 affordable homes); it is now proposed that that 40% of the units should be 'affordable' (up to 54 affordable homes)⁵. The current version of the section 106 Undertaking would secure that level of provision⁶.

¹ Plans B, E and H

² Document 25.1

³ Document 13.1 and plan C

⁴ Document 14.2

⁵ See the Design & Access Statement on disc 1 and document 23

⁶ Document 5

The application and the recommendation

- 1.4 The planning application form is dated 24 June 2013; it was validated in July and reported to the committee in October 2013¹. In spite of believing that sufficient housing land was then available to meet requirements over the next 5 years, the scheme was recommended for approval, subject to conditions and the execution of a section 106 Agreement securing contributions towards the provision of affordable housing, health and education facilities and the maintenance of open space². The reasons for the recommendation were that³:
- Having regard to the pattern of existing development in the area, representations received and relevant provisions of the Development Plan, as summarised below according to their degree of consistency with the National Planning Policy Framework, it is considered that subject to compliance with the conditions attached to this permission, the proposed development would be in accordance with the Development Plan.
 - The policies cited were:
Hinckley and Bosworth Local Plan (2001):- policies IMP1, BE1, BE13, BE14, BE15, BE16, REC2, REC3, RES5, NE5, NE12, NE14, T3, T5, T9 and T11, and the Core Strategy (2009):- policies 4, 15, 16, 19 and 24

The reasons for refusal and for recovery

- 1.5 In the event, however, the decision was made to refuse the application, contrary to officers' recommendation. The reasons for refusal were⁴:
1. In the opinion of the local planning authority, the proposed development will result in an adverse urbanising effect of [sic] the landscape, resulting in harm to the intrinsic character and beauty of the countryside contrary to the requirements of Saved Policy NE5 of the adopted Hinckley and Bosworth Local Plan 2001 and the requirements of Paragraph 17 of the National Planning Policy Framework.
 2. In the opinion of the local planning authority, the vehicular traffic associated with the proposed development will result in an unacceptable adverse impact upon the amenities of the occupiers of dwellings in Welbeck Avenue, Newstead Avenue, Brockhurst Avenue and Beechwood Avenue. The proposal is therefore contrary to the requirements of Policy BE1 of the adopted Hinckley and Bosworth Local Plan 2001.
 3. In the opinion of the local planning authority, the proposed vehicle access drive serving the development will result in an unacceptable adverse impact upon the amenities of the occupiers of Nos.9 and 15 Welbeck Avenue to which it is immediately adjacent. The proposal is therefore contrary to the requirements of Policy BE1 of the adopted Hinckley and Bosworth Local Plan 2001.
- 1.6 During the first week of the Inquiry, I indicated that the exhortation in the Framework that planning should be genuinely plan-led might warrant an approach to the provision of housing more in accordance with the housing trajectory than with some 'notional' annual average provision⁵. In this case an adopted Core Strategy, with 12 years still left to run, envisaged about half of the housing required over the Plan period being provided in 2 'sustainable urban extensions'⁶. As a consequence, the initial trajectory (endorsed by the Core Strategy Inspector) indicated a lower than annual average provision of housing over the early years (necessitated by the 'lead-in' times required for the infrastructure and planning of the 'sustainable urban extensions') made up towards the end of the Plan period as an accelerating delivery

¹ Document 24

² Document 24 and 25.1

³ Document 25.1

⁴ Document 25.1; the Decision Notice is on disc 1 and the file

⁵ My opening and subsequently

⁶ Document 29.6

of development in the 'sustainable urban extensions' was predicted to materialise¹. A commensurate approach to any shortfall identified in the '5 year housing supply' or against a 'full objectively assessed need', would seek to distribute the additional provision required over the remaining period of the Plan (the 'Liverpool' approach) rather than doing so within the next 5 years (the 'Sedgefield' method).

- 1.7 However, in Hinckley and Bosworth there have been a number of appeals, each decided on its merits, oscillating between the 'Liverpool' and 'Sedgefield' approaches to 'making good' identified shortfalls in housing requirements. This, amongst other things, is set out in Christopher Young's careful advice². There have been 2 recent appeal decisions (at Groby and Barwell³) that follow the 'Liverpool' method and at least 2 (at Three Pots and Britannia Road⁴) that adopt the 'Sedgefield approach'. The uncertainty has instigated High Court challenges initiated by the relevant appellants at Groby and Barwell and initially pursued by the Council at Three Pots⁵, although the latter has been abandoned in the light of altered circumstances subsequently⁶. The situation has led to a significant number of planning appeals within one small authority and much High Court litigation, thereby drastically delaying the delivery of housing needed in the Borough and hugely increasing the costs involved in achieving (or not) the planning permissions required⁷.
- 1.8 At the time the Inquiry was adjourned, no judgments had been handed down from the High Court though, as anticipated, the Groby judgement endorses both methods as 'legitimate', indicates that neither is prescribed by the Framework and supports the use of either as a matter of planning judgment⁸. In view of that anticipated outcome, it was agreed at the Inquiry that, rather than perpetuate appeals decided on the basis of conflicting methodologies and the consequent stream of High Court litigation, much effort and expense might be spared if the appeal were to be recovered for decision by the Secretary of State who might then be able to indicate the appropriate method to employ in the context of this Borough⁹. I supported that stance.
- 1.9 After due consideration, the Secretary of State directed that he should determine this appeal himself in the letter dated 5 June 2014¹⁰. The reason for recovery was that:

... the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, 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.

The need for EIA

- 1.10 Although this 'urban development project' falls within the descriptions set out at paragraph 10b of Schedule 2 and exceeds the thresholds in column 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, the Screening Opinion issued by the Council on 16 July 2013 indicates that the scheme would not entail development in a sensitive area and

¹ Documents 29.4 and 29.6

² Document 9

³ Documents 29.15 and 29.16

⁴ Documents 25.23, 25.26

⁵ ID13

⁶ Document 48

⁷ Document 49

⁸ Document 31.1

⁹ Document 9

¹⁰ Document 8

would thus be unlikely to have any significant environmental effect¹. Accordingly the scheme is not EIA development and an Environmental Statement is not required. Nevertheless, the application was accompanied not just by²:

- A Planning statement
- A Statement of Community Involvement and
- A Design and Access Statement

But also by:

- An affordable housing statement
- A landscape and visual assessment
- An arboricultural report and tree survey
- An ecological assessment
- A noise assessment
- A geophysical survey report
- An archaeological and heritage desk-based assessment
- A transport assessment
- A travel plan
- A flood risk assessment implying a preliminary SUDS strategy.

Public consultation

- 1.11 Pre-application discussion with Council officers, statutory and non-statutory consultees and the Parish Council preceded the application³. And, as the site was considered as an allocation at the 'preferred options stage' of the Consultation Draft Site Allocations and Development Management Policies DPD⁴, local people would have had a chance to respond to its potential development; subsequently the site was discounted mainly due to access difficulties. Nevertheless, efforts to respond to the local community included a presentation with a question and answer session at a Parish Council meeting and a public consultation event⁵. The latter was held at the Sketchley Grange Hotel on 14 May 2013 during the afternoon and early evening; a total of 71 people attended and 36 written responses were received. The former was held at a Parish Council meeting on 17 June 2013.
- 1.12 Between July and October while the appeal application was being processed, ongoing discussions and meetings took place with the Council to respond to issues raised by residents or statutory and non-statutory consultees and to draft the 'heads of terms' of what was then intended to be the section 106 Agreement⁶.

¹ On the file

² Documents 25.1 and 45 and disc 1

³ Document 24

⁴ Document 25.12

⁵ Document 24

⁶ Document 24

2. The Site and the Surroundings

The site

- 2.1 The appeal site lies adjacent to the south western edge of Burbage¹. The site is about 7.3ha of degraded 'Edwardian parkland' (though the landscape was probably created between the wars) and it wraps around the curtilage of what is now Sketchley House, a gaunt red brick villa built around the turn of the last century (as Fern Lea House) in the midst of what were then fields and farmland². The parkland and a fine avenue of majestic lime trees isolate the property from the Burbage estates and from the A5 (Watling Street); the house is served by a driveway to the bridleway and thence to the A5³.
- 2.2 The parkland pasture, which forms the bulk of the appeal site, is a gently sloping, westerly facing field surrounded by hedgerows and trees. The highest point is around 120.5m AOD and lies towards the eastern boundary north of Sketchley House: the lowest and somewhat boggy corner is around 110.5m AOD towards the north western edge. There is a field pond, apparently constructed as a sheep dip, immersed in trees and foliage in the southern portion of the site. Sketchley House and its curtilage are excluded from the appeal site. The bridleway and its lime trees, together with the plots of the semi-detached houses at Nos.11 and 13 Welbeck Avenue (the point of access), are within the site⁴.
- 2.3 The whole site is covered by an area Tree Preservation Order (75/00003/TPORD) dated 12 March 1975⁵. The Arboricultural Report indicates that although the bulk of those specimens remain of 'moderate quality' (category B), about 11% are deemed to be 'unsuitable for retention' (category U)⁶.
- 2.4 The landscape around Burbage, including the appeal site, lies within a 'local landscape character area' denoted as the 'Hinckley, Barwell and Burbage Fringe Character area'⁷. Although the distinctive landscape of Burbage Common and Wood (to the east of the settlement) is important for ecological and recreational reasons, elsewhere (as here) there are 'strong urban associations' with views 'limited by urban fabric or woodland' and the proximity of the M69 and A5 'result[ing] in traffic disturbance'. There are no, nor have there ever been, any qualitative landscape designations here, nor are there designated heritage assets; the LVIA indicates the site to be of 'medium landscape character sensitivity', in spite of the remnant parkland and the avenue of limes⁸.
- 2.5 Although there are vantage points from where the site can certainly be seen (mainly from the bridleway, some positions on the A5 and from a few properties along Sketchley Lane), the effective 'visual envelope' is limited by the topography, the existing vegetation and the estates at the edge of Burbage. The trees and hedges beside the A5, together with the noise and presence of such a busy road, create a firm barrier to the south west, separating the site from the more open countryside beyond. Thick vegetation in the back gardens of most houses in Welbeck Avenue

¹ Plan H

² Document 29, pages 13 and 14 and evident from other old maps together with the Design and Access Statement on disc 1

³ Document 14

⁴ Document 14

⁵ On file

⁶ On disc 1

⁷ Documents 14 and 30.1

⁸ Document 14.3

and Belfry Close, together with the lime tree avenue, largely screens the site from the estates to the east and reinforces an already strong eastern boundary. The field hedges to the north and west are more intermittent. But dense foliage is evident in places and some fine trees stand nearby. Even so, there are fine views from one or two vantage points on the bridleway across the site and over the open countryside of the Anker Valley towards Nuneaton¹.

The surroundings

- 2.6 The appeal site, being adjacent to Burbage, is also adjacent to part of the main urban settlement, and the one sub-regional centre, in the Borough. Although Burbage has some village-like characteristics, it now functions 'largely as an extension to the Hinckley urban area'². The settlements are barely separated by Hinckley Railway Station and the cross-country railway line between Leicester and Birmingham³.
- 2.7 Immediately to the east of the site, largely screened by the dense foliage in back gardens and beside the lime tree avenue, are the neat suburban streets of Welbeck, Newstead, Brockhurst and Beechwood Avenues. Here bungalows and houses, mostly detached or semi-detached, but with the occasional short terrace, line the fairly modest carriageways of Welbeck Avenue (5.7m wide), Brockhurst and Beechwood Avenues (just 5m in width) and Newstead Avenue (only 4.6m wide). Most of the dwellings have at least some off-street parking provision. But it is relatively limited at those properties towards the Wolvey Road entrance to Newstead Avenue, so that roadside parking is more evident along the narrowest avenue into the estate. Wolvey Road provides access to the A5⁴.
- 2.8 A local bus service (route 5) plies along Welbeck Avenue during the day, providing an hourly link to Hinckley town centre via Newstead and Beechwood Avenues: an 'inter-city bus' also provides an hourly service (X6) connecting Hinckley (and Burbage) to Leicester and Coventry with a stop in Wolvey Road. Hinckley Railway Station is only some 2.3km from the site offering an hourly service between Leicester and Birmingham with a 70 space car park and a staffed ticket office⁵.
- 2.9 Within a 2km radius of the site (a reasonable walking distance) there is a major employment area (Sketchley Meadows Business park, Sketchley Lane Industrial Estate and Logix Park, all to the west), much of Burbage (to the east) and the southern areas of Hinckley town centre (to the north). The bridleway offers a pleasant route to Sketchley Lane, connecting the employment area with the rest of Hinckley and Burbage. Within 5km (a reasonable cycling distance) there is the whole of Hinckley and Burbage, as well as the eastern areas of Nuneaton and several outlying villages; there is a short section of shared cycleway and footway beside the A5⁶.
- 2.10 Sketchley Hill Primary School is about 1.3km distant and Hastings High School is some 3.3km away to the east of Hinckley town centre. Burbage Surgery and local pharmacy is within 2km, close to local shops; large stores are located to the south of Hinckley town centre⁷.

¹ Documents 14, 30, 42.1 and 42.5

² Document 46, paragraph 4.24

³ Plan H

⁴ Site inspections and document 10

⁵ Document 10

⁶ Document 10

⁷ Document 10

3. The Proposal

- 3.1 The scheme is submitted in outline with all matters reserved for subsequent approval except the actual point of access from Welbeck Avenue¹. The creation of that access would require the demolition of the 2 semi-detached houses at Nos.11 and 13 Welbeck Avenue and the felling of 2 lime trees in the avenue of limes astride the bridleway to the rear². The application is for 'up to 135 dwellings', although the illustrative 'proving layout' accommodates just 127 homes, together with swathes of public and private open space, landscaping and the many retained trees³. Only about 4.5ha of the appeal site is shown as accommodating built development on the illustrative plan, the rest being laid out as informal and public open space or as the retained bridleway⁴.
- 3.2 The Design and Access Statement⁵ indicates that the scheme would accommodate a mixture of 1, 2, 3 and 4 bedroom houses, flats and bungalows. The 'illustrative proving layout' shows how such buildings could be arranged around an interconnected series of 'housing squares' and 'home zones', enveloped by peripheral areas of open space, a play area and the retained bridleway⁶. As originally envisaged, the scheme would have delivered some 30% of the units as affordable dwellings (up to 40 affordable homes) with the remaining 95 being available as open market housing⁷. Prior to the inquiry reconvening in June, the appellants considered that the local need for affordable housing warranted the provision of additional affordable dwellings. The intention now is that 40% of the units should be 'affordable' (up to 54 affordable homes)⁸.
- 3.3 The intention is that the level of affordable housing now envisaged would be reflected in the price at which the land might be sold on to builders. And, in order for the scheme to stand a good chance of contributing to the supply of housing within the next 5 years, 'reserved matters' are to be submitted for approval quickly and within just half the time normally allowed⁹.
- 3.4 The current version of the section 106 Undertaking is designed to secure 40% of the units as 'affordable' homes¹⁰. That Undertaking also proffers over £1.1m in contributions towards additional education facilities, the provision of open space and its maintenance, civic amenities, bridleway improvements, additional transport facilities, the implementation of a Travel Plan and additional policing, together with legal and monitoring costs¹¹.
- 3.5 Conditions are suggested in connection with the appeal scheme¹². They are intended to:
- Ensure that the development is carried out along the lines currently indicated;
 - Ensure that the scheme is implemented without undue delay;

¹ Document 25.1

² Document 13.1 and plan C

³ Document 14.2

⁴ Design and Access Statement on disc 1, plan B and document 14.2

⁵ On disc 1

⁶ Document 14.2

⁷ Documents 6 and 24

⁸ Document 23

⁹ Document 51

¹⁰ Document 5

¹¹ Supporting evidence is at documents 32-34

¹² Document 51

-
- Provide satisfactory access and parking arrangements;
 - Minimise car-borne travel;
 - Prevent any exacerbation of flood risks and provide for the 'sustainable drainage' of the site;
 - Protect the development from traffic noise on the A5;
 - Retain as many attractive trees as possible and provide for the landscaping of the site;
 - Safeguard, or mitigate for any loss of, the nature conservation interest of the site;
 - Ensure any archaeological finds are properly recorded;
 - Control construction and construction traffic to reduce road hazards and the impact of the work on residents.

4. Policy

The Development Plan

- 4.1 The Development Plan now consists of the adopted Hinckley and Bosworth Core Strategy (2009) and the 'saved' policies of the Hinckley and Bosworth Local Plan (2001)¹.

The Core Strategy

- 4.2 The Core Strategy (2009)² requires, in accordance with the then extant East Midlands Regional Plan, 9,000 homes to be provided within the Borough over the 20 years between 2006 and 2026; that is an annual average requirement of 450 dwellings. Most new homes are to be provided in the 'Hinckley sub-regional centre', which encompasses Hinckley, Burbage, Barwell and Earl Shilton. The Strategy envisages a minimum of 1,120 dwellings in Hinckley, a minimum of 295 dwellings in Burbage, some 2,000 'environmentally sustainable homes' in a 'sustainable urban extension' at Earl Shilton (also encompassing employment provision, neighbourhood shops, a primary school, a children's centre, doctors' surgeries, facilities for neighbourhood policing and green space) and some 2,500 'environmentally sustainable homes' (along with provision for a similar mix of facilities) in a 'sustainable urban extension' at Barwell. The 2 'sustainable urban extensions' are thus intended to accommodate 4,500 additional dwellings of which almost 92% are expected to be provided within the 20 year period of the Strategy (4,120)³. Some housing is allocated to 'key service centres' (nearly 750 dwellings) and limited residential development is to be permitted in villages (about 140 dwellings), but the Strategy focuses most new housing on the urban areas and depends for its success on the 2 'sustainable urban extensions' delivering some 46% of all the new housing required over the whole of the Plan period.
- 4.3 At paragraph 4.12 of the Core Strategy an approach is outlined to address any failure or under-performance of the chosen strategy in delivering the housing requirement. First, 'failure' of the 'sustainable urban extensions' to deliver the housing needed is to warrant a review of the Directions for Growth Report (from which the adopted 'preferred option' was initially derived) in order to identify an alternative 'preferred option'; that alternative is then to be the subject of further consultation. Second, any small scale shortfalls identified in the Annual Monitoring Report are to trigger a review of those sustainable sites identified in the SHLAA⁴ and not prioritised for development through the Site Allocations and Generic Development Control Policies DPD⁵.
- 4.4 Policy 4 of the Core Strategy specifically allocates 'land for the development of a minimum of 295 new residential dwellings, focused primarily to the north of Burbage, adjacent to the Hinckley settlement boundary to support the Hinckley sub regional centre'. The aim is to utilise 'existing areas of undeveloped land along the railway line and the Ashby Canal' and, in so doing, 'connect the urban areas of Burbage and south Hinckley to Burbage Common and the surrounding countryside, providing both recreational and environmental benefits'. It is explicitly recognised that, 'in functional terms, Burbage acts largely as an extension to the Hinckley urban

¹ Documents 24, 30, 48 and 49

² Document 46

³ See the housing trajectory in appendix 2 of document 46, also at document 29.6

⁴ Document 25.19

⁵ Document 47

area' (being close to Hinckley railway station and the town centre), so that development there could 'support Hinckley's role as a sub regional centre, whilst recognising that Burbage is a settlement in its own right with individual characteristics and needs'¹.

- 4.5 The policy also seeks to ensure that all new development 'contributes to Burbage's character and sense of place'. Of relevance here is the intention to 'protect and preserve the open landscape to the east [of the settlement] which provides an important setting for the village' (together with its Listed Buildings) and to 'enhance the landscape structure which separates the village from the M69 corridor [to the south], as supported by the Hinckley and Bosworth Landscape Character Assessment'². Specific protection is also given to the landscape to the east by the designation of a 'green wedge' between Burbage, Hinckley, Barwell and Earl Shilton (policy 6) and by areas designated as important for nature conservation and recreation (Burbage Wood and Aston Firs SSSI, the ancient semi-natural woodland at Aston Firs and Sheepy Wood and the local nature reserve and country park at Burbage Common and Woods)³.
- 4.6 In contrast, apart from being within the countryside and beyond the current boundary of the settlement, the Strategy provides no explicit protection for the appeal site or other land to the west of the settlement⁴. Moreover, Sketchley House is not Listed nor is it identified as being of even local interest as a heritage asset. There is no Conservation Area close to the site. There is no designation of the site as parkland, or as of value for recreation or nature conservation. It is covered by an area Tree Preservation Order, now made nearly 40 years ago, but nearly all of the trees worth retaining are to be incorporated into the scheme⁵.
- 4.7 The Strategy envisages a minimum of 2090 dwellings, or about 23% of the housing requirement, to be provided as affordable units (policy 15). In the urban areas, including Burbage and the 'sustainable urban extensions', policy 15 requires 20% of the homes to be affordable on sites of more than 0.5ha or accommodating 15 or more dwellings; in rural areas affordable units should amount to 40% of the dwellings on appropriate sites. Policy 16 insists that new residential development within or adjoining the urban areas (including Burbage) should be built at a minimum net density of at least 40dph, though, 'in exceptional circumstances, where individual site characteristics dictate and are justified, a lower density may be acceptable'. That flexibility might enable the aims of policy 4 to be met, namely that all new development 'contributes to Burbage's character and sense of place'.

The Local Plan

- 4.8 The reasons for refusal⁶ cite 2 of the 'saved' policies in the Local Plan⁷. Both are criteria based policies. Policy NE5 deals with development in the countryside and policy BE1 controls the siting and design of development.
- 4.9 Policy NE5 applies to areas beyond the boundary of settlements, 'green wedges', and 'areas of separation' identified on the Proposals Map. It states that:

In the countryside the countryside will be protected for its own sake. Planning permission will be granted for built and other forms of development in the countryside

¹ Document 46, paragraph 4.24

² Documents 30.1&2

³ Document 24 and details from MAGIC

⁴ Document 46

⁵ Document 49

⁶ Documents 2 and 24

⁷ Document 25.10

provided that the development [fulfils certain criteria]

- 4.10 None of the criteria listed relate to the appeal proposal. And, although the Framework does not 'protect the countryside for its own sake' one of its Core Principles is that both plan-making and decision-taking should recognise the 'intrinsic character and beauty of the countryside'.
- 4.11 Policy BE1 seeks to secure a high standard of design and an attractive development that safeguards and enhances the existing environment. It states, together with the clauses most relevant to this appeal, that:
- The Borough Council will seek to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Planning permission will be granted where the development:*
- a) complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features;*
 - b) avoids the loss of open spaces, important gaps in development, vegetation and features which contribute to the quality of the local environment;*
 - i) does not adversely affect the occupiers of neighbouring properties;*
- 4.12 Those requirements largely chime with relevant Core Principles and the advice of the Framework.

Emerging plans and policies

- 4.13 The current version of the Site Allocations and Development Management Policies DPD¹ was published in February 2014 as a pre-submission (Regulation 19) consultation document, now programmed to be examined in January 2015 instead of June 2014 as originally indicated². It has had a protracted gestation. At the examination of the Core Strategy, it was expected that the document would be submitted for examination in 2010³. However, although much effort and consultation has been expended on its preparation, the 8 week consultation on the Preferred Options version undertaken in 2009, elicited 13,500 representations⁴. A review and summary was produced in 2011 and all the representations have been taken into account in the issued pre-submission version. That document allocates a site at Sketchley Brook in the northern part of Burbage and adjacent to the Hinckley settlement boundary (in line with policy 4 of the Core Strategy) for 106 dwellings. It is explained that the allocation (together with a small allocation to accommodate 5 dwellings in the north west of the settlement) will contribute to meeting the 'residual minimum requirement' of 124 dwellings (as estimated at October 2013)⁵.
- 4.14 Alternative development sites adjacent to the settlement boundary had been considered for Burbage in the consultation version of the Preferred Options document issued in 2009⁶. The land to the east of the settlement was discounted because it forms the open landscape identified in the Core Strategy as providing an important setting for the village. The land to the south was deemed to have accessibility constraints and be less suitable than the preferred option. And, the land to the west (between the A5 and Sketchley Lane, which includes the appeal site) was also deemed to be less desirable than the preferred option (being wholly green-field) and pose access problems either directly on to the A5 or on to Sketchley Lane, the latter entailing a passage through an industrial estate or over a narrow section of the lane.

¹ Document 47

² Documents 29.12 and 47

³ Document 29.4

⁴ Document 47

⁵ See page 28 of document 47

⁶ Documents 2 and 23

4.15 An examination into the Earl Shilton & Barwell Area Action Plan was completed in May 2014 with the proposed date for adoption being July 2014¹. It is currently undergoing consultations on the Inspector's proposed modifications.

Government policies

4.16 The National Planning Policy Framework (2012) endorses a 'presumption in favour of sustainable development', which is to 'be seen as a golden thread running through both plan-making and decision-taking' with economic, social and environmental dimensions. Planning applications are to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Framework is one such material consideration and the 'weight' to be given to policies in Development Plans should now (well over 12 months from the publication of the Framework) depend on their degree of consistency with it (paragraph 215). Relevant policies for the supply of housing should not be considered 'up-to-date' if a 5-year supply of deliverable housing sites cannot be demonstrated (paragraph 49). And, where the Development Plan is absent, silent or relevant policies are 'out-of-date', the presumption in favour of sustainable development means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework, taken as a whole, or unless any of its specific policies indicate otherwise (paragraph 14).

4.17 In order to significantly boost the supply of housing, Councils are advised to undertake a series of tasks. They should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide a 5-year supply of housing with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery the buffer should be increased to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the Plan period and set out a housing implementation strategy describing how a 5-year supply would be maintained to meet the housing target; and
- set out their own approach to housing density to reflect local circumstances.

4.18 The Framework offers other advice. It indicates that one important component of 'sustainable development' is that schemes in accordance with the Development Plan should be approved and that a key Core Principle is that decisions should be genuinely plan led, empowering local people to shape their surroundings (paragraphs 14 and 17). The Core Principles (together with subsequent paragraphs) set out aims requiring places in which people live their lives to be enhanced, high quality design to be secured and the intrinsic character and beauty of the countryside to be recognised. And, there are exhortations that proposals should

¹ Documents 29.8 and 29.12

properly reflect local character, reinforce local distinctiveness and provide a good standard of amenity for all.

- 4.19 The tension between providing the housing needed and protecting the countryside and the identity of towns and villages is not new; it is permanent to planning. Moreover, not all policies that might influence the supply of housing deal solely with housing supply. In this case, 'saved' policy NE5 and policy 4 of the Core Strategy demarcate land use distinctions between settlements and countryside and identify aims to enhance the character and identity of Burbage. So, although the absence of a 5-year supply of housing may require an urgent review of settlement boundaries and the need for housing development on sites in the countryside, it does not necessarily render the distinction between town and country irrelevant or the need to maintain and enhance the identity of Burbage redundant. Rather, the Framework establishes a new planning balance between providing the housing needed and protecting the countryside and the identity of towns and villages. It is that new balance that is to be applied here.
- 4.20 Further advice is now available in the Planning Practice Guidance, issued on 6 March 2014. This guidance supersedes previous planning guidance documents. Household projections are just the starting point in estimating overall housing need and should be tempered by considerations relating to the relevance of past trends, market signals, future policies, employment projections and the like. In addition, the historic local delivery of housing is suggested as likely to be more robust if a longer term view is taken, capable of encompassing peaks and troughs in the housing market cycle. It is also asserted that any under-supply of housing should be dealt with in the first 5 years of the Plan, where possible: if that is not possible the 'duty to cooperate' should be invoked.

5. The Case for the Appellants

Introduction

- 5.1 There is a housing crisis in this country. That was made plain by the Planning Minister in a Parliamentary Debate on 23 October 2013¹. The solution is to build more houses. That prescription is now receiving weekly (sometimes daily) attention nationally and is the subject of speeches not only by the Planning Minister, but also by the Prime Minister, the Chancellor of the Exchequer, the Business Secretary and the Governor of the Bank of England². There is concern that the housing crisis is jeopardising the economy, expressed by the European Community, the OECD and the IMF³.
- 5.2 National planning policy (as set out in the Framework) gives a clear instruction to 'boost significantly the supply of housing'⁴. But the action required to do so at the local level has not been implemented. That is all too evident here.
- There is not a 5-year supply of housing land⁵, so that the housing policies of the Core Strategy are out of date⁶, a string of recent housing appeals have been lost⁷ and the Borough has accumulated a shortfall of over 600 dwellings (a requirement of about 1½ years) since the start of the Core Strategy period⁸.
 - It is accepted that the Council has a persistent record of under delivery, that the average annual housing requirement has been met only once in the last 7 years and that the provision outlined in the Core Strategy trajectory has failed to materialise⁹.
 - Neither of the 2 main housing allocations in the Core Strategy (at Barwell and Earl Shilton) have planning permission 5 years after the Plan was adopted and 8 years after the start of the Plan period; there is not even an application at Earl Shilton and at Barwell, although a permission was 'promised' for this April, the section 106 Agreement has remained unsigned for over a year and is now the subject of further consultation or renegotiation¹⁰.
 - The Site Allocations DPD, expected by the Core Strategy Inspector to be adopted in 2010¹¹, is still undergoing consultation with an examination currently planned for January 2015 and adoption in June¹².
 - Despite the significant and persistent problems with the 2 strategic sites, no aspect of the contingency plans, outlined in paragraph 4.12 of the Core Strategy and crucial to its 'soundness', have been implemented¹³.
 - The resultant dearth in the provision of affordable housing is now desperate. Instead of the annual requirement of 290 affordable homes identified in the SHMA up to 2012/13 just 68 have materialised leading to a substantial

¹ Document 22.2

² ID25

³ ID25

⁴ Section 4

⁵ Document 3

⁶ Section 4

⁷ Those at Britannia Lane, Workhouse Lane and Three Pots are at documents 25.23-25: the Groby decision was refused, but successfully challenged in the High Court, see documents 29.15 and 31.1

⁸ Document 24

⁹ Documents 3, 23, 29.5&6

¹⁰ Document 29 and evidence from Nic Thomas

¹¹ Document 29.4

¹² Documents 29.12 and 47

¹³ Documents 24 and 26

shortfall of 1,554 affordable dwellings. The latest finding from the emerging SHMA is that some 57% of projected demographic growth in the Borough is likely to require the provision of affordable housing¹.

- 5.3 The factors weighing in favour of the proposal were appropriately balanced by the professional officers in recommending the scheme for approval². That recommendation was made before the Council conceded in June that a 5-year supply of housing land could not be identified³ and before the proportion of dwellings offered as affordable units was increased from 30% to 40%, double that required by the operative planning policies⁴. Hence, the current balance in favour of the scheme must now be overwhelming. In those circumstances it may matter little whether the shortfall in the provision of housing land is modest, significant, serious or very serious. Nevertheless, if a different view is taken more detail might be necessary.

A full and objective assessment of housing need

- 5.4 The Core Strategy (2009)⁵ requires, in accordance with the then extant East Midlands Regional Plan (2009), 9,000 homes to be provided within the Borough over the 20 years between 2006 and 2026; that is an annual average requirement of 450 dwellings. The claim is that such a requirement is out-dated, being derived from a revoked Regional Strategy over 5 years ago and prior to the emergence of the Framework and the PPG. It cannot, therefore, reflect 'full and objective assessment of need', as advocated in the Framework, as set out in the PPG and as endorsed in Court of Appeal and High Court judgements⁶. Those defects remain, even though the Core Strategy is not revoked but extant and adopted, and even though the housing requirement is not constrained by Green Belt designations and the like, all in contrast to the circumstances pertaining to the judgements cited.
- 5.5 The PPG indicates that a full and objectively assessed estimate of housing needs should start with the latest household projections tempered by an analysis of past trends, market signals, future policies, employment projections and the like. This is the basis for the assertion that the requirement should be for 525dpa for the 20 years 2011-2031⁷ (a total of 10,500 dwellings, though a bit less than 7,900 dwellings over the 15 years 2011-2026) rather than the 450dpa used in the Core Strategy. This is derived from the 2011 trend-based household projections (which indicate a 'demographic' requirement for an additional 404dpa⁸) adjusted to reflect the guidance in the PPG. The main adjustments are based on:
- Evidence from the 2011 census, which indicates that there has been suppression in the formation of households headed by those aged 25-34 in relation to the trends seen in the 2008-based projections. An addition of 230 households is made to reflect the census estimate that there are about 124 concealed families in this age group within the Borough and the likelihood that

¹ Documents 21 and 23.11

² Document 25.1

³ Document 3

⁴ Documents 23 and 46

⁵ Document 46

⁶ Documents 27.41, 29.2 and ID33 *Court of Appeal Judgment in City and District of St Albans v SoS and Hunston Properties Limited [2013] EWCA Civ 1610*

High Court Judgment in Stratford upon Avon DC v SCLG and JS Bloor and Hallam Land Management [2012] EWHC 2074 (Admin)

⁷ Document 16

⁸ Document 17.6, table 2.3

there may also be twice as many single households in the same age group experiencing similar difficulties¹.

- Evidence from Experian, which indicates that an additional 600 jobs materialised in the Borough between 2010 and 2011 and that the Borough's share of the job growth expected within the SHMA might be of the order of 6,300 jobs. This compares with the 2011 trend-based projections, which indicate an annual fall in the working age population (16-64), thereby implying an evermore unsustainable commuting pattern unless housing provision is made to redress the imbalance. The emerging draft SHMA (2014) currently indicates a need for an additional 178dpa within the Borough than might be warranted by demographic projections alone to accommodate local economic growth up to 2036². Accordingly, adjustments are made in the trend-based projections to the 'working age' population (16-64 and the economically active over 65) to reflect employment growth³.
- Evidence that net migration into the Borough follows economic cycles, the annual average over the last 5 years being only 60% of that in the previous 5 year period⁴. In order to avoid estimates of housing need being constrained by the 'recent' economic recession, the net migration over the period 2003-2007 is increased by 3% to accommodate sufficient labour to meet economic needs that the trend-based projections might otherwise stifle⁵.

- 5.6 The estimated requirement of 525dpa is not subject to any planning constraints or to any emerging economic strategy⁶. Those are matters for a subsequent Local Plan process and perhaps for considerations relating to the 'duty to cooperate'. Hence, the estimate does not take account of the hopeful vision set out in the LEPs Strategic Economic Plan⁷. Nor does it specifically respond to evident market signals, even though the PPG advises that 'a worsening trend in any of these indicators will require upward adjustment to planned housing numbers'⁸. What those market signals illustrate is that there has been a very significant rise in house prices and a deterioration in the affordability of housing within the Borough (and in Burbage) over the long term⁹. The conclusion must be that if the market signals and the Strategic Economic Plan were to be taken into account, then the estimated housing requirement fully reflecting the objective housing need could, in reality, be very much greater¹⁰. On that basis the need to provide 525dpa is a very robust estimate.
- 5.7 In contrast, the Council's suggestion that the 2011 trend-based projections now show that the housing requirement should be just 416dpa takes no account of suppressed household formation or the need to address the anticipated growth in the labour force¹¹. It is, therefore, fundamentally flawed and not in accordance with current advice.
- 5.8 The latest 2012-based population projections for the next 25 years show a 6% reduction of the Borough population in 2021 compared to the 2011-based

¹ Documents 16, 18 and 19

² Document 19.3

³ Documents 16 and 19

⁴ Documents 17.6, table 2.6 and 19.2

⁵ Documents 16 and 19

⁶ Document 16

⁷ Document 19.4

⁸ At paragraph 020

⁹ Document 19

¹⁰ Document 19

¹¹ Documents 18 and 28

projections¹. However, the latest projections are based on recent trends (clearly influenced by recession) and they are considered to significantly under-estimate net international migration (that for 2013 being about 40% higher than forecast). Using assumptions commensurate with those used to derive the 2011-based household projections from the interim 2011-based population projections, results in a requirement for 410dpa, or 6,150 additional dwellings by 2026². That is very similar to the requirement of 404dpa to cater for the raw 2011 demographic trend-based addition in the number of households over the period 2011-2021³. Nevertheless, apart from the adjustments necessary to address the perceived shortcomings in the population projections themselves, further adjustments would be necessary to address the anticipated demand for labour and the worsening market signals evident in the Borough between 2002 and 2011⁴. Hence, the objective need for 525dpa must remain.

The 5-year housing land supply

Estimating the shortfall

- 5.9 The 5-year housing land supply for October 2013 (still the latest publicly available) indicated that there was then provision for nearly 5.9 years⁵. This was predicated on the residual requirement being spread over the remaining 12.5 years of the Core Strategy (the Liverpool method) with a 5% allowance 'for choice'. It assumed that about 720 dwellings would be delivered in the 2 'sustainable urban extensions' at Barwell and Earl Shilton, that commitments on large sites and small sites amounted to some 2,000 and 270 dwellings respectively and that sites identified in the SHLAA Review 2013 could accommodate 95 dwellings in urban areas and 8 homes in rural locations.
- 5.10 The assumptions underpinning the estimated provision are questioned, mainly due to disagreements on build rates, 'lead-in' times and an allowance for the non-implementation of permissions granted on large sites⁶. It is estimated that only some 420 dwellings would be delivered in the 2 'sustainable urban extensions' at Barwell and Earl Shilton, that commitments on large sites and small sites would amount to less than 1,800 and to 270 dwellings respectively and that sites identified in the SHLAA Review 2013 might accommodate only 22 dwellings in urban areas and 8 homes in rural locations⁷. Accounting just for those changes (but still adopting the Liverpool method and with a 5% allowance 'for choice'), there would be a modest shortfall in the housing required, the provision being sufficient for less than 4.8 years⁸.
- 5.11 However, in order to reflect the advice in the PPG that any under-supply should be addressed in the first 5 years (where possible – the Sedgefield approach) and that the provision actually achieved has met the annual average requirement just once over the whole operational period of the Core Strategy (the last 7 years), the requirement should be increased. First, a shortfall of about 630-650⁹ dwellings

¹ Document 19

² Document 19, table 1, page 17 and paragraph 3.15

³ Document 17.6, table 2.3

⁴ Document 19, paragraph 3.16

⁵ Document 25.16

⁶ Document 24

⁷ Document 24, page 52

⁸ Inspector's calculation

⁹ Document 24, paragraph 5.93 indicates the shortfall as 628 dwellings against the annual average requirement of the Core Strategy and document 26, paragraph 4.8 indicates a shortfall of 723 dwellings against the Core Strategy trajectory. The Inspector estimates the latter figure as 650, as at October 2013.

should be added to the 5-year requirement: second, that requirement should be increased by 20% to reflect the persistent under-delivery identified. As a result, sufficient housing land can only be identified to accommodate the housing required over the next 3.2 years¹.

- 5.12 It is no longer necessary to debate those differences. The Statement of Common Ground agreed in June acknowledges that a 5-year supply of housing land cannot be identified². The estimated shortfall varies, there being sufficient land to provide for the housing required over the next 4 years (for the Council) and over the next 3.2 years (for the appellants). The Council accept that an allowance for the non-implementation of permissions should be applied; from experience permissions on small sites are discounted by 11% and those on large sites by 4%. They also accept (particularly following the appeal decision at Stanton under Bardon³) that any current shortfall should be added to the 5-year requirement (the Sedgefield approach) and that a 20% buffer should be applied. Achieving the resultant requirement over the next 5 years would 'boost significantly the supply of housing', along the lines indicated in the Framework; the annual average provision necessary over the next 5 years would amount to about 760dpa. In contrast, the Liverpool approach would require provision for just 525dpa, albeit that that level of building would need to continue over the rest of the Plan period equating (coincidentally) to the full and objectively assessed housing need identified above⁴.

Addressing the shortfall

- 5.13 Any shortfall in the 5-year housing land supply requirement is unacceptable, particularly as the advice in the Framework is to take steps to 'boost significantly the supply of housing'⁵. The available supply accepted here is from 3 to 4 years⁶. Elsewhere (in the appeal at Brereton Heath) provision for 4.5 years was deemed to be both 'significant' and to give rise to 'serious concern'⁷. The shortfall here is greater.
- 5.14 Moreover, the serious concern that arises within the Borough is that, despite the 'strategic vision' being in place for 5 years, its implementation has failed and the tools to facilitate implementation are absent. The trajectory in the Core Strategy shows that of the 8,360 or so new dwellings to be provided between 2009 and 2026, 49% (4120) were to be built within the 2 'sustainable urban extensions' at Barwell and Earl Shilton⁸. Since about 2,600 of the required dwellings are denoted as 'commitments' or ascribed to developable urban sites⁹, and since the trajectory provides for over 650 more dwellings than the 9,000 required, the provision in the 'sustainable urban extensions' would amount to 82% of the 5,046 dwellings for which sites had to be identified over the duration of the Core Strategy¹⁰. The Strategy is thus heavily dependent on the delivery of the 2 'sustainable urban extensions'.

¹ Document 24

² Document 3

³ Document 27.42

⁴ Inspector's calculations

⁵ At paragraph 47

⁶ Document 3

⁷ Document 27.43, paragraph 13

⁸ Document 46, appendix 2

⁹ Document 46, table 1

¹⁰ Document 46, page 22 table 1 - the point is made in document 49 but with 'unadjusted' figures

- 5.15 As yet, however, not a single house has been delivered in either 'sustainable urban extension'. Neither site benefits from even an outline planning permission, let alone the approval of reserved matters; that at Barwell is mired in negotiations over a section 106 Agreement¹; that at Earl Shilton still awaits the submission of an application, in spite of optimistic assertions of delivery in February and March². And, although an Area Action Plan has been processed and is even now awaiting the outcome of consultation on proposed modifications, the evidence is that the consortium of developers at Barwell are now wishing to renegotiate the contributions set out in the section 106 Agreement³. The extension would require substantial infrastructure: planning policy would require 20% of the dwellings to be 'affordable'. It is already intended to provide only 10% of the units as affordable dwellings on the site with a contribution to the remainder being provided elsewhere⁴. The stalled progress would thus appear to indicate that without further adjustments the viability of the scheme could be jeopardised. It is acknowledged that it is hoped to resolve matters shortly⁵. But that has always been the case. The original trajectory envisaged 320 dwellings on the sites by 2014/15 instead of none⁶. And, even the current expectation of 100 dwellings at Barwell by 2015/16⁷ now looks optimistic, especially as the uncertainty at Barwell may well have knock-on effects at Earl Shilton. The Strategy of concentrating such a large proportion of new residential development on the edges of 2 industrial villages appears to be floundering due to market weaknesses and the requirements to provide both infrastructure and affordable housing.
- 5.16 At paragraph 4.12 of the Core Strategy alternative approaches are outlined to address any failure or under-performance. Failure of the 'sustainable urban extensions' to deliver the housing needed is to warrant a review of the Directions for Growth Report in order to identify an alternative 'preferred option'; that alternative is then to be the subject of further consultation. Although the 'sustainable urban extensions' must now be at least 3 years behind schedule and have failed to deliver 320 of the originally expected dwellings, a strategic review is not even mooted. Yet, the Inspector found the Core Strategy sound on the basis that just such an alternative solution would be put in place should there be any significant delay in delivering the proposed development at Barwell and Earl Shilton⁸.
- 5.17 The Inspector also considered that small scale shortfalls identified in the Annual Monitoring Report would need to trigger a review of those sustainable sites identified in the SHLAA⁹ and not prioritised for development through the Site Allocations and Generic Development Control Policies DPD¹⁰. The trouble is that no such document is yet in place. The current consultation version of the document is programmed to be examined in January 2015 and adopted in June, 5 years after the date intimated at the Core Strategy examination¹¹. Hence, although it is perfectly possible to identify sustainable sites from the SHLAA, the task of identifying additional sites to those in the Site Allocations DPD is impeded by the absence of an adopted

¹ Document 29.9

² Documents 29.10, HB1 and HB2

³ Document 29.8 and Nic Thomas' evidence

⁴ Document 29.9

⁵ Nic Thomas' evidence

⁶ Document 29.7

⁷ Document 29.5

⁸ Document 29.4

⁹ Document 25.19

¹⁰ Document 47

¹¹ Documents 29.4&13

document. In any case, no evidence is adduced to show that such an exercise has been attempted even in relation to the currently emerging version of the DPD. This undermines the credibility of the imminent 'step change' in completions indicated in the current trajectory as well as the ability to maintain it¹. The result is that the Strategy has been left to flounder and the safeguards sought by the Core Strategy Inspector have not been implemented.

- 5.18 A perfectly good 'sustainable' site not currently identified in the emerging version of the Site Allocations DPD was identified in the earlier Preferred Options incarnation of that document². The site included the appeal site and was rejected because of concerns over access and the green-field nature of the site. But with the access now secured from Welbeck Avenue, access from the A5, or through an industrial estate or over a narrow lane is no longer required. The main impediment then seen to this development is thus removed. As for the green-field nature of the site, it is self-evident that much of the housing in the Borough must utilise green-field land. And, several recent appeal decisions in Burbage have permitted residential development on green-field sites³. The Council should have made efforts to allocate such sites in implementing the approach to addressing housing shortfalls set out in the Core Strategy.

Affordable housing

- 5.19 The adopted Core Strategy requires 20% of the units in urban schemes of 15 dwellings or more to be 'affordable'. Yet the most recent evidence shows that there are 948 households registered on the Council's Housing Register almost immediately after a re-registering exercise⁴, of which over 300 have stated a preference for Burbage with 154 having a local connection to the place. Most seek a 1 or 2 bedroom property and 50% are in medium, high or priority need⁵. In contrast re-lettings from all the 730 affordable homes in Burbage amounted to just 30 over the 18 months from April 2012 to September 2013⁶. In the whole urban area (Burbage and Hinckley together) over 800 households seek an affordable home⁷.
- 5.20 Since 2006 a shortfall in the delivery of affordable housing in the Borough has accumulated amounting to some 1,554 dwellings compared to the target indicated in the SHMA (2008)⁸. It is thus not clear why the Core Strategy adopted a figure of 105dpa⁹, but the provision achieved lags below even that modest requirement, there now being a shortfall of some 259 affordable dwellings¹⁰. Over the 7 years up to 2012/13, just 476 additional affordable dwellings have materialised, an annual average of only 68dpa. Clearly, a step change in delivery is required to address both current and future needs. As things now stand, the likely supply of affordable homes would meet the identified needs for only 0.7 years (in relation to the SHMA) and about 2.8 years (in relation to the Core Strategy)¹¹.

¹ Document 29.7

² Document 25.12

³ Documents 25.23-26

⁴ ID30

⁵ ID32

⁶ Document 22.4

⁷ ID30

⁸ Document 21, Figure 4.9

⁹ Document 23.10 emphasises that a 'sound' Development Plan must seek to meet full objectively assessed housing needs for market and affordable housing

¹⁰ Op cit

¹¹ Document 21, Figure 4.11

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- 5.21 The latest finding from the emerging SHMA is that some 57% of the projected demographic growth in the Borough is likely to require the provision of affordable housing¹, with an annual requirement of 245 dwellings over the next 25 years. This demonstrates an ongoing need for a substantial provision of affordable housing in the HMA and the Borough.
- 5.22 The proposal has been revised to address those needs. The affordable housing offer has been increased from 30% to 40% and would provide up to 54 affordable dwellings, 55% for rent and 45% as 'intermediate' properties. There would be a predominance of 2-bedroom homes in the intermediate category, thus providing 'starter homes' and contributing to the creation of a balanced community. Given the relatively high levels of owner occupation in Burbage, the low level of social housing and private rented accommodation, the scheme would increase the housing and social mix of the place. And, the provision of 6 bungalows would cater for the high proportion of elderly people in Burbage².
- 5.23 The Council's claim that further affordable housing is not needed, due to the role of the private rented sector and the provision of future commitments³, is rejected. This ignores the scale of the problem, the suggestions in the emerging SHMA (2014) and the specific defects of private rented accommodation⁴. But, although the private rented sector can serve as a valuable 'stop-gap', it does not offer the security of tenure inherent in some form of ownership and valued by families and endorsed by Government's objective to encourage and widen home ownership⁵. Nor is it the same as 'affordable rented housing' where provision by local authorities or Registered Social Landlords is offered with many safeguards.

The impact of the scheme

- 5.24 The 3 reasons for refusal allege harm to the amenities of residents from the additional traffic generated by the proposal and especially to those living beside the proposed access road; they also identify harm to the landscape and intrinsic beauty of the countryside⁶.

Residential amenity

Traffic

- 5.25 The access is designed to conform to the relevant local guidance⁷, subsequently refined to minimise the impact on the lime tree avenue and to incorporate additional safety features; it is 5.5m wide with a 2m wide footway on the northern side and 2 'traffic-calming' build-outs and it runs between 2 landscaped strips some 4-5m wide⁸. Contributions are made towards improvements to the bridleway, bus stops and a Travel Plan would be prepared⁹. As a result, the Highway Authority raises no objections and the assessment in the committee report states that *'it is unlikely that any future relationship between the proposed dwellings and the existing properties would compromise the private amenities of existing occupiers'*¹⁰. However, the second reason for refusal asserts that the amenities of residents would be harmed

¹ Documents 21 and 23.11

² Documents 21 and 49, also section 4

³ Document 28

⁴ Some identified at document 22.2

⁵ The Framework paragraph 50

⁶ Document 2

⁷ The 6Cs Design Guide

⁸ Documents 13 and 13.1

⁹ Document 5

¹⁰ Document 25.2

by the additional traffic generated by the proposal. Hence, that assertion is tested against the potential traffic impact on community severance, driver delay, pedestrian delay, pedestrian amenity, fear and intimidation from traffic, highway safety, the carriage of hazardous loads, dust and dirt, ecological effects and heritage effects derived from the Institute of Environmental Assessment guidance¹.

- 5.26 The additional traffic generated by the scheme is estimated to amount to a 2-way flow of just 74 vehicles during the peak hour and barely 750 a day, of which 47 are expected between 23.00hrs and 07.00hrs. Peak hour flows would thus entail little more than 1 vehicle per minute at the access road with traffic dispersing fairly evenly to the north and south along Welbeck Avenue and thence through the estate to Wolvey Road; the agreed distribution indicates that 50% might use Brockhurst Avenue (resulting in roughly 1 extra vehicle every 2 minutes), 40% might traverse Beechwood Avenue (resulting in less than 1 extra vehicle every 2 minutes) and 10% might negotiate Newstead Avenue (just 1 extra vehicle every 8 minutes or so). Total peak hour flows would thus increase from 20 to 64 vehicles along Welbeck Avenue, from 37 to 74 vehicles along Brockhurst Avenue, from 40 to 74 vehicles along Beechwood Avenue and from 79 to 86 along Newstead Avenue².
- 5.27 The surveys of the existing flows were agreed with the Highway Authority and corroborated subsequently by surveys undertaken in response to residents' concerns³, ultimately unsubstantiated, that the initial counts had been affected by 'traffic lights' on Wolvey Road⁴. There had been no recorded personal injury accidents in the previous 5-year period on the local road network⁵. The impact of the additional traffic on the capacity and congestion of the local road network was then subject to detailed junction assessment modelling and percentage impact appraisal⁶; it was agreed with the Highway Authority that the impact was 'not significant'.
- 5.28 With such modest traffic flows even large percentage changes do not signify a harmful impact. For example, the 'guidelines' suggest a 2-way hourly flow 1,400 vehicles may entail a 10 second delay to pedestrians in crossing the carriageway⁷. Here flows are some 20-fold lower with safe, quiet, suburban streets accommodating 1 extra vehicle every 1-2 minutes once the scheme is in place. Hence in general, the impact on community severance, driver or pedestrian delay, pedestrian amenity, fear and intimidation from traffic, highway safety, dust and dirt would barely be noticeable, let alone result in any meaningful impact.
- 5.29 The one place where that conclusion might not apply would be in relation to the 2 dwellings beside the new access at 9 and 15 Welbeck Avenue. The proposal would transform those dwellings into corner properties, albeit on the corner of 2 very lightly trafficked streets⁸. However, there would be scope to ameliorate that impact by the installation of boundary treatments and the implementation of landscaping within the generous roadside verges. As a result, the impact should not be unacceptable⁹.

¹ Document 13

² Document 13, paragraphs 6.2.5-9 and document 13.2

³ Concerns are also set out in documents 35, 36 and 38-40

⁴ Document 13

⁵ TA at paragraph 2.3.2, on disc 1

⁶ TA, on disc 1

⁷ Institute of Environmental Assessment guidance and document 13

⁸ Document 39

⁹ Document 13

- 5.30 Once built, HGV movements generated by the scheme would be likely to consist of the weekly refuse vehicle and the sort of deliveries typical on any modest housing estate. During construction it is estimated that 2-way flows of HGVs might average about 10 per day. The potential impact of that traffic would be ameliorated by the implementation of a Construction Management Plan, controlling routes, timings, parking, wheel washing and the like. And, although the worst effects would be evident beside the access road, those should be minimised through exercising the arrangements and controls available through that Plan¹.
- 5.31 It follows that the traffic generated by the scheme would not impinge unacceptably on the amenities of residents and that the proposal would not contravene the requirements of policy BE1 on those grounds.

Noise

- 5.32 The additional traffic generated by the scheme would result in some additional noise. To estimate that impact, the change in L_{Aeq} noise levels for daytime and night-time periods is derived by comparing the measured noise of an individual event (in this case a passing car) 'summed' over the total estimated events with and without the development in place². Noise levels at the dwellings in Welbeck Avenue to the north of the access are estimated to increase by $L_{Aeq, 16hr}=4.9dB(A)$ during the day and by $L_{Aeq, 8hr}=4.7dB(A)$ at night: those to the south of the access by 3.8dB(A) and 3.6dB(A), respectively: those in Beechwood Avenue by 2.2dB(A) day and night, in Brockhurst Avenue by 2.8dB(A) day and night, and in Newstead Avenue by 0.4dB(A) and 0.3dB(A), respectively³. Since an increase of 3dB(A) is usually the minimum perceptible change under normal conditions, the increased traffic noise likely to be experienced in Newstead, Brockhurst and Beechwood Avenues would be imperceptible; even the increased noise affecting the dwellings on Welbeck Avenue to the south of the access would barely be perceptible. The increase experienced at the dwellings to the north of the access would be perceptible, but it would only be perceived as 'minor' change. At night, the L_{Amax} noise levels would not change as there would be no obvious reason why noise from existing passing vehicles should be any less than the noise from the vehicles of prospective residents. Hence the claim that the traffic likely to be generated by the scheme would unacceptably impinge upon the amenities of residents in Welbeck, Newstead, Brockhurst and Beechwood Avenues, is unfounded and the scheme would not be contrary to the requirements of policy BE1 on that score⁴.
- 5.33 The third reason for refusal relates to the 2 dwellings either side of the access at 9 and 15 Welbeck Avenue⁵. The former is a house with windows to the front and rear, but with a blank façade facing the access road: the latter is a bungalow with windows in the front, the rear and in the elevation facing the access road. The noise at the rear of No.9 is estimated as 41dB(A) during the day and 40 dB(A) at night with an L_{Amax} of 65dB(A): the noise at the side of No.15 is estimated as 40dB(A) during the day and 32dB(A) at night with an L_{Amax} of 57dB(A)⁶. These noise levels are low. They would result in an L_{Aeq} within rooms and in garden areas well below the recommended levels in the WHO guidelines. They would also be well below the existing levels of traffic noise emanating from the A5. The L_{Amax} level for No.9 would exceed the WHO guidelines, but that is common for most dwellings in any built up

¹ Document 13

² Document 10

³ Document 10, table 1

⁴ Document 10

⁵ Document 2

⁶ Document 10, table 2

area within the UK. Hence, use of the access road would not have an unacceptable impact on adjacent residents. And, indeed, the Environmental Health Officer raised no objection to the scheme on the grounds of noise disturbance¹.

- 5.34 On the contrary, the scheme is likely to have a beneficial effect on the traffic noise experienced by several local residents. It would entail the provision of a noise barrier along the A5. And, although required for the proposed development, both the barrier and the presence of the new dwellings would serve to reduce the sound of that traffic, particularly in relation to the properties on the west side of Welbeck Avenue, including nos.9 and 15².

Landscape

- 5.35 The first reason for refusal asserts that the scheme would have an adverse urbanising effect on the landscape, harming the intrinsic character and beauty of the countryside contrary to the requirements of 'saved' policy NE5³. It is accepted that the scheme would breach the policy and lie beyond the settlement boundary. But, that boundary is identified only in the adopted Local Plan 2001 and it was intended to identify the limits of development only up to 2006, some 8 years ago⁴. No revision has yet taken place even though the Core Strategy has been adopted and even though that document identifies Burbage as part of the Hinckley sub-regional centre⁵. The Allocations DPD remains absent and the settlement boundary has clearly not been re-defined to address present needs. In those circumstances, conflict with policy NE5 should be given significantly less weight⁶. Moreover, as the policy also restricts the supply of housing land it is, self-evidently, relevant to the supply of housing. As a 5-year supply of housing land cannot be demonstrated⁷ then, by virtue of paragraph 49 of the Framework, the policy must be out-of-date 'to the extent that it relates to the supply of housing'. That stance has been followed by the Secretary of State and has been supported by the Courts⁸. Diminished weight has also been attributed to policy NE5 in the Three Pots decision, though for the rather different reason of 'importing' an out-dated blanket protection of the countryside 'for its own sake' rather than 'recognising its intrinsic character and beauty'⁹. For all 3 reasons, the weight accorded to policy NE5 should be significantly reduced.
- 5.36 Of course, the first reason for refusal explicitly refers to 'the intrinsic character and beauty of the countryside' and the diminished weight properly accorded to policy NE5 does not condone a house-building free-for-all in the open countryside¹⁰. It is accepted that some harm would be caused by the development of this green-field site. But the significance of such harm is limited¹¹. The land is not designated as anything more than 'open countryside'. It is not part of a Green Belt, AONB or National Park: it is not identified as a protected 'local landscape' or as an 'area of separation', such as a 'green wedge': no part of it is singled out as 'important for nature conservation' on a European, national or even local basis. Sketchley House is

¹ Documents 10 and 25.1

² Document 10

³ Document 2

⁴ Document 25.10

⁵ Document 46, paragraph 4.24

⁶ Document 25.28, paragraph 17

⁷ Document 3

⁸ Document 25.30

⁹ Document 24, page 29 and document 25.25

¹⁰ Document 49

¹¹ Documents 2 and 24 set out the lack of constraints, see also section 4

oddly interesting, but it is of no particular distinction; it is not Listed either nationally or locally, nor is it Scheduled as a heritage asset. There is no Conservation Area anywhere near the site and the only protection for the 'degraded parkland' is an 'area-based' TPO, now somewhat 'long in the tooth'. In contrast, policy 4 of the Core Strategy seeks to protect and preserve the 'open landscape to the east, which provides an important setting to the village' and it aims to 'enhance the landscape structure which separates the village from the M69 corridor'¹. Given that Hinckley lies to the north of Burbage, the lack of protection afforded to the appeal site and the land to the west would appear to make this the only location to accommodate a development of the scale proposed or, indeed, any expansion required to the settlement.

5.37 Moreover, the landscape characteristics of the site and the careful design of the scheme serve to reduce the impact of the proposal still further². Analysis of the 'zone of visual influence' demonstrates that³:

- the visual envelope is restricted due to localised variations in topography, existing vegetation and the edge of Burbage; the hedges and trees along the A5 corridor confine the site behind a strong southern boundary, separating it from the open countryside to the south west;
- views are available from the public bridleway, but they are relatively enclosed due to intervening vegetation and the lime tree avenue; there are only glimpses across the Anker Valley and the site is partially confined by the existing buildings on Sketchley Lane, including Elms Farm and the commercial development to the west;
- the site is screened from the vast majority of properties within Burbage by vegetation and fencing beside the lime tree avenue, although it can be glimpsed from some properties on Welbeck Avenue, Belfry Close and Troon Way;
- a short stretch of the A5 offers views of the site filtered through the boundary hedgerows and trees;
- the site is not readily evident in the wider landscape or from the network of footpaths and roadways across the countryside to the west, due to the topography and the intervening vegetation, but the lime tree avenue is a notable landscape feature evident on the sky-line in some views.

5.38 The scheme has been honed to reflect and complement the characteristics of the site⁴. The master-plan has been worked up into an 'illustrative proving layout' which demonstrates the feasibility of incorporating the parkland character, protecting the good quality trees and providing a unified green infrastructure. In particular:

- all trees worthy of retention would be retained within the green infrastructure;
- the lime tree avenue and bridleway would be retained and enhanced with a landscaped buffer; the new dwellings would face the lime tree avenue in order to enhance passive supervision;
- the access would cross the bridleway at only one point;
- the main route through the scheme would create an attractive gateway from Welbeck Avenue; retained trees would serve as focal points along this route;
- the green infrastructure would provide an integrated multi-functional resource offering recreation and enhancing biodiversity; footpaths, play facilities, new planting, swales and attenuation basins would all be incorporated in the green

¹ Document 46, page 36

² Documents 14 and 15, see also the D&A on disc 1

³ Document 14.3, in particular

⁴ Document 14, see also the D&A on disc 1

infrastructure, to be secured by a 'green infrastructure biodiversity management plan' required by condition;

- noise from the A5 would be ameliorated by the introduction of an acoustic fence with new planting reinforcing the existing vegetation and thereby benefiting the local community;
- the setting of Sketchley House would be enhanced by the landscape proposals;
- the verdant characteristics of the southern and western edges of the site would be enhanced by the green infrastructure providing a pleasant transition between the estate and the open countryside;
- the resulting low density of development (up to about 18.5dph) would be appropriate at this edge of the settlement; the 'proving layout' would accommodate 127 homes within the maximum of 135 dwellings sought.

5.39 The professional assessment of the scheme demonstrates that in terms of urban design and environmental matters it is supported. The committee report and consultation responses indicate that¹:

- no objections are raised by the Environment Agency or Natural England;
- the low density is warranted by the characteristics of the site, its 'parkland appearance', the retention of many trees, the rural character of the surroundings, the visual separation from Welbeck Avenue, the provision of open space and the landscaped 'buffers' beside the A5 and the western boundary; hence, the key test required by policy 16 of the Core Strategy is met;
- the scheme would not seriously affect residential amenity due to the natural visual barrier of the lime tree avenue and a 30m separation distance between any new and existing dwelling; hence, subject to future approval of the reserved matters, the scheme would accord with 'saved' policy BE1;
- no serious ecological impact is identified and the potential to enhance long term biodiversity and public access to open space (where none is currently available beyond the bridleway) is recognised; the 'green infrastructure biodiversity management plan' would provide a mechanism to arrest the decline of the 'parkland', which might otherwise continue;
- although the loss of the site and a limited number of trees would be harmful, such damage would be perfectly acceptable, given the benefits and quality of the scheme.

5.40 In contrast the Council now offer no proper landscape and visual impact assessment, nor even a critique of such evidence presented for the appellant, to support their assertion that the scheme would seriously impinge on the landscape and be visually damaging². The fact that the site is visually well contained, that nearly all the trees are to be retained and extensive areas of public open space provided are all but ignored by the Council. Such a partial assessment should be rejected.

Ecology

5.41 There is no ecological reason to prevent this development. Neither the Council nor the County Ecologist raises ecological objections to the scheme³. Moreover, there has been extensive consultation with both throughout the determination of the application and during the appeal process. The information and surveys submitted have been undertaken in accordance with the appropriate professional guidelines; it has been deemed to be satisfactory throughout and where it has raised specific

¹ Document 25.1

² Documents 30 and 32

³ Documents 53 and 54

queries or additional questions, further work has been undertaken to provide the necessary answers. Based on all that information, the professional advice has always been that, subject to appropriate conditions, planning permission could be granted without serious harm to the nature conservation interests evident on the site.

5.42 The consultation response to the initial Ecological Appraisal raised one or two queries, which were resolved through a site meeting in September, as confirmed by a formal response in October¹:

- uncertainty about the location of a badger sett was resolved by identifying it as an 'outlier' sett in an adjacent garden that would be unaffected by the scheme;
- the quality of the hedgerows was established by additional survey data, though the 'proving layout' demonstrated that they would be retained;
- some uncertainty about the provenance of the black poplars was allayed by identifying their shape and the form of their crown as likely to be typical of hybrid specimens;
- clarification of the Leisler's bat record was addressed in subsequent surveys using static detectors;
- the quality of the parkland was found to be insufficient to qualify as a Local Wildlife Site, the grassland largely being 'species poor semi improved' habitat and only 3 mature trees (411, 413 and 415) meeting the relevant criteria; just one of those trees would be removed, but its removal would be for 'health and safety' reasons;
- doubts about whether the noise barrier beside the A5 would provide scope to retain the hedgerow on the southern boundary was allayed by the 'proving layout' showing retention of the hedgerow with the noise barrier installed to the north, along with additional planting of native species.

5.43 Further survey work was undertaken to cover seasonal variations. The results were included in the updated Ecological Appraisal² and entailed:

- static detector surveys completed in the summer and autumn to confirm the level of bat activity;
- autumn bat activity surveys involving transects across the site;
- tree climbing and inspection to confirm the presence or absence of bat roosts in the mature trees scheduled for removal.

5.44 The results of this additional survey work were not submitted until 16 April 2014. The consultation response from the County Ecologist (May 2014) indicated again that there was no objection to the scheme on ecological grounds and that the line of mature lime trees provided the main corridor of movement for bats within the site³. Nevertheless, clarification was sought and provided⁴ relating to:

- the high levels of bat registrations recorded by the static detectors, which could be from an individual bat triggering the detector constantly or a number of bats each triggering the detector occasionally; by comparing that information with the results of the transect survey (as suggested in the Bat Survey Guidelines) the likelihood was that the September recordings were due to a small numbers of bats foraging or commuting past the static detector; as the relevant boundary would be retained and enhanced, no significant effect

¹ Document 54, in particular documents 54.1-9

² Document 54.5

³ Document 54.9

⁴ Document 54

would be likely; the County Ecologist responded in June 2014 that the results did not support a bat roost close to the site and no objection was raised to the intended scheme¹;

- the need for further nocturnal survey work and additional roost surveys; further surveys were undertaken in May and June 2014 and did not indicate the presence of a bat roost and the County Ecologist indicated in July 2014 that no further comments were necessary².

- 5.45 As for the additional ecological concerns raised by the 'action group' and local people³, they are either unfounded or misconstrued⁴. So, although the arboricultural surveys were undertaken in February, they were undertaken by a qualified and professional arboriculturalist capable of assessing the health and condition of trees at any time of the year. They were barely over 12 months old at the start of the Inquiry. Moreover, the results would not be 'invalidated' or 'expired' by the intervening interval, though they would need to be reviewed if planning permission were granted and would, in any case, be the subject of a detailed condition⁵.
- 5.46 It is claimed that the grassland is of conservation value⁶. But that cannot be assessed by adding up the number of indicator species identified. The indicator species must relate to a particular grassland habitat, with its own particular characteristics and be present at a specified minimum level of 'abundance'⁷. So, the fact that 10 indicator species may be present from the combined lists relating to 'mesotrophic' and 'wet' grassland does not mean that the site is anything other than 'species poor'. It is not 'wet' grassland because it is not 'seasonally flooded', a key qualifying criteria. It is not mesotrophic grassland of conservation quality because thorough surveys undertaken in June (entailing a systematic walk-over of the site and the area within 10m of the site margins, as well as surveys of 20 controlled quadrats) identified only 6 indicator species and only 4 with a cover abundance of 'occasional' or greater. Those results must imply that the 3 additional species identified by local people occur⁸, at best, only 'rarely'. If they are present, then only 9 indicator species would be recorded and the site would still fail to reach the 10 indicator species required to qualify as a 'local wildlife site'. It should be classified as 'species poor semi-improved grassland', a view supported by the County Ecologist throughout and in her review of the ecological submissions from local people⁹.
- 5.47 It is also claimed that significant breeding bird assemblages are present within the site and that it would qualify as a 'local wildlife site' with a score of 44¹⁰. But, again, the selection criteria have been misconstrued¹¹. First, simple sightings are not sufficient; the presence of a significant population of a particular species should be evident (defined as 10% of the usual range of occurrence): second, the population should be established (defined as recorded in significant numbers on at least 5 occasions within the last 15 years). There is no evidence that those criteria are met and hence the site does not qualify as a 'local wildlife site' in relation to breeding bird assemblages.

¹ Document 54.13

² Document 54.13

³ Documents 37, 38, and 52.2-4

⁴ Document 54

⁵ Document 54.11

⁶ Document 42.3

⁷ Document 54 and 54.12

⁸ Document 42.3

⁹ Document 54.13

¹⁰ Document 42.4

¹¹ Document 54.14

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- 5.48 No objection from Leicestershire and Rutland Wildlife Trust materialised until 23 June 2014¹. The Trust now claims that the scheme may result in:
- harmful effects on protected species;
 - the loss of wildlife habitats including grassland and mature trees which may qualify as a 'local wildlife site' and damage an interesting mosaic of habitats such as grassland, rough grassland, scrub, woodland hedgerow and mature trees;
 - the loss of hedgerows and mature trees, with harmful effects to other fauna.
- 5.49 Comprehensive surveys were undertaken in 2013 and 2014. These included protected species. There were surveys of badgers, great crested newts, reptiles, breeding birds, potential bat roosts (involving climb and inspect surveys of mature trees and nocturnal surveys) and bat activity. And, there were additional surveys in May and June 2014 involving nocturnal bat roosts and both walk-over and quadrat botanical surveys².
- 5.50 No evidence of badger activity was identified, although a single outlier sett was located within the curtilage of Sketchley House that would be unaffected by the scheme. Moreover, the surveys confirmed that the site does not provide a foraging resource for the local badger population. No evidence of great crested newts or reptiles was identified within the site. A small number of notable bird species characteristic of the grassland, hedgerow, scrub and mature tree habitats were found on the site and surrounding area, but exceptional populations were not confirmed. In any case, it is unlikely that the scheme would significantly affect the local breeding bird population as the hedgerows and mature vegetation are to be retained with enhancements for breeding birds. No bat roosts were identified, though bat boxes on retained trees would be provided to increase potential roosting opportunities for bats. The activity and static detector surveys did not identify significant levels of activity. And, as the boundary habitats would be retained and a sensitive lighting scheme implemented, the impact on the local bat population would be negligible. Indeed, the additional landscaping and biodiversity management plan would increase habitat diversity and enhance the foraging value of the site. Hence, the proposal would not adversely affect any protected species³.
- 5.51 Nor would the scheme affect any habitat that might qualify as a 'local wildlife site'. The grassland would not meet the criteria to qualify as mesotrophic or wet grassland: the only mature tree of sufficient quality that would be felled would be lost because it is in declining health and its removal required for health and safety reasons: other habitats, such as the hedgerow, scrub and woodland are only of local value and would largely be retained. Moreover, the mitigation proposed would involve the planting of native species, the creation of wetland features and the retention of grassland, all to be managed to enhance biodiversity. Boundary hedgerows and the vast majority of the mature trees would be retained, thereby safeguarding important components in the mosaic of habitats on the site⁴.
- 5.52 Hence, there can be no ecological grounds to prevent the scheme.

¹ Document 42.3

² Document 54

³ Document 54

⁴ Document 54

The planning strategy

- 5.53 The Development Plan is now the Hinckley and Bosworth Core Strategy (2009) and the 'saved' policies of the Hinckley and Bosworth Local Plan (2001)¹. The former indicates that most new homes are to be provided in the 'Hinckley sub-regional centre', consisting of Hinckley, Burbage, Barwell and Earl Shilton. Burbage is thus part of the only 'sub-regional centre' within the Borough and, as such, it is intended to support the 'underperforming' centre of the town².
- 5.54 The Strategy seeks to focus development on the one sub-regional centre in the Borough, consisting of Hinckley, Burbage, Barwell and Earl Shilton³. About 82% of the dwellings then still to be provided over the Plan period were to be within the 2 'sustainable urban extensions' at Barwell and Earl Shilton; land for some 1,120 dwellings was to be found in Hinckley and a 'minimum' of 295 dwellings were to be built in Burbage itself, largely to the north of the settlement 'adjacent to the Hinckley settlement boundary'⁴. The Strategy is thus heavily dependent on the delivery of the 2 'sustainable urban extensions'.
- 5.55 In contrast the allocation for residential development in Burbage appears to be substantially less than in the other 3 settlements that form the 'sub-regional centre'. Initially, that was the case; the 'examination' version of the Core Strategy simply included the figure of 295 as an allocation. However, the Inspector amended policy 4 to ensure that such a figure would be a 'minimum', thereby removing a potential numerical ceiling to the dwellings that might be accommodated in Burbage over the Plan period⁵. And, since the soundness of the Plan depends, in part, upon the removal of that potential restriction, the claims that the provision in Burbage is now nearly met⁶ or that the appeal proposal would significantly exceed the strategic intension⁷, are without foundation.
- 5.56 The dependence of the Strategy on the 'sustainable urban extension' makes it vulnerable to any failure to deliver the dwellings expected there. As indicated above, that is exactly what has occurred. Not only have none of the expected dwellings in Barwell and Earl Shilton yet materialised, but also unexpected impediments have (and will) lead to further delays⁸, thereby significantly reducing the likely contribution of the 2 'sustainable urban extensions' to the provision of housing achieved over the Plan period. The Core Strategy includes mechanisms to address such failure. Essentially, failure of the 'sustainable urban extensions' is intended to be addressed by revisiting the 'Directions for Growth' report and, subject to further consultation, deriving an alternative strategy⁹. No evidence is adduced to show that such a course of action is even mooted. And, even if there was, the preparation of a new a strategy and its evolution through appropriate consultation would be unlikely to deliver the housing land required very soon.

¹ Documents 25.10&11

² Document 46, paragraphs 3.1 and 3.17

³ Document 46, page 30

⁴ Document 46, policy 4 and the trajectory in appendix 2

⁵ Document 24

⁶ HB4

⁷ Document 48

⁸ Evidence from Nic Thomas

⁹ Document 46, paragraph 4.12

- 5.57 The second mechanism applies when annual monitoring detects small scale shortfalls in the provision of the housing required and is intended to trigger a review of the sustainable sites identified in the SHLAA not prioritised for development in the Site Allocations DPD. But, the DPD is not yet in place and no evidence is adduced to show that even a 'review' of sites identified in the SHLAA but not in the emerging Site Allocations DPD is imminent¹.
- 5.58 In those circumstances, there can be very little scope for addressing the shortfall in the required housing provision other than to consider the merits of particular proposals². A key factor in favour of the appeal proposal is that it accords with the Core Strategy, as far as possible. First, the appeal site is adjacent to Burbage and thus on the edge of part of the 'sub-regional centre', where new residential development is to be focussed. Second, it accords with policy 4 in not impinging on those areas specifically identified for protection or landscape enhancement. The policy aims to 'protect and preserve the open landscape to the east which provides an important setting for the village' and 'enhance the landscape structure which separates the village from the M69'. Hence, the one area where additional development might be possible is the land to the west, just where the appeal site is located³.
- 5.59 The reluctance to accommodate more housing in Burbage has led to the creation of an increasingly exclusive and elderly community, undermining the exhortations of the Framework to provide the 'homes, business and industrial units, infrastructure and thriving local places that the country needs' or to 'promote mixed use developments'. The Core Strategy indicates that Burbage has a greater proportion of older people than the rest of the Borough and fewer people who are economically active⁴. This has been exacerbated by the lack of recent development. Between 2001 and 2011 the number of people in all age groups below the age of 44 fell while the number of residents aged over 60 increased substantially⁵. This is symptomatic of an increasingly imbalanced and unsustainable community fuelled by a substantial rise in house prices that favours the elderly (benefitting from 'ownership') and shuts out the young from the property market⁶. Yet, the residents who object to this scheme live on land which was once green fields developed to house a growing population in the 1950s⁷. The appeal proposal should be seen as a revival of that same process⁸. Moreover, it would address needs identified in the SHMA (2008) and in the emerging document. The former identifies the need to very significantly increase the level of affordable housing and provide bungalows for the elderly: the latter recognises the need for affordable housing (57% of demographic growth) and the role bungalows could play in making better use of the available housing stock⁹.

¹ See the section on the 5-year housing supply, above

² Document 24

³ Document 24 and 49

⁴ Document 46, paragraph 4.22

⁵ ID14 – the number aged 20-24 fell by 14%, 24-29 by 23% and 30-44 by 10%: those aged 60-64 increased by 50%

⁶ Document 23, page 5: though what the graph actually shows is that the rise in house prices is associated with the reduction in house building (from around 250,000 annually between 1953 and 1977 to about 150,000 since about 1982, due to the demise of Council house building and the on-set of the 'right to buy') coupled with the sharp practises of banks and building societies perpetrated from about 2000

⁷ Document 30

⁸ Document 49

⁹ ID9, paragraph 5.23 indicates that bungalows are very frequently expressed as an aspirational form of housing for the older age group; and, at 6.120, it recognises that although 'currently anathema to crudely applied planning density requirements, bungalows are the traditional housing aspiration of older households, and could tempt more under-occupying households out of their large accommodation, which would improve stock utilisation more than higher density new building'

The merits of the scheme

- 5.60 The proposal is located in the right place for new housing¹. The location accords with the Core Strategy in being adjacent to part of the only 'sub-regional centre' in the Borough where new residential development is to be focussed and in a position that would not impinge on the areas to the east and south specifically identified for protection or landscape enhancement, respectively². But the scheme would offer much more³:
- There would be double the required provision of affordable housing; instead of 20% of the units being affordable, 40% would be provided on that basis. Such a high level of provision would be achieved precisely because Burbage is a popular location and land values in the area would be capable of supporting the offer. This is a matter to which the Secretary of State has consistently attached substantial weight⁴. And, it would address one of the most pressing housing problems in the Borough.
 - The proposal would result in low density development with one third of the site laid out as public open space accessible to both prospective and existing residents. That is far in excess of the standards normally applied. Moreover, most of the major trees would be retained. Such provision, together with the landscaping proposed, would create a very high quality scheme. National planning policy no longer seeks to encourage higher density development, although it does advocate the pursuit of high quality schemes and good design. The provision of family houses with gardens set amongst extensive areas of open space should prove attractive to young families and thus help to rectify the growing imbalance in the population of Burbage.
 - The proposal would entail a genuine mix of housing, by tenure, type and size. In particular it would contain bungalows, the absence of which in many new developments is of concern to the Secretary of State⁵; there would also be 8 flats with 1 bedroom, which could offer accommodation attractive to elderly residents.
- 5.61 The merits of the proposal were recognised in the committee report⁶. Clear conclusions derived from that professional assessment include:
- The provision of affordable housing substantially exceeds the 20% minimum requirement (now even more so);
 - In the absence of evidence to demonstrate that the residual housing requirement for Burbage could be delivered on 'previously developed land' within the settlement boundary, green-field sites conforming with policy 4 of the Core Strategy would need to be identified;
 - The appeal site was identified as a potentially suitable site under 'Alternative Option 3' for Burbage within the Site Allocations DPD 2009, but rejected due to access problems; the proposal overcomes those access problems;
 - the Site Allocations and Development Management Policies DPD is not programmed to be adopted until 2015 and prematurity is not a reason in itself to refuse planning permission;
 - The principle of development is in accordance with the Core Strategy and the intentions of the Framework;

¹ Document 49

² Document 46

³ Section 4

⁴ Documents 22.4-9 and 23.10&13

⁵ Document 23.14

⁶ Document 25.1

- The site occupies a sustainable location and benefits from good access to local shops, services, public transport, employment areas and community facilities;
- There would be almost no impact on capacity that the junction between the B4109 and M69 and the Highway Authority would not recommend refusal;
- The intention to improve bridleway U67 between Watling Street and Sketchley Lane and to provide a pedestrian link to the A5 would be secured through the section 106 Undertaking and by condition, thereby improving permeability through the site and encouraging more sustainable transport modes;
- The parking arrangements would generally accord with 'saved' policies T5, T9 and BE1, as well as the guidance of the Framework;
- Although the density would be low, it would be warranted by the aim to retain some of the parkland appearance and most of the attractive trees, thereby retaining the rural character at the edge of the settlement;
- Subject to the approval of reserved matters the scheme would not impair residential amenities and would comply with policy BE1;
- The mix, tenure, amount and clustering of the affordable housing would be appropriate and welcomed in helping to address the needs of those on the housing register;
- The removal of just 2 lime trees from the lime tree avenue would not alter the general character and appearance significantly;
- The benefits of significantly contributing towards the residual housing numbers in Burbage and the identified need for affordable housing would outweigh the harm caused by the loss of the two lime trees and the environmental impact of the scheme.

5.62 Those professional assessments were made when the Council believed it could demonstrate a 5-year supply of housing land and when only 30% of the units were offered as affordable dwellings¹. Now that it is acknowledged that a 5-year supply of housing land is unavailable² and that the proportion of affordable units offered would be increased to 40% the scales must have tipped yet further in favour of the allowing the scheme.

The planning balance

5.63 The delivery of housing to address the agreed shortfall in the 5-year housing requirement, the provision of affordable housing at twice the minimum level normally sought, the genuine mix of dwellings by size, type and tenure, together with some bungalows and the generous provision of open space, all offer weighty reasons in favour of the scheme³. In contrast the harm alleged here is particularly limited. Indeed, the reasons for refusal relate only to policies in the old Local Plan designed to 'expire' some 8 years ago in 2006. As the letter accompanying the Saving Direction makes plain, the focus should be on progressing an up-to-date plan in line with national policy⁴. There is a Core Strategy, but that is all; no conflict with it is alleged in the reasons for refusal and, as indicated above, the scheme would comply with its strategic requirements. Yet, the need to still cite policies in an old Local Plan prepared almost half a generation hence demonstrates that the Core Strategy cannot be viewed as anything like a complete Development Plan. Moreover, no detailed expert evidence was offered to support the reasons for refusal. And, although it may not be unreasonable to proffer informed opinions in

¹ Document 25.1

² Document 3

³ Document 49

⁴ ID34

relation to visual matters and the landscape¹, the second and third reasons for refusal invoke the need for expert knowledge, which was wholly lacking.

- 5.64 Inasmuch as the scheme would comply with the Core Strategy it would accord with the most recent part of the Development Plan, albeit that even that part preceded the publication of the Framework. However, compliance with such a Development Plan is not the end of the matter because the Framework introduces a 'presumption in favour of sustainable development' as a 'golden thread' inherent to plan-making and decision-taking. In the absence of a 5-year supply of housing land, the Framework indicates that housing policies 'should not be considered up-to-date'². And, where policies are 'absent, silent or out-of-date' that the 'presumption in favour of sustainable development' means 'granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, or specific policies in this Framework indicate [that] development should be restricted'³.
- 5.65 Clearly, those tests place a high hurdle against the refusal of new housing schemes when the relevant circumstances pertain. They do not invoke an *a priori* test that a housing scheme should first be demonstrated to constitute 'sustainable development'. Hence the reasoning in the *William Davis* judgement does not apply in this case⁴. It would not matter if it did because the proposal has been assessed to constitute 'sustainable development'⁵.
- 5.66 The contrary claim that the environmental harm would outweigh the economic and social benefits is misconceived⁶. First, when the 'presumption in favour of sustainable development' is engaged it is not enough to identify even significant harm: it is necessary to identify harm which is so significant that it is capable of outweighing the very many benefits attributable to the proposal⁷. Second, just how significant such harm must be is clear from a compendium of decisions made by the Secretary of State; unless the environmental damage relates to a Green Belt or a 'green wedge', or some serious site-specific or highway problem, permission for housing has normally been forthcoming⁸. Third, the concept of 'sustainable development' in the Framework is not in conflict with the international definition adopted by the Brundtland Commission. It is not defined solely in relation to environmental protection. It has 3 equally important and intertwined dimensions relating to its economic, social and environmental roles. The Council have attempted to emphasise the latter, but the economic⁹ and social¹⁰ roles are of great importance.
- 5.67 It follows that in assessing whether or not this scheme would constitute sustainable development it is necessary to consider the interplay of all 3 dimensions and the balance between them. This approach has been adopted elsewhere¹¹. Moreover, both the Secretary of State and Inspectors have concluded that in spite of 'substantial environmental disbenefits ... the adverse impacts of allowing [housing]

¹ Document 30

² The Framework paragraph 49

³ The Framework paragraph 14

⁴ Document 50

⁵ Document 25.1

⁶ Document 48

⁷ Document 25.40

⁸ Document 27.50

⁹ Documents 24, paragraph 4.28, 25.7 and ID34

¹⁰ Documents 21 and 23

¹¹ Document 27.43, paragraphs 38-40

development outweigh[s] the benefits to be gained¹. The appeal proposal would deliver very considerable benefits for very limited real harm. On that basis the recommendation should be to allow the appeal.

¹ Documents 25.40 and 25.39

6. The Case for Hinckley and Bosworth Borough Council

Introduction

6.1 The key issues are:

- What is the objectively assessed level of housing need and what are its implications?
- Is there a 5-year supply of land for housing?
- What impact would the development have on the countryside, the character of Burbage and residential amenity?
- Are the appeal proposals sustainable development?
- How should the harm caused by the scheme be weighed in the planning balance with its principal benefits?

A full and objective assessment of housing need

6.2 The Core Strategy pre-dates the Framework. The starting point is, therefore, to assess the full, objectively assessed need for housing within the Borough in accordance with the Court of Appeal's decision in *City and District Council of St Albans v The Queen (on the application of) Hunston Properties Limited and Secretary of State for Communities and Local Government and another*¹. However, this appeal is distinguishable from *Hunston* because in that case there was not an extant pre or post Framework Development Plan. *Hunston* is not to be read so as to displace section 38(6) of the Planning and Compulsory Purchase Act 2004. Rather, where there is a Development Plan which is not time expired, the correct approach is to use the assessment made at an appeal to check whether the figure contained in the plan is robust. If the assessment produces a figure which approximates closely to the need expressed by the Development Plan, then the Plan should be accorded full weight. If the assessment indicates that the Development Plan significantly understates need, then more weight may be accorded to the assessment².

6.3 The use of a 'paragraph 47 assessment' to check the robustness of an extant Development Plan is also indicated by the 'standard methodology' for assessing housing need set out in the PPG³; need is to be assessed across a housing market area, having regard to the 'duty to cooperate'. That 'duty' is necessary to resolve a range of assumptions that not only determine objective need, but also have implications for development well beyond the confines of the Borough, such as migration flows, patterns of employment growth and the like. Clearly, a 'standard methodology' invoking the 'duty to cooperate' cannot easily be applied in the context of a section 78 or 79 appeal. Hence, it is doubtful whether any assessment carried out in the course of a planning appeal can provide a 'full, objective assessment of need'. Consequently, where there is an extant Local Plan which was formulated in accordance with the 'standard methodology' (in this case undertaken in the context of the now revoked East Midlands Regional Strategy) it would be wrong to set it aside for an assessment made using a less rigorous methodology⁴.

Demographic need

6.4 The approach to calculating the 'full, objectively assessed need' adopted here is to start with the implications of demographic change and then to consider whether any

¹ Document 29.2

² Document 48

³ Paragraphs 15-20 of the PPG

⁴ Document 48

adjustment should be made in response to market signals and employment trends¹. Of course, there can be a debate about whether 2008, 2011 or 2012-based population and household projections should be used, about the extent of concealed households, levels of net migration and the like. But it is agreed that the recently released 2012-based population projections are 'important' and are a 'reliable' starting point. The assessment based on those projections indicates that there is a 'demographic' need for 410dpa² within the Borough, a figure similar to the 2011-based estimate undertaken for the Council of 416dpa³.

Market signals

- 6.5 Do market signals indicate a need to adjust that figure⁴? In essence, all these signals are relative and require comparisons between local, regional and national trends. The advice is that 'prices or rents rising faster than the national [or] local average may well indicate particular market under-supply relative to demand'⁵. The evidence is that median house prices in the Borough have tracked those in Leicestershire since 2002 and have now converged with those in England⁶; that actual house prices are amongst the lowest in Leicestershire; and that price increases between 1998 and 2007 were the lowest and falls between 2007 and 2012 amongst the highest in the County⁷. Rents similarly reflect an easier market than regionally or nationally⁸; increases in the lower quartile private rents are substantially below both regional and national increases; absolute levels (both of lower quartile and median rents) are on a par with those in the East Midlands and lower than in England. The pattern of 'affordability' of housing within the Borough also reflects regional and national trends. In spite of easing recently, it is about 2 points higher (worse) than it was in 2002⁹. But houses are more affordable in the Borough than in Leicestershire or England¹⁰.
- 6.6 Overcrowding in the Borough, apart from being very low (affecting only 3.2% of households) shows almost no increase between 2001 and 2011. In contrast, overcrowding in the HMA and England is not only about twice as high, but also increased over that period by 29.5% and 22.5%, respectively¹¹. This would also support the finding that the average household size within Hinckley and Bosworth has not increased recently¹².
- 6.7 A comparison between the rate of development and 'planned supply' may also indicate that 'future supply should be increased', though the advice is that a 'meaningful period should be used'¹³. In this case a comparison between dwelling completions and the average annual provision over the period 2006-2013 indicates the under-provision of dwellings in the Borough¹⁴. That is hardly surprising. The period chosen is largely confined to the 'great recession'. Moreover, although

¹ Documents 16&18

² Document 18

³ Document 28

⁴ Paragraph 19 of the PPG

⁵ PPG

⁶ Document 16, Figure 5.2

⁷ Document 17.3

⁸ Document 28

⁹ Document 16, Figure 5.3

¹⁰ Document 17.3

¹¹ Document 16, table 5.1

¹² Document 28

¹³ PPG

¹⁴ Document 16, Figure 5.1 indicates an under provision of 94 dwellings, whereas the actual shortfall against the annual average is 178 and against the original trajectory 650

Districts allocated relatively modest housing requirements (Harborough, Melton and Oadby and Wigston) met or exceeded their planned provision the remaining Leicestershire Districts all failed to do so, the Borough performing rather better than most.

- 6.8 None of those 'market signals' indicate that there has been a worsening trend within the Borough that would warrant an upward adjustment in housing requirements to those derived solely from the household projections¹. Moreover, there is clear evidence that the decline in delivery rates is not due to the absence of available housing sites or planning permissions for residential development, but to a reluctance of builders and developers to progress their schemes in a 'flat market' with limited effective demand. There is a catalogue of sites where permissions remain unimplemented, even if renewed, or where they have been allowed to lapse². In addition, the latest AMR indicates that the number of sites where planning permission for residential development lapsed, doubled in 2008 and increased 4-fold in 2009 from what it had been in 2006³. The experience of the 'sustainable urban extension' at Barwell illustrates the point. A resolution to grant planning permission was passed in April 2013⁴. Yet, more than a year later the section 106 Agreement remains unsigned. This manifest lack of urgency suggests that the consortium are not short of opportunities to build homes in and around Hinckley, but would rather renegotiate the level of contributions ostensibly agreed at the very recent EiP into the Barwell and Earl Shilton Area Action Plan⁵.
- 6.9 Hence, the solution is not to build more houses, or rather issue more planning permissions for residential development, in Hinckley and Bosworth. House prices and the affordability of housing are part of a national trend in house price inflation due to the availability of cheap mortgage finance and dubious financial practises. Cheap mortgage finance still exists, but its availability is constrained. So those who can obtain a mortgage should not find it difficult to buy a home in the Borough⁶.

Employment trends

- 6.10 The advice is that a likely change in job numbers should be compared with the growth of the working age population in the housing market area⁷ to balance migration levels across the SHMA and to avoid unsustainable commuting patterns. Those considerations are really matters for plan-making rather than for an appeal as they invoke the 'duty to cooperate'. Instead, the appellants respond to the alleged 'labour force deficit' by providing more houses to 'grow' the working age population⁸. That is not what is advocated in the PPG. It is thus misguided. First, there can be no certainty that the new homes built to 'boost the working age population' would be occupied by 'working age households'; that would be especially so in Burbage where prospective occupants are likely to be older and wealthier than elsewhere within the Borough⁹. Second, 'boosting the dwelling provision' in Hinckley and Bosworth could entice the economically active from elsewhere in the SHMA.

¹ Document 48

² Document 25.20

³ HBBC website only

⁴ Document 29.9

⁵ Evidence from Nic Thomas, see also HB1 and HB2

⁶ Document 48

⁷ Paragraph 18 of the PPG

⁸ Document 16

⁹ ID14

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- 6.11 As for the employment growth advocated by the LEPs Strategic Economic Plan, it is clear that many jobs may well require additional dwellings elsewhere¹. For example the MIRA Enterprise Zone is located on the border with Warwickshire and would help to meet the needs of the Coventry and Warwickshire LEP (where the Borough is represented). In any case, the Strategic Plan is designed to accelerate rather than introduce wholly new development; it awaits approval and is the basis of a competitive bid for funds.
- 6.12 The conclusion must be that neither 'market signals' nor 'employment trends' provide cogent grounds to increase the 'full, objective need' arising from demographic projections; the need should remain as 410dpa. It follows that the average annual requirement set out in the adopted Core Strategy of 450dpa is robust.

The 5-year housing land supply

- 6.13 In February the Council was able to demonstrate a 5-year supply of housing land². This was calculated in accordance with the Liverpool methodology, applying a 5% buffer and relying upon the deliverability of the dwellings in the 'sustainable urban extensions' at Barwell and Earl Shilton³, elicited through careful monitoring and the responses from developers⁴. That approach was supported by appeal decisions at Groby and Shilton Road⁵. And, it was expected that an outline planning permission would be granted for the 'sustainable urban extension' at Barwell in April 2014 on the completion of a section 106 Agreement and the resolution made the previous year⁶.
- 6.14 However, the appeal decisions at Groby and Shilton Road were challenged. And, a subsequent appeal at Three Pots⁷ raised concerns about the delivery of the 'sustainable urban extensions', found the Liverpool approach inconsistent with the Framework as opposed to the Sedgfield method and imposed a 20% buffer in response to 'persistent under-delivery', even though the 'shortfalls' were largely anticipated by the initial trajectory and deemed by the Core Strategy Inspector not to affect the soundness of the Plan⁸. The current trajectory (October 2013) still anticipates exceeding the housing requirement over the Plan period and more than doubling the provision achieved during 2012 in 2013⁹. That appeal decision was challenged by the Council on the grounds that the Inspector had misconstrued and misapplied paragraph 47 of the Framework and misconstrued policy NE5, requiring it to entail a 'cost-benefit approach' to proposals¹⁰.
- 6.15 The judgement of the High Court¹¹ on the challenge at Groby vindicated the use of the Liverpool methodology, held that persistent under-delivery had not necessarily occurred and supported the application of policy NE5. The EiP into the Barwell and Earl Shilton Area Action Plan raised no fundamental doubts about the deliverability and viability of either 'sustainable urban extension'¹² and subsequent assurances

¹ Document 19.4

² Document 25.16

³ Document 29

⁴ Documents 29.9&10, HB1-HB3

⁵ Documents 29.15&16

⁶ Documents 29.9&10, HB1 and HB2

⁷ Document 29.17

⁸ Document 29.4

⁹ Documents 29.5&6

¹⁰ ID13

¹¹ Document 31.1

¹² Document 29.8

appeared to confirm imminent progress¹. But in March 2014, the appeal decision at Stanton under Bardon² endorsed the stance adopted in the Three Pots appeal, questioned the timing and deliverability of the 'sustainable urban extensions', imposed a 20% buffer for 'persistent under-delivery' and applied the Sedgefield methodology. That decision was deemed to be unchallengeable. And, as a consequence, the Council's challenge to the Three Pots decision was withdrawn. Moreover, shortly after closure of the EiP into the Area Action Plan the consortium raised concerns about the contributions required in the context of delivering the Barwell 'sustainable urban extension'. These have not yet been resolved³. Hence, the planning permission anticipated for April could not be granted, nor is it known when it might be reported to committee. This does not mean that the 'sustainable urban extensions' are undeliverable. But it does mean that the timing of development, and possibly the quantum delivered within the Plan period, cannot now be confidently guaranteed⁴.

6.16 In response to those changed circumstances it is now conceded that a 5-year supply of available housing land cannot be demonstrated. The June 'statement of common ground' records that the parties agree that available and developable housing sites would cater for the housing required over some 3.2 to barely more than 4 years⁵. It is accepted that either shortfall is significant. Hence, by virtue of paragraph 49 of the Framework, policies for the supply of housing should be considered to be out-of-date and the presumption in favour of sustainable development in paragraph 14 engaged.

6.17 However, the operation of paragraph 14 was considered by Lang J in *William Davis Limited and Jelson Limited v Secretary of State for Communities and Local Government and North West Leicestershire District Council* [2013] EWHC 3058 (Admin). It was held that:

'... paragraph 14 of the NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of the NPPF if the presumption in favour of sustainable development in paragraph 14 applied equally to sustainable and non-sustainable development'.

6.18 That is the law. Some may disagree. But, inferior tribunals are duty bound to apply it. Hence, the absence of a 5-year supply of housing land necessitates consideration of whether this scheme on this site would constitute 'sustainable development'. That issue is to be addressed later.

Affordable housing

6.19 The provision of affordable housing is tied to the housing requirement and is likely to be delivered in line with the housing trajectory⁶. The analysis of 'market signals' (above) indicates that the affordability of housing within the Borough is no more acute in absolute or relative terms than in the HMA or England; on the contrary, there are some indications that it is less acute than elsewhere. The re-registering required to up-date the housing register has halved the number on the housing waiting list⁷. And it is accepted that the expanding private rented sector can serve as an 'interim source of intermediate housing' (a 'product substitute') and does so

¹ HB1 and HB2

² Document 29.14

³ Evidence from Nic Thomas

⁴ Evidence from Nic Thomas

⁵ Document 3

⁶ Policy 15 of the Core Strategy

⁷ HB6, HB7, HB8, HB11, ID30, ID32

for at least 224 households¹. Moreover, it is agreed that 'There is indeed little that is particularly remarkable about Hinckley and Bosworth which distinguishes it from the general housing crisis facing this country and the imperative for a step change in housing delivery, particularly affordable housing delivery²'. In those circumstances, there is no reason to depart from the statutory basis to providing for affordable housing set out in policy 15 of the Core Strategy³. The policy takes account of the needs identified in the SHMA (2008)⁴ and was found to be sound by the Core Strategy Inspector⁵. Hence, although substantial weight should be given to the affordable housing offered, that weight should not be overwhelming.

- 6.20 The provision of 54 affordable homes would be of value. But there is not an affordable housing crisis in Burbage. The number of affordable dwellings granted planning permission as at April 2012 exceeds the number of households currently living in Burbage seeking affordable housing, omitting only those in 'low' housing need⁶. Moreover, that takes no account of the private rented sector serving as a 'product substitute' for some⁷. Hence, in spite of the relatively higher cost of Burbage as a location, there appears to be no housing crisis facing low income households who actually live in Burbage now.

The impact of the scheme

- 6.21 There are 3 reasons for refusal⁸. They allege harm to the amenities of residents from the additional traffic generated by the proposal and especially to those beside the proposed access road; they also identify harm to the landscape and intrinsic beauty of the countryside.

Residential amenity

- 6.22 'Saved' policy BE1 is a criteria based policy seeking to ensure a high standard of design while safeguarding and enhancing the existing environment. It also operates to protect residential amenity and chimes with part 7 of the Framework; it should thus be accorded full weight⁹.
- 6.23 The scheme would entail the loss of 2 homes at Nos.11 and 13 Welbeck Avenue to create an access road into the site. That road would run just 4.5m and 5.2m from, and along the entire length of, the rear gardens at Nos.9 and 15, respectively¹⁰. All the traffic generated by the new estate (estimated as some 74 vehicle trips during the morning peak and 82 vehicle trips during the evening) would thus ply back and forth close to gardens that would otherwise be secluded and peaceful¹¹. The increased noise and activity would harm the amenity that might reasonably be expected, contrary to 'saved' policy BE1. Moreover, the traffic to and from the proposed estate would have to traverse the fairly narrow Avenues of, Beechwood, Brockhurst and Newstead, often further restricted by on-street parking. While the

¹ Robin Tetlow XX

² Robin Tetlow XX

³ Document 46, page 57

⁴ ID9

⁵ Document 29.4

⁶ ID32 and document 22.3 – 69 affordable dwellings had been granted planning permission by 2012 and 40 resident households of Burbage in 'medium' housing need or higher were seeking an affordable home there, an additional 38 were in 'low' housing need. However, the figures relating to all those seeking affordable housing in Burbage are quite different 159 and 160 respectively.

⁷ Document 28

⁸ Document 25.1

⁹ Document 30

¹⁰ Document 10 and 11

¹¹ Document 11.2

increase in traffic might often be less than 1 vehicle per minute, it would be noticeable enough to impinge on the residential amenity of those streets¹.

- 6.24 The difficulties were well understood by councillors. The site is simply not a very good site; the awkward and inconvenient access demonstrates the point. Were it otherwise, and the solution to the access obvious, it would be surprising that the residential development of the site was not pursued through the SHLAA and the 2009 version of the Site Allocations DPD². The fact that the site is not identified in the emerging Site Allocations DPD³ demonstrates the flaws in the access arrangements proposed and the harmful effects identified would contravene the requirements of policy BE1.

Landscape

- 6.25 'Saved' policy NE5 is a criteria based policy directed at maintaining a distinction between the town and the countryside and safeguarding the latter⁴. It is not primarily a housing supply policy. And, although it seeks to protect the countryside 'for its own sake', it also provides a mechanism to endorse one of the Core Principles of the Framework in providing scope for decisions to reflect the 'intrinsic character and beauty of the countryside'. Clearly, the Framework does not confer a blanket protection on the countryside regardless of its landscape merits and, in the Three Pots appeal, the weight attributed to policy NE5 was reduced accordingly⁵. But, the weight to be attached to a policy is a matter for the decision maker. And, it is context specific. It is agreed that the landscape of the appeal site is of some quality and confers an 'intrinsic character and beauty' on the countryside to the west of the settlement⁶. Hence, policy NE5 should be accorded considerable weight. That weight is not to be diminished because the policy does not, itself, expressly require a 'cost benefit analysis' of the proposal. Such an analysis is, in any case, required by reading the Plan as a whole.
- 6.26 The Courts support such a line⁷. Not every Development Plan policy restricting development must be incompatible with the policy encouraging 'sustainable development' in the Framework (and thus out of date) just because it does not, in its own terms, qualify that restriction by indicating how it might be overcome by the benefits of a particular proposal. Rather, the question of whether a particular policy of the relevant Development Plan is or is not consistent with the Framework must depend on the specific terms of the policy and of the corresponding parts of the Framework when both are read in their full context.
- 6.27 Clearly, this scheme would adversely affect the appearance and character of the landscape and not be in keeping with the scale and character of existing buildings or the general surroundings⁸. It would thus contravene policy NE5. Moreover, a key element of the Core Strategy (set out in policy 4) is to ensure that new development should contribute to the character and sense of place evident in Burbage. The claim is that the environmental impact of the scheme would outweigh the economic and social benefits that it might deliver. The impact would be especially damaging

¹ Document 30, with details taken from documents 10 and 11

² Documents 25.12&19

³ Document 47

⁴ Document 30

⁵ Document 31.2

⁶ Mr Rech XX

⁷ Paragraph 186 of *Bloor Homes East Midlands v Secretary of State for the Environment and Hinckley and Bosworth Borough Council* [2014] EWHC 754 (Admin)

⁸ Document 30

because the site serves important roles in the character and perception of Burbage¹.

- being located immediately to the north of the A5, the site serves as the western gateway to the settlement;
- it is part of a distinct gap (which includes the Sketchley Meadows Business Park) between the edge of Hinckley and Burbage, maintaining the separate identity of the settlements evident from the A5;
- it is highly visible and attractive, being on rising ground and accommodating mature trees in a parkland setting to an Edwardian house;
- the lime tree avenue is a visible component of the site, softening the built-up edge of Burbage and forming a valued remnant of the place's earlier identity;
- the site enhances the appearance, outlook and recreational function of the well used bridleway accentuating the tranquillity of this safe link between the built up area and the footpath network across the countryside beyond the A5.

6.28 The scheme would obliterate those functions and cause very substantial harm to the environment²:

- the gap would be significantly diminished, thereby effectively obliterating the separation between, and distinct identity of, Hinckley and Burbage, contrary to the exhortation in the Framework for schemes to reflect local identity and a sense of place;
- the attractive parkland would be destroyed and the rural setting of Burbage urbanised, an impact accentuated by the 2-3m high acoustic fence beside the A5;
- the estate of 135 dwellings would swamp the remaining trees and reduce the parkland into narrow strips of green space at the margins of the site;
- the lime tree avenue would be hemmed in by houses and transformed into little more than an alleyway without views towards open countryside, thereby damaging the amenity value of a pleasant recreational facility; and,
- the safety and seclusion of the bridleway would be significantly diminished, being severed by the access road.

6.29 Worse still, all that damage would be wrought in the interests of implementing a scheme wasteful of a finite and attractive parkland resource. The design response to the parkland setting has attempted to incorporate the mature trees into the estate, necessitating an unusually low density of around 19dph rather than the minimum net density sought of at least 40dph on land within or adjacent to Burbage (and the other 'urban' areas), as set out in policy 16 of the Core Strategy³. The environmental impact of the scheme would be contrary to policy NE5 and policy 4 of the Core Strategy and it would render the scheme unsustainable. The claim is that such damage would outweigh the economic and social benefits that the proposal might deliver.

The planning strategy

6.30 Although the Core Strategy seeks to focus development on the one sub-regional centre in the Borough (of which Burbage is a part) the allocation is for a 'minimum' of 295 dwellings in Burbage itself, largely to the north of the settlement 'adjacent to the Hinckley settlement boundary'⁴. Because policy 4 of the Core Strategy aims to 'protect and preserve the open landscape to the east which provides an important setting for the village' and 'enhance the landscape structure which separates the village from the M69', it leaves open the possibility that land to the west might also

¹ Document 30

² Document 30

³ Documents 48 and 46, page 59

⁴ Document 46, policy 4

be suitable for development. However, it requires that 'development contributes to Burbage's character and sense of place' which, for the reasons outlined above, the proposal would fail to achieve.

6.31 Clearly, the allocation for residential development in Burbage is substantially less than in the other 3 settlements that form the 'sub-regional centre'. Indeed, in relation to the minimum requirement of 295 dwellings, there is now only a residual amounting to some 44 dwellings, to be completed over the 12 years of the remaining Plan period¹. But, although it is agreed that the housing policies may be out-of-date, it is not agreed that the relatively 'modest' allocation to be accommodated in Burbage should be ignored. The weight to be attached to that distribution of dwellings is a matter for the decision maker.

6.32 In that context it is necessary to consider that²:

- the scheme would increase the number of houses to be built in Burbage by more than one third;
- although the high house prices in Burbage make the place attractive to developers, it is important to choose development sites to avoid damaging the character of the village, exactly what the modest housing allocation was designed to achieve;
- the site has long been regarded as unsuitable for development, being removed from the draft Site Allocations and Generic Development Control Policies DPD in 2009 as a green-field site with access difficulties³; it is reasonable to infer that the site was then deemed unsustainable;
- the emerging Site Allocations DPD eradicates the remaining shortfall of 44 dwellings by allocating sites for 110 homes, some 64 dwellings above the minimum required⁴; should the appeal succeed there would be an over-provision amounting to about 67%;
- the draft allocation is a brown-field site adjacent to a site currently being developed; such 'sustainable' development might be undermined by the appeal scheme.

6.33 Should the spatial strategy fail because the 'sustainable urban extensions' stall, then the strategy⁵ is to derive an alternative approach by revisiting the 'Directions for Growth' report. That situation has not yet arisen. Should annual monitoring mechanisms detect small scale shortfalls in the provision of the housing required, then a review of sustainable sites identified in the SHLAA but not prioritised for development in the Site Allocations DPD is to be instigated. That situation has also not arisen. First, the appellants deny that the shortfall is small scale. Second, the appeal site is not 'a sustainable site identified in the SHLAA'. Third, neither of those responses is intended to be implemented without the authorisation of the Council and appropriate consultation. So, although the appeal site is adjacent to Burbage and thus on the edge of the 'sub-regional centre', permission for the proposal would undermine the Core Strategy by providing for substantially more than a 'modest' level of development related to the settlement and by circumventing the mechanisms specifically intended to address any failure of the Strategy to deliver the housing required.

¹ HB4

² Document 48

³ Document 25.12

⁴ Document 47

⁵ Document 46, paragraph 4.12

The merits of the scheme

- 6.34 The scheme is submitted in outline and, although open space, play areas and mature trees would remain, it would breach a clear and defensible boundary to the settlement and transform an area of open parkland (albeit somewhat degraded) into a housing estate, oddly divorced (by the avenue of lime trees) from the rest of Burbage¹. The proposal would result in a severe environmental impact that the provision of housing, including affordable housing, would fail to outweigh. In particular the proposal would²:
- be built at a wholly unnecessary and unsustainable density of barely 19dph in direct conflict with policy 16 of the Core Strategy, which seeks to secure sustainable rather than wasteful development at a minimum net density of 40dph in 'urban' locations³;
 - fill a noticeable part of the gap that maintains the effective separation between Hinckley and Burbage, jeopardising the separate identity of the settlements and the sense of place evident here, contrary to policy NE5;
 - obliterate attractive parkland and impinge on the rural setting of Burbage;
 - urbanise the roadside by the A5 through the installation of a 2m to 3m high acoustic fence and the erection of 135 houses;
 - diminish the amenity value of the lime tree avenue by enclosing it with houses and obscuring views towards the open countryside to the west;
 - result in the loss of Nos.11 and 13 Welbeck Avenue with the access road impinging on the amenity of the rear gardens of Nos.9 and 15, contrary policy BE1.
- 6.35 Those damaging environmental effects must be set against the economic and social benefits of contributing up to 135 dwellings to reduce the lack of sufficient land to meet the requirement for housing over the next 5 years and up to 54 affordable dwellings. But, as indicated above, the provision of so many dwellings here would exceed the 'modest' level of development envisaged in Burbage by the Core Strategy and circumvent the mechanisms specified therein to address any shortfall in housing provision. And, although up to 54 affordable homes would be welcome, there appears to be no housing crisis facing low income households who actually live in Burbage now. Hence, the damaging impact of the scheme would not be outweighed by the economic and social benefits derived from it.

The planning balance

- 6.36 It is accepted that a 5-year supply of available housing land cannot be demonstrated⁴. Hence, by virtue of paragraph 49 of the Framework, policies for the supply of housing should be considered to be out-of-date and the presumption in favour of sustainable development in paragraph 14 engaged. But, following the judgement in *William Davis*, that presumption only applies to a scheme which has been found to be sustainable development, so that the key consideration here is whether this scheme on this site would constitute 'sustainable development'.
- 6.37 For the reasons outlined above, the damaging environmental impact of the scheme would render it unsustainable. It would be contrary to the requirements of policy 4 in the Core Strategy and policies NE5 and BE1 'saved' from the Local Plan: it would intrude into the countryside, seriously harm the character and identity of Burbage and impair the amenity of residents there: it would also represent a wasteful use of

¹ Document 30

² Document 30

³ Document 48

⁴ Document 3

land. Hence, the presumption in favour of sustainable development does not apply in this case. Rather, the damaging impact of the scheme and its conflict with the Development Plan clearly outweigh its benefits, especially as the need for affordable housing is not acute in Burbage and the total dwellings provided would exceed the 'modest' provision envisaged.

- 6.38 The proper planning balance should not be susceptible to rhetorical solutions spun from speeches by politicians and bankers purporting to assuage the problems they themselves have caused¹. Here the parkland and house are local landmarks. The parkland was designed to have, and continues to possess, intrinsic beauty and it enhances the countryside around Burbage; it is not the sort of 'ordinary countryside' that might normally fall to residential development in the absence of a 5 year supply of housing land. Its loss would cause serious harm to the character and identity of Burbage and although there may not be many instances when the environmental dimension prevails over the offers made by house-builders and developers, this should be one of them. The recommendation to the Secretary of State should be to dismiss this appeal.

¹ ID25

7. The Case for Leicestershire County Council

Education, libraries and civic amenity

- 7.1 The Statement of Requirements for Developer Contributions in Leicestershire was first adopted in March 2001. It has been updated and revised on the basis of experience and consultation and adopted in December 2006; the last review took place in December 2007¹. The document sets out the likely levels and types of contributions required towards County Council services and infrastructure in relation to new development. It provides a consistent approach across the County and an indication of the level of contributions developers might be expected to make. However all contributions are assessed on a site by site basis and directly related to an individual proposal. The criteria for individual services are reviewed annually and updated accordingly.
- 7.2 The contributions sought here are based on the original application for 135 dwellings, consisting of 25 2-bedroom, 56 3-bedroom and 50 4-bedroom houses and 4 1-bedroom flats². The scheme would, of itself, generate an increased demand within the existing school catchment, on the local library and on the local civic amenity site. The Requirements document is designed to address such pressure in an equitable, fair and transparent manner and has been supported at appeal.

Education

- 7.3 The education 'requirement' is necessary to meet the statutory responsibility to secure sufficient appropriate school places to serve the area³; there is a further duty to secure diversity in the provision of schools and increase opportunities for parental choice⁴. The statutory basis for admissions to all maintained schools imposes a duty to provide school places for all pupils resident in the area⁵ and the County aims to achieve this by giving a high priority to catchment area pupils and allowing parental preference wherever possible. In essence, children are entitled to a place in their catchment area school or a place in a preferred school, if there is room.
- 7.4 The 'net capacity' of a school is derived from a single, robust and consistent method devised by the DfE and free transport is provided for primary pupils attending a catchment school more than 2 miles from their home and more than 3 miles for secondary pupils. The proposal would be within the catchment area of Sketchley Hill Primary School. There would be a deficit of 41 places there of which 10 are existing and 31 generated by the proposed development. Within 2 miles of the appeal site there are 2 infant schools and 2 junior schools. The overall deficit of pupil places within that 'catchment' would be 184 pupil places, with 31 (actually 30.96) being generated by the proposal. Hence, in order to provide the additional primary school places required as a result of this scheme a contribution of £374,585.35 is sought, calculated by the number of deficit places attributable to the proposal multiplied by the cost of provision (£12,099.01) in accordance with DfE figures. The contribution would be used to provide the necessary capacity by the provision of an additional classroom at Sketchley Hill Primary School⁶.

¹ Document 32.1

² Document 32

³ Section 14 of the 1996 Education Act

⁴ Section 2 of the 2006 Education and Inspections Act

⁵ Section 84 of the School Standards and Framework Act 1998 as amended by Section 40 of the Education and Inspections Act 2006

⁶ Document 32

7.5 The site lies within the catchment of Burbage Hastings High School, anticipated to have a deficit of 7 places (of which 6 are existing and 1 is created by this development). But, because 2 high schools within 3 miles of the site contribute to an overall surplus of 42 places, an education contribution would not be required for the high school sector. However, it is estimated that there would a deficit attributable to the proposal in the 2 secondary schools within the catchment (John Cleveland College School and The Midlands Studio College) of 12.9 places. Multiplying that deficit by the DfE cost multiplier of £18,355.16, results in a requirement of £236,781.56. That would be used to address the capacity at John Cleveland College by implementing a phased building programme, the money being spent within 5 years¹.

Libraries

7.6 The Council have a statutory obligation to provide a comprehensive and efficient library service for those people who reside, work or who are undergoing full time education within the area². This entails maintaining adequate stocks of books and other printed material as well as audio-visual stock and sufficient in number, range and quality to meet the general requirement and any special requirements both of adults and children. The proposal would be closest to Burbage Library in Church Street and, demand from prospective resident would be likely to have an impact on the local library service and facilities. The contribution is thus for books, audio books, newspapers and periodicals, for additional loan and reference and for some consequent reconfiguration of the internal space. It is estimated that the appeal proposal would generate some 217 additional users who would require an additional 520 items of lending stock, plus reference, audio visual and homework support material. The contribution is therefore sought to maintain the current standards in respect of the ratio of books to residents and to mitigate the impact of the proposed development on the local library service. This requirement is thus directly related to the scheme and it is estimated to amount to £8,060³.

Civic amenity

7.7 The Council is required to arrange 'for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited, so that 'each place is situated either within the area of the authority or so as to be reasonably accessible to persons resident in its area [and] ... available for the deposit of waste at all reasonable times ... [and] is available for the deposit of waste free of charge by persons resident in the area'. These are Civic Amenity Sites or Recycling and Household Waste Sites⁴. There are 14 such sites throughout the County and the Barwell Civic Amenity Site provides such facilities nearest to Burbage and the appeal site. The contribution required is estimated by multiplying the net additional dwellings resulting from the scheme (135-2) by the proportionate cost per dwelling of providing the Barwell Civic Amenity Site (£47.05) and amounts to £6,258⁵.

7.8 The Barwell Civic Amenity Site can already experience difficulties in accommodating the number of residents, together with the varied types of and quantities of waste, at peak times. The increased demand due to new developments, such as this one, would compound those difficulties, though the contributions requested would only mitigate the increased burden due to the proposed development. The increased

¹ Document 32

² The Public Libraries and Museum Act 1964 (As Amended)

³ Document 32

⁴ Environmental Protection Act 1990 (Section 51)

⁵ Document 32

need would not exist but for the proposal. Hence, the contribution would directly relate to the nature and scale of the scheme¹.

Transport

- 7.9 The proposal is expected to generate some 750 daily vehicular trips. Those trips would not exist but for the proposed development and it is reasonable to expect the developer to mitigate their impact on the highway network and to encourage a modal shift in line with Government guidance and the Local Transport Plan². The Framework supports that stance, advising that Councils should 'actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable: [and that] 'developments should be located and designed where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities: [and that] to support the move to a low carbon future, local planning authorities should plan for new development in locations and ways which reduce greenhouse gas emissions'³. Such advice is reflected in the Local Transport Plan. It states that the County Council 'will work through the planning system to seek to reduce the need to travel [doing] this by seeking to ensure that new development proposals put forward by others are either supported by an appropriate range of facilities that reduce the need to travel off site or, where it is necessary to travel off site, travel distances are minimised and genuine, safe, high quality choices are available (or can be provided) for people to walk, cycle and use public transport to access facilities and services nearby'. It also aims to 'Improve the quality of the walking, cycling and public transport services and facilities on offer across the County'. In relation to walking, cycling and public transport, improvements to the quality of information provided about existing and new walking, cycling and public transport facilities are sought.
- 7.10 To those ends the 'travel packs' and 'passes' are considered essential to inform new residents about the travel choices in the vicinity and in providing an incentive to use the bus service from an early stage, thereby encouraging a change in behaviour. They would also assist in encouraging the modal shift sought by the Travel Plan. The provision of raised kerbs would make services more accessible for the disabled and those with pushchairs. Information display cases at the nearest bus stops would help to make the service more attractive to users. And, upgrading the displays to offer Real Time Information would encourage a modal shift, more sustainable transport habits and a reduction in single occupancy car journeys, enhancing, at the same time, the quality and attractiveness of public transport⁴.
- 7.11 The Real Time Information contribution is calculated from the unitary cost of providing and installing the equipment at the nearest stops and an amount toward the upgrade of the necessary on-board mechanisms. The proposal would not be acceptable without such measures, because in their absence there would be less use of the buses and more car journeys, adding to congestion and car-borne travel contrary to local and national policies. The contributions sought toward the provision of travel packs and passes, raised kerbs, Real Time Information and an information display case at the nearest bus stops are directly related to the development and are of a scale appropriate to the development. Therefore they are measures that can be considered to be CIL compliant⁵. There is also a need to be

¹ Document 32

² Document 32.3

³ The Framework paragraphs 17, 35 and 95

⁴ Document 32

⁵ Document 33

able to monitor the impact of the Travel Plan. This will entail the undertaking of a baseline survey, a meeting to identify appropriate targets and provision for subsequent surveys together with analyses of the results¹.

- 7.12 The contributions currently sought amount to a maximum of £29,250 for the travel passes, £4,080 for the bus stop display cases, £6,000 for implementing the Travel Plan monitoring arrangements, £750 per dwelling towards the Real Time Information system and £58.85 per dwelling for the travel pack².

¹ Document 32.3

² Document 32

8. The Case for the Police and Crime Commissioner for Leicestershire

- 8.1 Policing is a service that is always available and responds to demand on an 'equal access' basis; the level and efficiency of that response depends on the facilities available. Calls and deployments are monitored and give an indication of the level of services delivered to the 45,400 households in the Borough or the 6393 houses in Burbage. In 2011 there were 83,315 calls from the Borough, 9,386 of which required emergency attendance and 5,314 entailing some 'follow up'. In Burbage there were 11,664 calls, 314 emergencies and 744 attendances; last year there were 419 recorded incidents. Those incidents largely entail burglary, car related crime and theft and there are geographical concentrations at the commercial units around Hinckley Island and the town centre. Some 372 incidents of anti-social behaviour are recorded in Burbage and regular patrolling and local community contact maintained by the Neighbourhood Policing team, located at Hinckley Local Policing Unit¹.
- 8.2 The integrated nature of policing means that many different operational units are involved in responding to recorded incidents. Staff at the Local Police Unit, the hub at Braunston, the Basic Command Unit at Loughborough, the Force HQ at Enderby, tactical support, road safety, communications and regional crime can all be involved. Some 270 staff are employed to deliver policing in the Borough and about 80% of their time is devoted to such activities. The minimum number of staff is deployed to meet existing levels of demand, which means that there is little additional capacity to extend staffing to cover additional development. The aim is to deploy additional staffing and additional infrastructure to cover the demand from new development at the same level as the policing delivered to existing households. Hence, additional development would generate a requirement for additional staff and additional personal equipment (workstations, radios, protective clothing, uniforms and bespoke training), police vehicles of varying types and functions, radio cover (additional base stations and investment in hardware, signal strengthening and re direction), national database availability and interrogation, control room telephony, CCTV technologies, mobile units, 'beat drop in hubs', premises and the like. Yet, the prognosis is that 'It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding'². Hence, the necessity to seek developer contributions to ensure that existing levels of service can be maintained as growth continues³.
- 8.3 The proposed development is expected to increase the overnight population of this settlement by at least 307 people and a net addition of 133 new houses must bring additional policing demands. Extrapolating from existing empirical data indicates that the scheme would generate annual additions of some 239 calls and responses, 28 emergency events, 16 non-emergency events, 9 additional recorded crimes and 8 recorded anti-social behaviour incidents. In turn those events would require additional vehicle use, more radio calls, greater use of the PND systems to process and store crime records and intelligence, further deployment of mobile CCTV technologies and additional access for beat staff in a local Hub, not to mention consequences for support and HQ staff⁴.
- 8.4 The Framework supports the provision of the facilities and services needed in a

¹ Document 34

² The Leicestershire Growth Impact Assessment of 2009, document 34.7

³ Document 34

⁴ Document 34

community. This is one of the 'core principles' and SPDs are indicated to be an appropriate means to assist applicants in understanding the obligations that proposals might generate. The Framework advocates the creation of healthy and inclusive environments where crime and disorder and the fear of crime do not undermine the quality of life¹. Policy IMP1 of the Local Plan reflects that advice and provides an over-arching justification for the contributions sought. And, the Leicestershire County Council Statement of Requirements² sets out the provisions that should be made towards the need for additional policing that might be due to new development.

- 8.5 The contribution requested amounts to £44,711 to mitigate the additional impacts estimated to accrue directly from the proposed development. These contributions are required to upgrade the capacity of existing infrastructure, which would not otherwise be sufficient to meet the likely demand from the scheme. It is anticipated that staff salaries and day to day routine additional costs would be met by rate revenues. A programme to procure the additional facilities required would be agreed as a clause in a legal agreement³. The contributions sought would be directly related in scale and kind to the development, so that the completion of some infrastructures would require funding from elsewhere. But, the contribution would be used wholly to meet the direct impacts of this development and wholly in delivering the policing to it. On the basis of advice⁴, the level of contributions sought are not based on a formula but derived solely from the direct impact of the scheme on policing. This has elicited support at appeal⁵. A detailed explanation of the methods used to calculate each element of the total contribution is offered together with the justification for it derived from the advice in the Framework⁶. It is shown that the contributions sought are directly related to the development, fairly and reasonably related in scale and kind to the scheme and necessary to make the development acceptable in planning terms⁷. There would thus be CIL compliant⁸.

¹ The Framework paragraphs 17, 69 and 70

² Document 32.1

³ Document 5

⁴ Document 34.9

⁵ Documents 34.10-15

⁶ Document 34

⁷ Document 34

⁸ Document 34.1

9. The cases for local people

The impact of the scheme

9.1 Local people and councillors are concerned about the impact of the scheme in relation to planning policy and on traffic, living conditions, the appearance of the landscape, the operation of Elms Farm and on the ecology of the site. Statements were made orally in February and additional evidence submitted in writing during June. I have tried to combine the points made in this evidence by its primary subject matter and indicate the main author irrespective of whether it was spoken or written.

Planning policy

9.2 Councillor Inman¹ represents the local ward, which includes the appeal site. He is aware of residents' concerns and voted to refuse planning permission. The scheme would represent an unwarranted intrusion into the countryside. Back in 1972 he tried to prevent the development of the Sketchley Meadows Industrial Estate. That failed, but 2 major concessions were won. First, that there should be an area of separation between the new industrial estate and the edge of Burbage; such separation remains, in spite of the increase in the former and the new dwellings to the north of Sketchley Lane, and it should be maintained. Second, Sketchley Lane was 'stopped up' and access to the A5 prevented; a danger of the present proposal is the eventual joining up of roads on the Three Pots estate with those at Sketchley Meadows.

9.3 The need to retain the appeal site as open land is recognised in the Core Strategy², which has the wide support of Burbage residents. New development is directed to Sketchley Brook in the north west and the minimum of 295 new dwellings is already exceeded by permissions granted for some 400 houses. The current need for 44 dwellings, after the appeals allowed at Three Pots Road and Workhouse Lane, would be more than exceeded by a further 135³; there must now be more than a 5-years supply of housing land. Yet residents have every right to be angry that further development is in danger of radically changing the surrounding area without proper consultation. The emerging Site Allocations DPD should provide the proper forum for identifying sites for future development and the scheme would also be contrary to the Burbage Village Plan and Design Statement. Consultation is currently continuing on the Site Allocations DPD with a view for submission to the Secretary of State later this year⁴. The appeal site is not identified for development⁵. Its development would thus represent piecemeal rather than sustainable planning and undermine the provision of a safe road pattern or of redressing shortages of public open space. Indeed, the access would entail demolishing a pair of semi-detached dwellings simply to create a narrow entrance to the proposed estate positioned very close to Nos.9 and 15 Welbeck Avenue; and, it would be served by narrow and frequently congested estate roads. The scheme would thus have an adverse effect on nearby residents and the Three Pots estate as a whole.

¹ Document 35

² Document 46

³ HB4

⁴ Document 29.12

⁵ Document 47

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- 9.4 Councillor John Moore¹ represents the local ward (Burbage, Sketchley and Stretton) and has previously been a Parish Councillor chairing the group producing the Burbage Parish Plan and the Village Design Statement. The Ministerial foreword to the Framework indicates that sustainability is about 'ensuring that better lives for ourselves don't mean worse lives for future generations' and it entails 'change for the better' and 'positive growth – making economic, environmental and social sense for this and future generations'. It exhorts planning to be a 'creative exercise in finding ways to enhance and improve the places in which we live our lives' being a collective enterprise, including rather than excluding people and communities.
- 9.5 This scheme fails in all those respects. It fails to address the needs of Burbage and fails to contribute to the 3 dimensions of sustainable development identified in the Framework. First, the need for housing across the Borough has been properly assessed in the Core Strategy²; there is a 5 year and 10 month supply of developable housing land and a residual requirement in Burbage of 44 new homes with 12 years of the current Plan remaining³. The Neighbourhood Plan should be completed within the next 2 years offering residents the opportunity to confirm where they want any residual housing to be built. In any case, the real need is not for more housing but for infrastructure, including the lack of formal and informal leisure facilities, the capacity of local schools, medical facilities and the replacement of soccer pitches and 'fishing pools' lost to the development at Sketchley Brook. The scheme may provide some short-term employment in construction, but Burbage is becoming a dormitory settlement providing housing for 'economic migrants' working in Coventry, Birmingham or Leicester. Providing for such needs is not a good reason to destroy a much valued landscape or to generate additional traffic movements through the narrow streets of the Three Pots housing estate. Second, this would not contribute to a strong, vibrant and healthy community. On the contrary, it would result in yet more houses without the infrastructure to support them, exacerbating the existing infrastructure deficit. Third, the scheme would cause great environmental damage. It would erode the buffer between the settlement and the Sketchley Meadows Industrial Estate: and, it would obliterate the semi-rural setting, attractive vista and perceived tranquillity along the lime tree avenue.

Residential amenity

- 9.6 Gary Welland⁴ lives at 15 Welbeck Avenue, adjacent to the proposed access road. He moved there with his family from a dwelling on a main dual-carriageway and a 'Red Route' with a view to retirement. The dwelling was chosen because it was effectively in a cul-de-sac with no through traffic; because there was a friendly 'feel' to the estate; and because the open land at the rear appealed to an amateur naturalist. If the appeal proposal succeeds all that would be lost and the bungalow would stand on a corner plot. The disruption likely to be experienced during the 'preparation' stages can only be imagined; 2 perfectly sound properties would be demolished just 5m distant followed by the construction of the new road, the removal of 2 mature trees and the deliveries of bricks, cement and timber in heavy vehicles, together with the machinery, would rumble past the bungalow at close quarters. Once completed all the traffic generated by the development (both vehicular and pedestrian) would pass the property. Safety would be jeopardised. The existing driveway would be adjacent to the new access road making reversing

¹ Document 36

² Document 46

³ Documents 29 and HB4

⁴ Document 40

either into, or out of the drive hazardous; such a configuration is not evident anywhere else on the estate.

- 9.7 The worry about how the character of a valued home may change is real and constant: the despair at no longer being in control has led to many sleepless nights. Everyone on the Three Pots estate would be adversely affected by this development due to the loss of a valuable open space and the increased traffic. But the effects here would permanently alter the character of a dwelling bought as a desirable retirement home and thus blight the lives of those living there.
- 9.8 John Greasley¹ is concerned about the safety of the access arrangements. Only one option has been considered. It was presented as a *fait accompli* when first described to local residents, apparently resulting from an opportunity to purchase Nos.11 and 13 Welbeck Avenue. There are 2 specific safety concerns. First, the access would have to accommodate the traffic generated by 135 dwellings and, second, all the cars and any delivery vehicles would have to use the 3 narrow roads through the estate. The Highways and Transportation report confirms that those roads are too narrow for that purpose; an access serving between 50 and 400 units should be 5.5m wide to accommodate emergency services and prevent cyclists being knocked off by HGVs². The estate roads do not meet that standard. Hence, the proposal would compound the risks in pursuing an unsustainable and unsafe scheme and lead to subsequent dangers in creating crucial delays to an ambulance or hazards to children cycling to school.
- 9.9 Eric Neale explains that he agrees with the objections raised by others but wants to emphasise that he is a keen cyclist and is concerned that the proposal would sever the bridleway, introducing a hazardous crossing into a route that would otherwise be traffic free. The bridleway currently connects to Sketchley Lane, but from there it would be possible to travel further afield via the Ashby Canal to Sustrans route 52 or, perhaps, on to Normandy Way.
- 9.10 Mrs Kerry Shipman and Mrs Emma Holden³ represent the action group 'Stop Welbeck Houses'. This was started to oppose the plans exhibited last year. The Group now has a website with daily hits, an email contact list of over 100 people and more than 50 people who regularly attend meetings. The Group has undertaken a traffic survey and an informal questionnaire; the latter achieving a response rate of over 40%, all respondents being against the appeal proposal. There are strong concerns about the impact of the scheme on wildlife, the countryside and the effect of the increased traffic. In particular, the scheme would seriously affect the safety and tranquillity of the bridleway. This is currently quiet, tranquil and safe. It is regularly used by dog walkers, horse riders, joggers, walkers and bike riders of all ages. And, a local school uses it as an 'outside classroom' demonstrating the changing seasons and affording study of the local wildlife and the opportunity for 'nature hunts'. But all that would alter because the access road would cross the bridleway. Extreme vigilance would be necessary when approaching the access road and a safe place where children might learn to ride bikes and play together would be lost. That would be even worse if access to the A5 (now possible from Sketchley House) could also be gained from the development.
- 9.11 In any case, the site is not nearly as 'sustainable' as it first appears⁴. The bus service to Hinckley is only hourly, stops at 18.30hrs and does not run on Sundays; it

¹ Document 39

² On disc 1, see also documents 10 and 11

³ Document 38

⁴ In comparison to the assertions in document 10

struggles to navigate the narrow avenues amongst the parked cars, is not coordinated with any other public transport and is not entirely secure. There is already sporadic flooding in the avenues. And, although there is an excellent Post Office with basic essentials and a sandwich shop on the Three Pots estate, there is no other outlet within over half a mile away; beyond easy walking distance for those with young children or for the elderly. There is only 1 safe place to cross the B4109 (the main road into Hinckley) and the footpaths are fragmented and narrow in places, making a trip to the shops difficult with a wheelchair or pushchair. The 2 local schools have only limited capacity and there are long waits for appointments with doctors or dentists. Those defects are exacerbated because Burbage, with its proximity to the A5 and the M69, is seen by developers as an ideal location for commuter homes. Such development must harm the local economy and detrimentally affect the characteristics of the village. It should be refused until the currently permitted schemes have been completed so that the Council might properly assess what might be left of Burbage to develop.

Landscape

- 9.12 John Greasley¹ refutes the claim that the site fails to offer vistas equivalent to those across the land to the east towards St Catherine's Church in Burbage. On the contrary, the site provides attractive vistas towards Sketchley House across the intermittent hedge, presenting a magnificent view as one leaves Burbage on the A5. The scheme would wreak further harm to the landscape. Contrary to the arboricultural report², removing a small number of trees from the lime tree avenue would damage an attractive readily visible feature evident from many vantage points. In particular, when walking along the bridleway the trees now provide a natural canopy of continuous shade, so enhancing the tranquillity of the place³. Removing even one or two trees from this avenue would ruin the vista and insert a 'scar' into the shaded path.
- 9.13 The assessment of the trees on the site is also questioned. The arboricultural report is based on a survey undertaken in February 2013 (when the trees were not in leaf) and is valid for only 12 months (which have now past)⁴. The assessment is flawed. The Horse Chestnut (367) is indicated as in 'poor' condition and to be 'felled', but this is a beautiful tree readily visible from the A5⁵. The Horse Chestnut (364) is denoted as being in a 'fair' condition, but also to be 'felled'. In fact, although this tree has lost branches over the years it appears to be in good condition. The Horse Chestnut (369) is classified as being in a 'fair' condition, but the 'deadwood' is identified for removal, although the tree appears to be perfectly healthy. A Sycamore (407) is shown as being in 'good' condition, but with deadwood identified for removal: it is actually a beautiful tree. A further Horse Chestnut is shown as 'fair' but to be 'felled', resulting in the loss of another beautiful tree. A Beech is denoted as 'poor' and to be 'felled', but this tree appears healthy and provides a lovely contrast to the others around it. An Atlantic Blue Cedar is found to be 'fair' but identified to be 'felled', yet this tree is unique. And, of course, the habitat for all the trees, along with the wildlife that they support and the vista that they present, would be destroyed by the scheme.

¹ Document 42.5

² On disc 1, see also document 54.11

³ Document 42.5, figures 5 and 6

⁴ Document 54.11

⁵ Document 42.5, figures 9-12, in particular

9.14 Gail Greasley¹ also maintains that the site offers magnificent views in all directions providing significant visual amenity to local residents and also for motorists on the A5. The bridleway is a local feature which would be badly affected by the removal of any lime tree within the avenue, as the continuous canopy of leaves would be destroyed². The large variety of trees on the site helps to provide its unique appeal. Some of those trees would be felled, the habitat of all those remaining would be blighted and doubtless there would be requests to fell more trees to provide more space for houses and their associated infrastructure. The site is a tranquil environment at the edge of the village offering a significant visual amenity to many users. This should not be destroyed.

Agriculture

- 9.15 Neil Rice³ farms 38 acres at Sketchley Lodge Farm adjoining the western and northern boundaries of the site and producing 7,000 free-range chickens, 30 suckler cows with calves, 2 bulls and up to 100 over-wintering sheep. The proposal would cause damage and create several problems. First, the scheme would disrupt the flora and fauna of the site. Having grazed the land for some 20 years the presence of Buzzards, Bats, Badgers, Owls and a wide variety of other birds and mammals are evident. Second, the farm is currently reasonably well isolated from housing. But the appeal scheme would be adjacent to the farm and it would entail the location of a children's play area directly against a boundary⁴. A suckler herd involves mature cows running with bulls: the calves are reared by the cows until they weaned. Bulls can pose dangers, but cows are protective mothers and can also be dangerous. Yet these animals would be in a field beside a children's play area where a child's temptation to explore may well be stronger than the fencing. Family pets could also be a potential problem, dogs worrying both sheep and cattle. There is also growing evidence of a link between dog faeces and 2 significant livestock diseases, namely neosporosis (which causes cattle to abort) and sarcocystosis (a neurological disorder in sheep). And, cats are just as partial to a chicken dinner as we are.
- 9.16 Third, bio-security is a major issue in agriculture, especially since the last foot and mouth outbreak. Controlled access onto the farm is a key defence against the spread of infection and communicable diseases and all authorised accesses to the farm have disinfectant stations, repeated at the poultry area. Trespass onto the land, a risk accentuated by the proximity of the proposed housing, would bypass those precautions and severely compromise bio-security.
- 9.17 Fourth, because the topography of the site would lead to any run-off draining onto the farm, a major concern is that the appeal proposal would exacerbate flood risks. A number of drainage ditches on the farm are currently struggling to cope with the volume of water they need to clear, indeed in some areas they are not coping. The development can only exacerbate this situation and any SUDS or 'balancing pools' might not cope properly with the unforeseen and unexpected volumes of rain that have occurred over the last few years. The consequences of any failure would directly and disastrously affect the farm without having much impact on the proposed development. Indeed, a development at Sketchley Grange Hotel, which did have planning approval, has resulted in 5 years of seasonal flooding elsewhere on the farm taking several acres out of effective production.

¹ Document 42.1

² Document 42.5, figures 5 and 6

³ Document 41

⁴ Plan B

Ecology

- 9.18 Gail Greasley¹ indicates that the 'Stop Welbeck Houses' action group are able to present additional evidence about the beauty, visual amenity and ecology of the site now that the trees are in leaf. It is suggested that the grassland would appear to meet LWS status as mesotrophic grassland, with 7 species from list F and a further 2 from list G identified². Since the flora report from 'FPCR' was conducted on 13 March species may have been missed; this is not an ideal time to identify many grassland species, summer being better when the plants such as Red Clover, Sorrel & Pignut would be flowering. There are also significant breeding bird assemblages in the vicinity of the site, the species identified from the LWS red data book exceeding the 40 point minimum (44 'points' are either probable or confirmed, while a further 33 LWS points are listed as 'possible' and might be 'upgraded' to 'probable' or 'confirmed' later)³.
- 9.19 Neill Talbot⁴ is a Senior Conservation Officer with the Leicestershire & Rutland Wildlife Trust. He is concerned that the development would be likely to damage the habitat of species protected under the Conservation of Habitats and Species Regulations 2010, particularly bats and breeding birds. The advice, once in PPS9, advises that 'authorities should ensure that these species are protected from the adverse effects of development, where appropriate, by using planning conditions or obligations. Planning authorities should refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm'. This advice remains pertinent being consistent with Circular 06/2005, referenced as a footnote in the Framework in relation to the hierarchy of nature conservation sites.
- 9.20 The Framework (at paragraph 117) refers to the 'protection and recovery of priority species populations' and (at paragraph 109) it advises that the planning system should 'contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity...'. There are concerns about the loss or damage to wildlife habitats, including areas that meet, or are likely to meet, LWS criteria (formerly denoted as SINCs). In this case it would be likely that the grassland would meet the LWS criteria, if surveyed at the appropriate time of year. A further survey should be undertaken, as a visit in early March is totally unsatisfactory. A survey by Graham Calow only from publically accessible areas identifies 9 indicator species; only 10 are required to meet the LWS criteria and additional species would almost certainly be recorded during further surveys this summer⁵. Neutral grassland is a priority habitat in the Leicester, Leicestershire & Rutland Biodiversity Action Plan. In addition, a number of the mature trees on site meet LWS criteria.
- 9.21 But the site also contains a mosaic of valuable habitats supporting a range of flora and fauna, including species-rich grassland, rough grassland, scrub, woodland, ditches, hedgerows, mature trees and dead wood. The hedgerows and mature trees are likely to provide habitats for a range of species including birds, bats and other small mammals, amphibians and invertebrates. The mosaic of habitats is important

¹ Document 42.1

² Document 42.3

³ Document 42.4

⁴ Document 42.3

⁵ Document 42.3

in its own right and accentuates the value of the individual habitats on the site. The disruption of this mosaic does not appear to be the subject of mitigation measures.

- 9.22 Graham Calow¹ explains that he is a volunteer naturalist having verified flora records for the 'NatureSpot' website for nearly 3 years, recorded the flora of Sapcote Parish since 2006 and kept 10 year records of local flora for the Vice County Flora Recorder, Michael Jeeves. The visit to the appeal site took approximately 2 hours with excellent views over the site from the bridleway, from the roadside beside the A5 and from the grounds of Sketchley House. All the LWS grassland species previously submitted to 'NatureSpot' were identified other than *Ranunculus bulbosus* (Bulbous buttercup). Within the hedgerow by Sketchley House several plants of *Galium verum* (Lady's Bedstraw) could be confirmed². And, throughout the site *Trifolium pratense* (Red Clover), *Rumex acetosa* (Sorrel) and *Conopodium nigra* (Pignut) frequently occurred. The whole site was abundantly covered with *Ranunculus acris* (Meadow buttercup) and, within the southern corner *Luzula campestris* (Field woodrush) occurred 'occasionally'. In a boggy area east of field pond, at least 4 *Juncus effusus* (Soft Rush) could be seen and a *Cardamine pratensis* (Cuckoo flower or Lady's Smock) was present close to the western hedgerow. There is thus confirmation of 8 LWS species from lists F & G and subsequently photographic evidence indicated that Bulbous Buttercup was about 30 feet from public footpath.
- 9.23 Julia Harding³ explains that the Ecological Appraisal indicated that bat activity had soared from 27 'sightings' to 651 and that the rare Lesliers bat had been removed from the findings⁴. The County Ecologist confirmed that such activity suggested an active roost on the site where trees might be removed, necessitating a further survey and requiring some explanation about the removal of the Lesliers bat⁵. This demonstrates the inadequacy of the initial surveys.
- 9.24 European Protected Species are animals and plants that are listed in Annex IV of the European Habitats Directive and in England and Wales they are protected under Regulation 41 of The Conservation of Habitats and Species Regulations (2010). Bats are highly specialised animals; they are the only flying mammal, they are warm-blooded, give birth and suckle their young. They are also long-lived, intelligent, and have complex social lives, some commuting several kilometres to seek the feeding habitat that they prefer. All species of bats are protected by law. The presence of a protected species or habitat is a material consideration in the assessment of development proposals⁶ and under the Regulations it is a criminal offence to deliberately capture, injure or kill a bat or to deliberately disturb it. This includes any disturbance likely to impair their ability to survive⁷. Hence, planning authorities should not grant consent where they suspect a criminal offence might ensue and where the 3 'licensing tests' are unlikely to be satisfied. Those tests require the authority to be satisfied that development would entail the preservation of public health or public safety or be for some purpose of overriding public interest, including beneficial social or economic purposes; where an impact is likely, its effect must not be detrimental to the maintenance of the species at a 'favourable conservation status' in their natural range or, if it is, no satisfactory alternative must exist.

¹ Document 42.3

² This was also pointed out to me at the site inspection

³ Document 42.2

⁴ Documents 45.2, 54.5&8

⁵ Documents 54.6&9

⁶ The Framework, paragraph 20

⁷ This includes, to breed, to rear or nurture their young, to hibernate or migrate, to affect significantly the local distribution or abundance of the species, or to damage or destroy a breeding site or resting place

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- 9.25 In this case, the necessary information is lacking and, as it has not yet been produced by FPCR, the appeal should be dismissed. The initial survey of potential roosts was only done with a pair of binoculars. Given the activity now identified, further investigation is necessary. All hedgerows on the site are listed as a 'Habitat of Principal Biological Importance'. Hedgerow H1 is classified as 'important' (on ecological grounds) under the Hedgerow Regulations. All 6 hedgerows are considered to be of 'moderate to high nature conservation priority', providing a good network of connectivity across the site with links to the wider area. In any case, all hedgerows are of inherent ecological value and provide 'corridors' along which plants and animals, including bats, can feed and disperse. The impact of the disturbance caused by the development has not been properly assessed.
- 9.26 The appeal site is an ideal feeding ground for bats. The moths, caddis flies, crane flies and beetles on which they feed, together with the insects which gather in large swarms over water and day flying insects, are offered a diversity of habitats on the appeal site. Its use as grazing land attracts flies to dung: a multitude of insects swarm over the ponds: the trees harbour countless moths and butterflies, particularly the maples, poplars and the common lime. The parkland trees support a diversity of species and provide a diversity of habitats. Some, like the lime are priority habitats under the UK Biodiversity Action Plan and provide multiple food sources in nuts, nectar, flowers, sap, dead wood and fungi attractive to birds, moths, beetles, squirrels and mice. Hornbeams support flocks of finches and tits attracted to the autumn seeds along with many small mammals.
- 9.27 There are 19 different species crammed into this piece of land making it the most diverse wooded area here. A tree can 'sequester' 1 tonne of carbon dioxide in 40 years and this site helps to separate the Three Pots estate from the industrial units at Sketchley Meadows and the traffic on the A5. It is a 'green lung' and fulfils many functions as a refuge for wildlife, as a vista enhancing recreational activities, as a means to alleviate flood risks, as a carbon store and as a source of food production. This area is part of 'our place', a place of safety and enjoyment. If the Localism Act means anything at all, it must put the wishes of local people at the heart of decision-making and the Framework surely endorses the view that the voices of local people should be heard in arriving at decisions which affect the locality. It is unfortunate that we have lost so much. But if there is one site that means more to the residents of Burbage than any other, then it is this one. It is to be hoped that whoever makes the decision on this appeal will have regard to all the submissions made and realise that the outcome should entail more than just ticking a box for more housing.

10. Other Written Representations

In respect of the application

- 10.1 The Council consulted widely on the application posting a site notice and notifying neighbours. As a result Burbage Parish Council objected to the scheme and 94 letters of objection were received¹. The Parish Council objected to:
- the loss of an unallocated green-field site beyond the settlement boundary and the incursion of the scheme into the open countryside, contrary to the Village Design Statement and causing damage to the individual character of the village with the loss of a rural vista at its edge;
 - the erosion of space that can contribute to meeting recreational and leisure needs of the community;
 - the impact of the scheme on the flora and fauna of the site, the implications for protected species and the local wildlife and adverse effect on the character and appearance of the landscape;
 - the unsustainable form of the proposed development extending the settlement boundary towards the A5 and setting a precedent for further development in the 'buffer strip' affected by traffic noise and air pollution: it is unlikely that prospective residents would not use the A5 and the M69 to commute away from Hinckley, thereby undermining the move towards a low carbon economy and exacerbating congestion and road hazards: the local roads would not cope with further construction traffic, which would impinge on residential amenities;
 - the absence of a 5-year supply of housing land, which recent appeal decisions must have mitigated.
- 10.2 Local people write to endorse those concerns and emphasise:
- the noise and disturbance during construction, the unnecessary demolition of Nos.11 and 13 Welbeck Avenue and the increase in traffic noise and congestion once the dwellings are occupied: the estate roads would not be wide enough to cope with increased traffic and access for buses and emergency vehicles would be restricted even further;
 - the destruction of natural wildlife together with the loss of ancient protected trees, valuable green space, agricultural land, ancient hedgerows and grasslands; this would impact on the bridleway and the ecology of the site and reduce its recreational, amenity and tranquil quality; this would fail to conserve or enhance the natural environment and it might also jeopardise the preservation of potential archaeological remains;
 - the impact of the scheme on local amenities, the capacity of the sewerage system and the reduction in the quality of life: there would be an increase in litter resulting in increased vermin and more 'rat runs' through the area: parking could overspill onto estate roads and increased traffic would further endanger pedestrians: the scheme would impinge on the capacity of local schools, doctors' surgeries and other local services;
 - the loss of a green-field site beyond the settlement boundary, serving as an area of separation: the scheme would link housing and the nearby industrial estate, contrary to the Burbage Village Design Statement, resulting in the overdevelopment of Burbage village, hence the site has been deemed unsuitable for residential development;

¹ Document 25.1

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- the proposal would be in an unpleasant area to live, due to noise and disturbance from A5 and M69: there would be a lack of parking within the new development and the scheme would not contribute to the principles of sustainable development or widen the choice of quality homes in the area: future residents would not have access to good public transport links;
 - there are brown-field sites in Hinckley preferable to this proposal and the erection of further housing without matching employment would result in more commuting and increases in traffic and pollution.

In respect of the appeal

10.3 There were 52 letters of objection from local people before the start of the Inquiry in February, 45 of them being from separate households and one being from David Treddinick MP¹. All the concerns raised are reflected in the submissions made by the people who spoke at, or wrote subsequently to, the Inquiry. Those matters are reported in the previous section.

¹ Documents 43 and 44

11. Conclusions

Introduction

11.1 The appeal site and its surroundings are described in section 2 and the main features of the proposal, including the conditions and section 106 Undertaking, are outlined in section 3. The numbers in square brackets below are references to previous paragraphs in this report.

11.2 The key issues are whether:

- the objectively assessed level of housing need warrants any significant alteration in the housing requirement identified in the Core Strategy;
- the absence of a 5-year supply of housing land, as agreed here, warrants the relevant housing policies being denoted as 'out-of-date' and the application of the 'presumption in favour of sustainable development';
- the need for affordable housing warrants the provision offered by the appeal proposal;
- the impact of the scheme would wreak serious harm in terms of residential amenity, the landscape, the character of Burbage or the ecology of the site;
- the scheme would seriously undermine the development strategy envisaged in the Core Strategy;
- the scheme could secure a high quality design and a good standard of amenity for all, demonstrably enhancing a place in which people live their lives;
- the economic, social and environmental benefits of the scheme would outweigh the environmental damage identified, so that the proposal would constitute 'sustainable development'.

11.3 The list of conditions discussed at the Inquiry is set out in an annex attached to this report. The appropriate form of those conditions and the 'compliance' of the Undertaking are considered at the end of this section.

A full and objective assessment of housing need

11.4 The Framework advises, and the *Hunston* judgement confirms, that a Plan should meet the 'full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out [within it]'. The PPG indicates that a full and objectively assessed estimate of housing needs should start with the latest household projections tempered by an analysis of past trends, market signals, future policies, employment projections and the like. Of course, the 'latest household projections' are not value free. They are derived from fairly short term trends and it is legitimate (as the PPG advises) to consider whether those trends should pertain some 15 to 20 years hence, not least because recent projections (derived from 2008, 2011 and 2012-based estimates) differ considerably and become ever more pessimistic. [4.17, 4.20, 5.4-5.6, 6.2-6.5]

11.5 The adjustments to the trends undertaken here focus on household formation, migration and jobs. Market signals and the impact of future policies (as embodied in the LEPs Strategic Economic Plan) are analysed but not incorporated into the need assessment. I agree with that approach. The Strategic Economic Plan is largely aspirational at this stage and, although market signals illustrate (for example) a rise in house prices and a deterioration in the affordability of housing within the Borough and in Burbage (albeit marginally reversed recently), they simply mirror regional and national trends. So, although there may be situations where 'a worsening trend in any of [those] indicators [may] require [an] upward adjustment to planned

housing numbers', this is not one of them. It would neither be sensible nor possible to address flaws in the housing market evident on a national or regional scale through uncoordinated adjustments to the housing requirements in one modest Borough. [5.4-5.6, 6.3-6.11]

- 11.6 The 'full and objective assessment of housing need' derived from that approach results in an annual average housing requirement of 525dpa for the 20 years 2011-2031 (a bit less than 7,900 dwellings to the end of the Plan period and over the 15 years 2011-2026). In contrast, a requirement of 416dpa is estimated by the Council, although that may not address a need from 'suppressed households' or accommodate anticipated job growth. Nevertheless, that is close to the requirement of 410dpa derived, very fairly, from an assessment based on the latest 2012 population projections, adjusted using assumptions commensurate with those used for the 2011-based assessment. However, there may be impediments to using the latest 2012-based projections. They are just population rather than household projections (at the time of the Inquiry), they must be influenced by the recession and they are thought to under-estimate net international migration. Even so, it is clear that the annual average housing requirement used in the Core Strategy of 450dpa lies towards the middle of the range (525dpa down to 410dpa) derived from the 2011 and 2012-based estimates of what constitutes a 'full and objective assessment of housing need' within the Borough. Does that warrant any significant alteration to the housing requirement identified in the Core Strategy? [5.5-5.8, 6.3-6.11]
- 11.7 It seems to me that the answer must be 'no'. First, the Framework indicates that providing for the full and objectively assessed needs is subject to consistency with its own policies. One such policy, set out in the 'core planning principles', is that both plan-making and decision-taking should 'be genuinely plan-led'. Here part of the Development Plan consists of an adopted Core Strategy that is not time-expired and still has a dozen years or so to run. Decisions should thus be made in accordance with the Development Plan unless material considerations indicate otherwise. Of course, a material consideration might be that the Plan has not been kept up-to-date. However, to warrant increasing the average annual housing requirement in line with the requirement derived from the full and objectively assessed housing need, I think that there should at least be a material distinction between them. Although the Core Strategy requirement would represent almost a 15% reduction from the higher needs assessment, which might be significant, the fact that it lies between the levels of need derived from the 2 most recent population projections would suggest that difference to be immaterial. [4.16-4.20, 5.5-5.8, 6.3-6.12]
- 11.8 Second, the 'standard methodology' for assessing housing need described in the PPG is to be applied across a housing market area entailing the 'duty to cooperate'. That 'duty' is necessary to resolve a range of inter-locking assumptions, involving migration flows, patterns of employment growth and the like; in its absence, those assumptions become, of necessity, somewhat heroic. It is simply not possible to agree cross-border flows, commuting patterns or the location of houses to accommodate the labour force in isolation from the other 'members' of the housing market area. It follows that the 'standard methodology' cannot easily be applied accurately in the context of an appeal. Hence, the results need to be treated with a degree of circumspection. Even more so here where the inter-locking assumptions about migration flows, commuting patterns, the location of new employment and new dwellings have been carefully coordinated across several housing market areas at the regional level. And, since it is very fairly accepted that the housing requirement for the Borough identified in the now revoked East Midlands Regional Strategy is not 'constrained', it may well be that it is that requirement that remains

rather more rigorous and robust than the current attempt to assess the 'full and objectively assessed housing need' within one modest Borough. [4.20, 5.4-5.8, 6.2, 6.3, 6.10]

- 11.9 Third, although the annual average housing requirement of the Core Strategy is 450dpa, the need to address the current shortfall to achieve the housing required over the rest of the Plan period (the Liverpool approach) would necessitate the substitution of a larger figure. It turns out that adding a 5% buffer for 'choice' and reducing the expected provision from the 2 'sustainable urban extensions', as well as that from the 'large sites' and from the sites identified in the SHLAA Review 2013 (all as the appellants suggest), leads to a new annual average housing requirement over the rest of the Plan period of 525dpa. This is numerically identical to the requirement derived from the 'full and objective assessment of housing need'. It is also a coincidence. But, perhaps it is one that should not be too surprising given the integrated and coordinated approach across the region adopted in the revoked East Midlands Regional Strategy and the fact that the housing requirement for the Borough identified there was not 'constrained'. The objectively assessed level of housing need would thus largely be catered for by the current housing requirement identified in the Core Strategy. However, those 2 estimates would not quite match because the 'need' is assessed from 2011 while the Core Strategy requirement is assessed from 2013. But it seems to me that a possible difference of about 150¹ dwellings would not only be small, but also well within the margins of error inevitable in such analyses. Hence, a significant alteration to the Core Strategy requirement would not be warranted. [5.8, 5.12, 6.2, 6.3]

The 5-year housing land supply

- 11.10 In the Statement of Common Ground agreed in June, it is accepted that a 5-year supply of housing land cannot be identified. It may not matter much whether the provision would be sufficient for 3 or 4 years; both would represent a significant shortfall in the housing land required. But the Council explain that the reason for the implosion of the stance they adopted in February is that they now accept, following recent appeal decisions, that a 20% buffer should be imposed for 'persistent under-delivery', that the Sedgefield method should be applied in accordance with the exhortation in the Framework 'to boost significantly the supply of housing' and that the dwellings expected from the 2 'sustainable urban extensions' are yet to materialise. I do not concur with all those reasons. [5.9-5.12, 6.13-6.16]
- 11.11 I do not accept that there has been a 'persistent under-delivery' of housing within the Borough. As explained in the *Grobby* judgement, the word 'persistent' implies a failure to deliver the required amount of housing that has occurred for a long time. The view that such failure has been persistent here appears to be derived from the observation that the delivery of dwellings has matched (or exceeded) the annual average requirement just once in the last 7 or 8 years since the Core Strategy was adopted. But that is not a sensible comparison. There is no requirement (of any kind) that the delivery of dwellings should always match the annual average provision. Indeed, such an expectation would be unrealistic. Uniform distributions of dwelling delivery do not even occur at a national scale, let alone within the confines of a modest Borough. The provision of housing comes in 'lumps' and it follows 'cycles'. So, variations about the annual average requirement should be expected and periods of plenty, followed by periods of 'famine', should be

¹ 2*(525-450)

accommodated in meeting what is actually required, namely the number of dwellings to be provided over the Plan period. [4.2, 4.16, 4.17, 5.11, 6.15]

- 11.12 In any case, such a simple comparison as entailed in examining the dwellings delivered against the annual average required should often be unnecessary (especially where a Plan is not time-expired) because a potentially more realistic one is offered by the housing trajectory. Much effort is usually expended on preparing and annually updating the monitoring and projections entailed in those figures and, at Hinckley and Bosworth, developers are asked to assess the deliverability of dwellings on their sites, so that the resulting trajectory should reflect the latest local information as well as a realistic assessment by the development industry. That seems to me to be exactly what the PPG advocates. In assessing the 'local delivery record' a long term view is encouraged to accommodate cycles in the housing market and the advice is that past excesses can be taken into account to off-set any current under-provision. [4.17, 4.20, 6.13]
- 11.13 Applying that advice to Hinckley and Bosworth it is immediately clear that a period when delivery largely matched or exceeded the Core Strategy annual average requirement long before and up to 2008 was followed by a period when shortfalls (sometimes quite substantial) occurred. Until about 2009, the 'shortfalls' were largely anticipated by the initial trajectory and deemed by the Core Strategy Inspector not to affect the soundness of the Plan. The current trajectory (October 2013) still anticipates exceeding the housing requirement over the Plan period and more than doubling the provision achieved during 2012 in 2013. In those circumstances, it seems to me to be both factually inaccurate and unfair to denote any failure to deliver the housing required here as 'persistent'. There is no requirement to achieve the annual average provision annually and the delivery that has occurred has largely been anticipated, planned and coordinated. [6.14]
- 11.14 Even so, a 5-year supply of housing land cannot be identified, whichever method (Liverpool or Sedgefield) is used. And, in relation to the initial trajectory, the current shortfall is equivalent to a supply of about 1½ years. The main reason for this is the failure of the 'sustainable urban extensions' to deliver the dwellings anticipated and the dependence of the Core Strategy on those 'extensions' to deliver some 82% of the dwellings required over the Plan period. It is not just that the anticipated delivery has slipped; indeed, the original trajectory envisaged 320 dwellings on the sites by 2014/15, reduced to 100 dwellings at Barwell in the current trajectory by 2015/16. Rather, it is the diminishing likelihood of achieving any significant delivery of dwellings on the sites in the immediate future. Neither site benefits from even an outline planning permission, let alone the approval of reserved matters; that at Barwell is mired in re-negotiations over a section 106 Agreement and that at Earl Shilton still awaits the submission of an application. The trouble is that the stalled progress would appear to indicate that without further adjustments the viability of the schemes is questionable and the deliverability of the number of dwellings even now anticipated must be doubtful. [5.14, 5.15, 6.15]
- 11.15 The Core Strategy specifies mechanisms to address such failure. One entails a thorough re-think involving a review of the Directions for Growth Report and the identification of an alternative 'preferred option', to be subject to further consultation; nothing is yet mooted along those lines. The second mechanism is intended to address 'small scale' shortfalls triggering a review of those sustainable sites identified in the SHLAA and not prioritised for development through the Site Allocations DPD. That latter mechanism is impeded by the absence of an adopted Site Allocations DPD. Worse still, no evidence is adduced to show that such an

exercise has been, or is about to be, undertaken, even in relation to the emerging document. In those circumstances, the credibility of the latest trajectory in anticipating more than double the provision achieved during 2012 in 2013, and of roughly maintaining that level of provision subsequently, is seriously undermined. And, the likelihood of delivering the houses required over the Plan period in the manner anticipated must become evermore remote. [4.3, 5.15-5.17, 6.14]

- 11.16 How should those failings be addressed? The Framework sets out a series of tasks 'to boost significantly the supply of housing'. They are all consistent with a plan-led approach to decision making and invoke the use of the housing requirements identified in a DPD, the supporting evidence base, trajectories or density policies. The use of the evidence base here would ensure that the Core Strategy would meet the 'full, objectively assessed needs for market housing', provided the current shortfall could be made up over the rest of the Plan period; that is demonstrated in the previous section. The identification of sites and broad locations for growth in 6-10 years time and for up to 15 years hence would also be achieved if the delivery of dwellings identified in the current trajectory could be maintained. That would also set out the expected rate of housing delivery over the Plan period and a specific density policy in the Core Strategy indicates the approach to be adopted here. The one major failure relates to the exhortation to 'identify and update annually a supply of specific deliverable sites sufficient to provide 5-years worth of housing against [the] housing requirements'. In my view, that failure stems from the failure to implement the mechanism set out in the Core Strategy to address identified shortfalls in the 5-year supply of housing land, from which it follows that a 'housing implementation strategy ... to maintain delivery of a 5-year supply of housing land' is also lacking. To my mind, that significantly exacerbates the seriousness of the shortfall identified here. [4.17, 4.20, 5.12, 6.13]
- 11.17 The Framework does not specify how that shortfall should be addressed. Not even in the tasks listed 'to boost significantly the supply of housing' is a preference between the Sedgefield and Liverpool methods identified. The PPG suggests that 'the aim should be to deal with any under-supply within the first 5 years of the Plan where possible'. But that seems to envisage the preparation of a new Plan where difficulties might be addressed by invoking the 'duty to cooperate'. That situation does not apply here. In any case, if the current shortfall could be made up over the rest of the Plan period then, as indicated above, the provision would meet the 'full, objectively assessed needs for market housing'. Neither the Framework nor the PPG identifies any need to do any more. [4.17, 4.20, 5.12, 6.13]
- 11.18 The Framework insists that 'housing applications should be considered in the context of the presumption in favour of sustainable development' and that 'relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites'. Since relevant housing policies could be rendered 'up-to-date' without any change save for the identification of additional housing land, the policies themselves are not necessarily rendered inherently outmoded, redundant or inapplicable by this mantra. Hence, they are not necessarily 'out-of-date'. Clearly, as soon as sufficient additional housing land is identified the policies would be 'up-to-date' and command whatever their full statutory status might afford. It follows, (in line with the *Grobby* judgement) that as the Core Strategy and 'saved' policies are not absent, silent or necessarily 'out-of-date', the 'presumption in favour of sustainable development' to be applied here is, essentially, to approve 'development proposals that accord with the Development Plan without delay'. Of course, where proposals do not accord with the Development Plan decisions should be in accordance with the Plan unless

material considerations indicate otherwise. One important material consideration is the lack of a 5-year supply of deliverable housing sites. [4.16, 6.15]

11.19 Clearly, not all policies that might influence the supply of housing deal solely with housing supply. 'Saved' policy NE5 and policy 4 of the Core Strategy are examples. They demarcate land use distinctions between settlements and the countryside and they identify aims to enhance the character and identity of Burbage. The absence of a 5-year supply of housing may require an urgent review of settlement boundaries and the need to identify sites for development in the countryside, but it does not necessarily render the distinction between town and country irrelevant or the need to maintain and enhance the identity of Burbage redundant. Rather, the Framework establishes a new balance between providing the housing needed and protecting the countryside and the identity of towns and villages. It is that balance which is crucial here. [4.8-4.12, 4.18. 4.19]

Affordable housing

11.20 The provision of affordable housing is tied to the delivery of market housing. A failure in the provision of the latter must thus inevitably lead to a failure to provide for the former. The Framework suggests that a Local Plan should meet the 'full, objectively assessed needs for market and affordable housing in the housing market area'. Yet the Core Strategy insists on only a modest 20% of affordable units in housing schemes, even on suitably large sites in urban areas. The evidence indicates that this level of provision is incapable of reflecting the need identified in the SHMA. The current shortfall accumulated since 2006 in relation to that document amounts to some 1,554 dwellings. The emerging SHMA indicates that about 57% of the projected demographic growth should probably entail the provision of affordable housing, with an annual requirement of 245 affordable dwellings over the next 25 years. In contrast, the annual average requirement for affordable dwellings identified in the Core Strategy is only 105dpa. But the shortfall against even that level of provision amounts to about 259 affordable dwellings; indeed, just 476 additional affordable dwellings have materialised during the last 7 years, representing an annual average of only 68dpa. As things now stand, the likely supply of affordable homes may meet the identified needs for only 0.7 years (in relation to the SHMA) and barely 2.8 years (in relation to the Core Strategy). [4.7, 4.17, 5.19-5.21, 6.19]

11.21 The result is that there is now an acute need for affordable dwellings in the Borough and in Burbage. There are some 948 households on the 'revised' Housing Register of which over 300 have stated a preference for Burbage with 154 having a local connection to the place; 50% are in medium, high or priority need. In contrast re-lettings from all the 730 affordable homes in Burbage amounted to just 30 over the 18 months from April 2012 to September 2013. [5.19]

11.22 In that context, the proposal would help to meet an acute need that would not otherwise be met; indeed, it seems to me that there would be no realistic prospect of meeting that need without a 'step change' in the mechanisms for the delivery of affordable units. The proposal would represent such a 'step change'. Moreover the mix of dwellings in terms of units for rent and 'intermediate' properties, and in terms of size and type, would be geared to catering for 'starter homes', families and the elderly, thereby contributing to the housing and social mix both of the proposed development and of Burbage. [5.20, 5.22, 6.19]

11.23 I do not accept that the private rented sector should be regarded as an appropriate alternative to the provision of affordable housing in the long term, although it may

serve as an essential 'stop-gap' for some in housing need; the security of tenure is different and the safeguards offered by local authorities or Registered Social Landlords are usually absent. Nor does it seem sensible to limit the provision of affordable homes in Burbage to those now living there and seeking such housing. Burbage is not an isolated rural village, but part of the only sub-regional centre and main urban area in the Borough. It should, therefore, accommodate needs emanating from beyond its boundaries. Hence, I consider that the need for affordable housing is acute and warrants the provision offered by the appeal proposal. [5.23, 6.19, 6.20]

The impact of the scheme

11.24 The impact of the scheme is addressed in the 3 reasons for refusal alleging harm to the amenities of residents, especially to those beside the proposed access road, and harm to the rural landscape of the site and its surroundings. Local residents are also concerned that the scheme would irretrievably damage a site with the quality of a potential 'local wildlife site'. I consider those issues below. [5.24, 6.21, 9.1]

Residential amenity

11.25 The access is designed to conform to the relevant local guidance and minimise the impact on the lime tree avenue. Contributions would be made towards improvements to the bridleway and bus stops and a Travel Plan would be prepared. The additional traffic generated would amount to a 2-way flow of just 74 vehicles during the peak hour and barely 750 a day. Peak hour flows would thus entail little more than 1 vehicle per minute at the access road and traffic would be likely to disperse fairly evenly to the north and south along Welbeck Avenue and thence through the estate to Wolvey Road. There would thus be roughly 1 extra vehicle every 2 minutes along Brockhurst Avenue, barely that along Beechwood Avenue and much less than that along Newstead Avenue. Such modest traffic flows, even those resulting from large percentage increases, would not significantly alter the quiet and safe character of these suburban streets. And, although the proposal would transform Nos.9 and 15 Welbeck Avenue into corner properties, that corner would still be one on 2 very lightly trafficked streets; there would, in any case, be scope to ameliorate any impact through boundary treatments and the implementation of landscaping within the generous roadside verges. I acknowledge the consternation in which residents anticipate the upheaval likely to be experienced during the construction period, but that has never solely warranted the refusal of planning permission. [5.25-5.31, 6.22-6.24, 9.6-9.11]

11.26 Because the traffic flows would be very modest, they would not lead to noise and disturbance sufficient to impinge on residential amenities. Even at the 2 corner properties noise levels would be low and well within the recommended WHO guidelines for rooms and gardens. Moreover, the scheme would be likely to have a beneficial effect on the traffic noise experienced by several local residents (including those at Nos.9 and 15 Welbeck Avenue) due to the proposed noise barrier along the A5. Hence, neither the volume of traffic, the noise it might generate nor the use of the access road would be likely to have an unacceptable impact on residents, from which it follows that the scheme would satisfy the requirements of policy BE1. Indeed, neither the Environmental Health Officer nor the Highway Authority raised objections to the proposal and the assertions to the contrary are not sufficiently compelling to convince me otherwise. [5.25, 5.32-5.34, 6.22-6.24, 9.6-9.11]

Landscape

- 11.27 As indicated above, even if policy NE5 is a relevant policy for the supply of housing land, it may still have an important planning role in maintaining a distinction between town and country. It may not be written in terms that entirely reflect the guidance in the Framework. But, as it is agreed that the avenue of lime trees and the remnant parkland on the appeal site are attractive features, this is a case where protecting the countryside 'for its own sake' would chime with the Core Principle of reflecting the 'intrinsic character and beauty of the countryside' in decision-taking. Of course, the policy identifies a boundary in a Local Plan adopted some 14 years ago and intended to apply only until 2006. There has been no revision to the boundary even though the Core Strategy identifies Burbage as part of the Hinckley sub-regional centre and the Site Allocations DPD is not even programmed for adoption until June 2015. Nevertheless, whether an effective alteration to the boundary of Burbage would be warranted here must have regard to the harm due to building on an attractive green-field site beyond the current settlement boundary. [4.19, 5.35, 5.36, 6.25-6.27, 9.12-9.14]
- 11.28 It is accepted that harm would be caused by the development of this green-field site. But, in terms of designations and current policy, I agree with the appellants that such harm would be fairly limited. The land is not designated as anything more than 'open countryside'; it is subject to no special protection or designation and even the TPO is old and only 'area-based'. Moreover, although policy 4 of the Core Strategy seeks to protect and preserve the 'open landscape to the east' of the settlement and 'enhance the landscape structure' to the south, it is completely silent about the land to the west, which includes the appeal site. In any case, I think that the visual impact of the scheme would be somewhat confined by the topography, vegetation and buildings evident here. The additional planting and noise barrier would accentuate the confining effect of trees and foliage along the A5: the buildings on Sketchley Lane, at Elms Farm and at Sketchley Meadows Business Park and industrial estate denote limits to this modest stretch of countryside to the north and west: the lime tree avenue and the adjacent vegetation largely screen the site from most properties in Burbage. Although there are views across the Anker Valley from the bridleway, they are largely glimpsed between the lime trees and vegetation: and, although the site can be seen from the A5, the views are filtered through the boundary hedgerows and trees and occur over a fairly short stretch of the road. I do not agree that the site forms a 'gateway' to Burbage; to my mind the commercial and industrial sheds at Sketchley Meadows actually herald the approach of the place. Nor do I agree that the site forms part of a distinct gap between Hinckley and Burbage; it is simply a site adjacent to the edge of the settlement. [5.36, 5.37, 6.27, 6.28, 9.2, 9.5, 9.12-9.14]
- 11.29 The scheme would intrude into the countryside beyond the strong boundary created by the lime tree avenue and, in spite of the large number of trees retained, the perception of the parkland would be radically altered by the intended estate, even though swathes of open space would remain. The character of the lime tree avenue would also alter, part of it being beside houses and front gardens rather than the remnant parkland. But the development would be surrounded by landscaping and its low density would allow swathes of public open space to merge with the surrounding countryside, so maintaining a semi-rural edge to the settlement. In my view, the low density envisaged would thus be appropriate here. Hence, although the scheme would be harmful and contrary to policy NE5, that harm would be limited and perceived within a relatively confined visual envelope. The harmful impact of the scheme on the landscape and the character of Burbage would thus be marginally ameliorated. [5.37-5.40, 6.27-6.29, 9.2, 9.5, 9.12-9.14]

Agriculture

- 11.30 The proposal would result in residential development being closer to Sketchley Lodge Farm. But that juxtaposition would not be especially unusual and the 'proving layout' allows for a swathe of open space, some 20m in depth, between the dwellings and the periphery of the site. So, although people, pets and children would be closer to the farm, residential uses would not actually abut the farmland. Moreover, some defence against serious disruptions to the bio-security required for the successful operation of that agricultural enterprise could be provided in the detailed design of the landscaping and boundary treatments, to be controlled through the suggested conditions. For example, special provision, in the form of fencing and landscaping, might be made in the vicinity of the 'play area'. [section 3, 5.37-5.40, 9.15, 9.16]
- 11.31 I can appreciate the concern about run-off from the developed site draining onto the farmland, given the topography, and I saw for myself that parts of the site towards the boundary remained damp, in spite of the 'good weather'. However, the scheme is to be carried out in accordance with the approved Flood Risk Assessment incorporating measures to limit the discharge rate, and to provide facilities for the storage of surface water run-off, so that for a rainfall event with a probable recurrence of up to 1:100 years and with a 30% addition (for climate change), surface water run-off would not exceed that from the undeveloped site. I see no reason why those measures should not be effective; the installed SUDS and 'balancing pools' are to be designed specifically to cope with the 'unexpected' volumes of rain currently foreseen and to avoid exacerbating flood risks elsewhere. And, although mistakes are always possible, they should be very unlikely, given that the conditions to be imposed here are required by the Environment Agency and under the control of the Local Planning Authority. The scheme should not, therefore, seriously impinge on the operations at Sketchley Grange Farm. [section 3, 5.37-5.40, 9.17]

Ecology

- 11.32 There are no ecological objections to the scheme from the Council or from the County Ecologist; that has been the case throughout the determination of the application and the subsequent appeal. Nor did any objection emerge from the Leicestershire and Rutland Wildlife Trust until 23 June 2014. This suggests to me that the site has never been considered as inherently valuable for nature conservation. I appreciate that local residents dispute that finding. But, although interesting sightings and observations have been accumulated by knowledgeable people, it seems to me that they are not always embedded in the contextual background essential to assessing the nature conservation value of the site. [5.41, 5.44, 5.48, 9.18-9.27]
- 11.33 The records collected relating to the quality of the grassland and the breeding bird assemblages illustrate the point. The fact that 10 indicator species may be present from the combined lists relating to 'mesotrophic' and 'wet' grassland is not sufficient for the site to be anything other than 'species poor', as the County Ecologist has always maintained. The indicator species must relate to a particular grassland habitat, with its own particular characteristics, and be present at a specified minimum level of 'abundance'. So, the site does not qualify as 'wet' grassland because it is not 'seasonally flooded', a key qualifying criteria. Nor does it qualify as mesotrophic grassland because, in spite of thorough surveys, only 6 indicator species are identified, with only 4 occurring at a 'cover abundance' of 'occasional' or greater. I was interested to see Lady's Bedstraw (*Galium Verum*) beneath the hedge around Sketchley House (also recorded by Graham Calow), but even with the

cuckooflower and pignut, the grassland would not be of nature conservation quality. Similarly, the accumulation of birds sighted does not necessarily add up to form sufficient qualifying criteria; the presence of a significant population of a particular species should be evident and the population should be 'established'. Again, the sight of an occupied Sparrowhawk's nest in the lime tree avenue was fascinating at the site inspection, but there is no evidence that it was part of a 'significant' or 'established' population. Hence, the evidence does not demonstrate that the site would qualify even as locally important for nature conservation in relation to breeding bird assemblages. [5.45-5.51, 9.18-9.27]

- 11.34 The site has been subject to comprehensive ecological surveys in 2013 and 2014; queries raised have also been investigated, sometimes through additional survey work. The surveys demonstrate that badgers do not forage into, or use, the site, although a single outlier sett lies within the curtilage of Sketchley House: there is no evidence of great crested newts or reptiles: a small number of notable bird species characteristic of the grassland, hedgerow, scrub and mature tree habitats have been identified, but not in significant populations: no bat roosts are identified and there is no evidence of significant bat activity on the site. [5.42-5.44, 5.48-5.51, 9.18-9.27]
- 11.35 In any case, the scheme has been designed to ameliorate the impact on the flora and fauna of the site. The hedgerows and mature vegetation are to be retained with additional enhancements for breeding birds: bat boxes are to be provided on the retained trees to increase potential roosting opportunities for bats and a sensitive lighting scheme implemented. The additional landscaping proposed, together with the 'biodiversity management plan' should help to increase habitat diversity and enhance the foraging value of the site. Hence, although the scheme would affect the ecology of the site, it would not impinge on protected species, nor spoil a site of even local nature conservation value. And, as the proposal would incorporate measures to enhance biodiversity, I consider that its overall ecological impact would be limited. [5.41, 5.50, 5.51, 9.18-9.27]

The planning strategy

- 11.36 Although the appeal proposal would not accord with the 'saved' policies in the Local Plan, being in the countryside beyond the edge of Burbage, it seems to me that it would adhere to the requirements of the Core Strategy, as far as possible. First, being adjacent to Burbage the site is on the edge of part of the one 'sub-regional centre' in the Borough where new residential development is to be focussed. Second, the scheme would not impinge on the countryside to the east and south of the settlement specifically identified for protection or landscape enhancement by policy 4 of the Core Strategy. Hence, the one area where additional development might be 'left open' (as the Council accept) is the land to the west, just where the appeal site is located. [5.53, 5.58, 6.31, 9.2-9.5]
- 11.37 Of course, policy 4 also requires that 'development contributes to Burbage's character and sense of place'. Very simply, the proposal would partly achieve that aim by avoiding the areas identified for protection and enhancement. However, although the scheme would intrude into the countryside beyond the current settlement limit, I consider that it would not detract from the character of the settlement unduly. First, it would intrude into a segment of countryside that is itself contained within recognisable limits; the A5 and the roadside foliage to the south, the commercial, industrial and agricultural buildings at Sketchley Meadows and Elms Farm to the north west and the dwellings and large hotel on Sketchley Lane to the north. Second, the low density and swathes of open space around and amongst the proposed dwellings would maintain a semi-rural character at this edge of Burbage.

Third, due to the topography and intervening foliage, the apparent visual impact of the scheme would not be extensive and would be partially screened from the settlement by the lime tree avenue and dense garden hedges. [5.37, 5.53, 5.58, 6.31, 9.2-9.5]

- 11.38 The general compliance of the appeal site with the Core Strategy as a location for further housing development is also supported by its identification as a potential housing site at the Preferred Options stage of the emerging Site Allocations DPD. It was rejected from further consideration only due to concerns over access and the green-field nature of the site. But with the access now secured from Welbeck Avenue, the main impediment then seen to this development is removed. And, it is self-evident that in redressing the shortfall in market and affordable housing, some green-field land must be utilised. [5.18, 5.53, 5.56, 5.58, 6.31, 9.2-9.5]
- 11.39 The Council claim that the housing allocation envisaged for Burbage is substantially less than in the other 3 settlements that form the 'sub-regional centre'. In relation to the minimum requirement of 295 dwellings, the allocation for 110 homes in the emerging Site Allocation DPD would provide 64 dwellings above the 'minimum' required. Since permission for the appeal scheme would exacerbate such 'over-provision' it would undermine the modest allocation envisaged for the place in the Core Strategy. [5.55, 5.59, 6.30-6.32, 9.2-9.5]
- 11.40 I do not accept that claim. The allocation set out in policy 4 of the Core Strategy is now identified as a 'minimum'. Exceeding it *per se* would undermine nothing in the Core Strategy, especially as key purposes of the allocation are to 'support the Burbage local centre and support Hinckley's role as a sub-regional centre'. The tests remaining, other than the need to safeguard the landscapes to the east and south, essentially relate to the provision of green infrastructure, safe cycle-ways and well designed development. As indicated above, I think that the scheme would fulfil those requirements. And, it would not detract from the character of the settlement unduly. Moreover, the provision of new and affordable homes should help to diversify the dwelling and population distribution in Burbage; a step towards creating the 'thriving local places that the country needs'. Hence, I consider that the scheme would largely accord with the development strategy envisaged in the Core Strategy. [5.55-5.59, 6.30-6.33, 9.2-9.5]

The merits of the scheme

- 11.41 Although the scheme is only submitted in outline, I think that the illustrative 'proving layout', together with the Design and Access Statement, would provide a template for the creation of a well designed and attractive development. The 'illustrative layout' shows how a mixture of 1, 2, 3 and 4 bedroom houses, flats and bungalows could be arranged around interconnected 'housing squares' and 'home zones', enveloped by swathes of open space, a play area and the retained bridleway. About one third of the site would be laid out as public open space, accessible to both prospective and existing residents. The scheme would not only provide for a diverse range of house types and sizes, but also the layout would be honed to accommodate most of the more significant landscape features, such as the lime tree avenue, most of the best parkland trees and the augmented surrounding foliage. And, the low density would contribute to the semi-rural ambience at this edge of Burbage. The proposal would also provide for a socially diverse community with 40% of the housing being affordable units 'pepper-potted' across the site (twice the provision normally required), and with a range of dwellings that might serve as 'starter homes', family properties and accommodation in the form of flats or bungalows that might prove attractive to elderly residents. [section 3, 5.60-5.62, 6.34, 6.35]

11.42 The open space and improvements to the bridleway would contribute to the green infrastructure and safe cycle-ways in Burbage, in line with the Core Strategy. And, being located adjacent to the 'sub-regional centre' away from the 'safeguarded' landscape to the east and south of the settlement, the scheme would also accord with the strategic aims of the Core Strategy. It seems to me that this is just what 'good design' as a 'key aspect of sustainable development' should be and that the proposal would represent just the sort of positive approach to achieving the kind of 'high quality and inclusive design' sought by the Framework. [4.5-4.7, 5.60-5.62, 6.30-6.32]

The planning balance

11.43 The scheme would deliver up to 135 dwellings to address the shortfall in the 5-year housing requirement and conditions are suggested to ensure a 'reserved matters' application would be submitted in half the time normally allowed. The scheme would deliver twice the minimum level of affordable units normally sought, thereby representing the sort of 'step-change' in the provision likely to be required and contributing significantly to redressing the dearth in provision experienced hitherto. The scheme would entail a genuine mix of dwellings by size, type and tenure, and accommodate a generous provision of open space. The scheme would largely comply with the Core Strategy in being located where development is to be focussed beside part of the sub-regional centre (and thus 'sustainably' close to employment, public transport, schools, shops and leisure facilities), but avoiding the 'safeguarded' landscapes to the east and south of the settlement. The illustrative 'proving layout' would provide a template capable of offering a sound basis for delivering a well designed scheme retaining many of the landscape features evident on the site (the mature trees, the lime tree avenue and the surrounding hedgerows) and presenting an appropriate semi-rural edge to the settlement. I think that those outcomes would represent significant economic and social benefits demonstrably supporting the economic and social roles envisaged by the Framework for the planning system in delivering 'sustainable development'. Moreover, the scheme would embody much that would mitigate or ameliorate some of the environmental damage evident in building on a green-field site beyond current development limits. [section 3, 4.3-4.7, 4.16, 5.63, 11.14-11.23, 11.32-11.42]

11.44 In contrast the environmental harm demonstrated here would be limited. It is not just that the reasons for refusal relate only to the 'saved' policies in the old Local Plan. No conflict with the Core Strategy is cited and, indeed, the scheme would largely accord with policy 4. The technical evidence demonstrates that residential amenities would not be seriously impaired by the proposal, thereby satisfying the requirements of policy BE1. It is also demonstrated that the site would not qualify even as a local site of nature conservation value and that the proposal would not impose significant adverse affects on protected species or habitats; on the contrary, measures to protect habitats and enhance bio-diversity would be incorporated into the development. The proposal would intrude into the countryside beyond a clearly identifiable boundary and impair the perception of the 'remnant parkland'. But that intrusion would be into a segment of countryside that is itself visually contained to the south, north west and north by the A5, by commercial and industrial buildings and by development along Sketchley Lane. Although the boundary of the lime tree avenue would be breached, the low density of, and swathes of open space within, the scheme would evoke a semi-rural character at this edge of Burbage. And, due to the topography and intervening foliage, the 'zone of visual influence' would be modest. So, although the proposal would be contrary to policy NE5, I think that its environmental impact would be both limited and fairly well confined. [5.63, 6.36, 6.37, 11.24-11.35]

- 11.45 The planning balance is thus clear. The significant economic and social benefits that would be delivered by this scheme would demonstrably outweigh the limited environmental damage identified, especially given the measures to mitigate and ameliorate the environmental impact actually evident. The proposal would thus constitute 'sustainable development' as envisaged by the Framework, from which it follows that the scheme should benefit from the 'presumption in favour of sustainable development' inherent to decision-taking. Those considerations thus constitute compelling reasons to allow this proposal although it would conflict with an element of the Development Plan. [5.64-5.67, 6.37, 6.38]
- 11.46 The Framework indicates that 'housing applications should be considered in the context of the presumption in favour of sustainable development' and that, in the absence of a 5-year supply of housing land, housing policies 'should not be considered up-to-date'. I explain why the housing policies relevant here should not be regarded as absent, silent or necessarily 'out-of-date'. That is why the 'presumption in favour of sustainable development' applicable here is equivalent to a compelling reason to except the scheme from those Development Plan policies with which it conflicts. However, should the Secretary of State disagree with that assessment, then the Framework is quite clear that the 'presumption in favour of sustainable development' means 'granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, or specific policies in this Framework indicate [that] development should be restricted'. Clearly, those tests do not invoke an *a priori* test that a housing scheme should first be demonstrated to constitute 'sustainable development'. And, the limited environmental harm identified would not amount to an adverse impact sufficient to 'significantly and demonstrably outweigh the benefits' of the scheme 'when assessed against the policies in this Framework taken as a whole'; nor could such damage be ascribed to conflict with specific policies in the Framework indicating that development should be restricted. [4.16-4.20, 5.64-5.67, 6.37, 6.38, 11.18, 11.19]
- 11.47 I accept that the compendium of Secretary of State decisions cited in the course of this appeal demonstrates that the sort of environmental damage likely to prevent housing development where a 5-year supply of housing land cannot be demonstrated is normally significant, entailing harm to a Green Belt or a 'green wedge', or some serious site-specific problem. But I do not accept that those decisions necessarily demonstrate that a scheme simply intruding into the countryside beyond a defined development limit, would necessarily be acceptable. So much must depend on the balance between the nature and extent of the environmental damage actually wrought set against the significance of the social and economic benefits actually delivered, that I doubt the utility of attempting to derive a 'calculus of significant weight' derived from those decisions. I explain why I consider that, in this case, the balance is firmly in favour of this scheme. [5.66, 5.67, 6.37, 6.38]

Conditions and the section 106 Undertaking

Conditions

- 11.48 The conditions discussed at the Inquiry are set out in the form I would recommend in the annex; they are listed at document 51. The main effects of the conditions are described in section 3. They are intended to ensure that the development is carried out along the lines currently indicated and that the scheme would be implemented quickly. Controls are imposed to provide satisfactory access and parking arrangements and to minimise car-borne travel. Measures are intended to prevent any exacerbation of flood risks and to provide for the 'sustainable drainage' of the

site. The dwellings are to be protected from the noise of traffic on the A5 and the aim is to retain as many attractive trees as possible, as well as landscaping the development. Mitigation measures are incorporated in relation to the nature conservation and archaeological interests of the site. And, measures to control construction and construction traffic are aimed at reducing road hazards and the impact of the work on local residents. [section 3]

- 11.49 Although the suggestion that application for the approval of the reserved matters is to be made to the Local Planning Authority within 18 months (condition 1) is made by the appellants, it is particularly important here not just because it would help to ensure that the scheme would stand a good chance of delivering the dwellings permitted within the current 5 year period, but also because the absence of a 5-year supply of housing land is largely due to the absence of the mechanisms outlined in the Core Strategy to redress the failure of the 'sustainable urban extensions' to deliver the dwellings anticipated. The 'early' delivery of the dwellings proposed in the appeal scheme would thus be commensurate with the mechanisms originally envisaged in the Core Strategy to redress shortfalls experienced in delivering the housing required. [11.15-11.17]
- 11.50 There is no need to justify the controls set out in condition 3; they would contribute to ensuring that the scheme would be one of quality and good design. But condition 4 is imposed because the 'proving layout' would provide a sound basis for delivering a well thought out scheme incorporating key features in the landscape and attractive swathes of open space. [11.41, 11.42]
- 11.51 Conditions 5-7 simply aim to ensure that the access arrangements and the bridleway would be satisfactory and safe: conditions 8 and 9 insist that sufficient car and cycle parking are provided. A 'Residential Travel Plan' is required (condition 10) to minimise the incidence of car-borne travel and, thereby, reduce the impact of the traffic generated by the scheme on the estate roads leading to the proposed access. The measures intended to prevent any exacerbation of flood risks, to provide for the 'sustainable drainage' of the site and the disposal of foul sewerage are self-explanatory (conditions 11-13).
- 11.52 The noise assessment demonstrates that traffic on the A5 affects the southern part of the site, so that a noise barrier would be required to ensure a satisfactory noise environment for the proposed dwellings positioned there. Although the effects of such a barrier have been taken into account, the position and design remains indicative. Hence, there is a need to submit details to the Local Planning Authority (condition 14). [11.26]
- 11.53 Conditions 15-18 embody measures to ameliorate the ecological impact of the scheme and are integral to the proposal. Similarly, the landscaping and the tree protection measures (conditions 23-25) are essential elements in delivering the quality and character envisaged. Conditions 21 and 22 are intended to provide special protection for the residential amenities of the occupants of the properties beside the proposed access. This is also the intention of conditions 27-30, although these conditions embody some protection for residents on the estate roads to the proposed access during the construction of the proposed development. The location of the site beside Watling Street warrants the archaeological investigation required by condition 26. [11.25-11.35]

Section 106 Undertaking

- 11.54 The current version of the section 106 Undertaking is designed to secure 40% of the units as 'affordable' homes. That level of provision would be essential to address

the need identified and to begin to redress the shortfall shown. It is a very important element in the social and economic benefits accruing from the scheme and significant in determining that the planning balance should be in favour of the proposal. It is thus directly related to the development, warranted by the need to meet relevant policies and crucial in assessing the acceptability of the scheme in planning terms. [11.20-11.23]

- 11.55 The Undertaking also proffers over £1.1m in contributions towards additional education facilities, the provision of open space and its maintenance, civic amenities, bridleway improvements, additional transport facilities, the implementation of a Travel Plan and additional policing, together with legal and monitoring costs. [section 3]
- 11.56 The provision of the open space and its maintenance are crucial to the character and appearance of the scheme, to the retention of so many trees around and amongst the development and to several of the mitigation measures designed to ameliorate the impact of the development on the flora and fauna of the site. The bridleway improvements are necessary to ensure that a safe and commodious route would remain and accommodate the crossing of the access road. Hence, I think that these elements would also be directly related to the development, warranted by the need to meet relevant policies and crucial in assessing the acceptability of the scheme in planning terms. [section 3, 11.27-11.35, 11.42]
- 11.57 The contributions towards additional education and library facilities, civic amenities, transport improvements, the implementation of a Travel Plan and additional policing are largely derived from the current version of the Statement of Requirements for Developer Contributions in Leicestershire. This provides a consistent approach across the County and an indication of the level of contributions developers might be expected to make. A detailed explanation of how each element of the overall contribution is calculated is set out elsewhere. However, the Framework supports the provision of the facilities and services needed in a community and the preparation of SPDs to assist applicants in understanding the obligations that proposals might generate. Moreover, the evidence demonstrates that the contributions sought are directly related to the development, proportionate to the scheme and necessary to make the proposal acceptable in planning terms. Hence, I consider that the contributions sought can be considered to be CIL compliant. [section 3, 7.1-7.12, 8.1-8.5]

12. Recommendation

12.1 I recommend that the appeal be allowed, subject to the conditions set out in the annex.

David Cullingford

Inspector

APPEARANCES

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<i>In writing</i>		
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<i>Instructed by:</i>		
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Richard Crosthwaite	BA DipTP MRTPI	Principal Planning Officer, Hinckley and Bosworth Borough Council
Simon Atha	BSc MA	Planning Officer, Development Management, Hinckley and Bosworth Borough Council
Nic Thomas		Chief Planning and Development Officer, Hinckley and Bosworth Borough Council

FOR THE LEICESTERSHIRE COUNTY COUNCIL:

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She would have called, but matters agreed:		
Andrew Tryer	BA MRTPI	Developer Contributions Officer, Leicestershire County Council
Steve Kettle		Library Services, Leicestershire County Council
Sue Owen		Children and Young People's Services, Leicestershire County Council
Paul McMorran		Environment and Transport, Leicestershire County Council
Simon Hill		Highways, Leicestershire County Council

FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE:

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She would have called, but matters agreed:		
Michael Lambert	BA MRTPI	Growth and Design Officer, Police and Crime Commissioner for Leicestershire, Leicestershire Police

INTERESTED PERSONS:

Cllr David Inman	Sketchley & Stretton Ward	Hinckley and Bosworth Borough Council
Cllr John Moore	Sketchley & Stretton Ward	Hinckley and Bosworth Borough Council
Julia Harding		Local resident and member of the 'action group'
Kerry Shipman		Local resident and member of the 'action group'
Emma Holden		Local resident and member of the 'action group'
John Greasley		Local resident
Gail Greasley		Local resident and member of the 'action group'
Neil Rice		Local resident and farmer at Sketchley Lodge Farm
Eric Neale		Local resident and member of the Cycle Touring Club

DOCUMENTS

- Document 1 Lists of persons present at the Inquiry.
- Document 2 Statement of Common Ground, February 2014
- Document 3 Statement of Common Ground, June 2014
- Document 4 Statement of Common Ground between the Council and Police & Crime Commissioner for Leicestershire, February 2014
- Document 5 Section 106 Undertaking, June 2014
- Document 6 Section 106 Undertaking, February 2014 (now superseded)
- Document 7 Letter of notification and circulation lists
- Document 8 Secretary of State's letter of recovery, 5 June 2014
- Document 9 Advice for recovery ~ Christopher Young
- Document 10 Summary and proof ~ Paul Bassett
- Document 11 Appendices ~ Paul Bassett
- 1 Glossary
 - 2 Traffic flows
- Document 12 Summary proof ~ Simon Parfitt
- Document 13 Proof and appendices ~ Simon Parfitt
- 1 Access design
 - 2 Existing and future traffic flows
- Document 14 Proof and appendices ~ Phil Rech
- 1 CV
 - 2 Plans and aerial photographs
Illustrative proving layout for 127 dwellings
 - 3 Landscape and visual assessment
- Document 15 Rebuttal to Simon Atha's evidence ~ Phil Rech
- Document 16 Proof ~ James Donagh
- Document 17 Appendices ~ James Donagh
- 1 Draft NPPG, 2013
 - 2 Finding your objectively assessed housing needs ~ LGA 2013
 - 3 Understanding recent changes in household formation rates, RTPi research report No.1, 2014
 - 4 New estimates of household demand and need, Alan Holmans, TCPA, 2013
 - 5 Geography of housing market areas, DCLG 2010
 - 6 Statistics for Hinckley & Bosworth
 - 7 POPGROUP household and dwelling requirements
- Document 18 Rebuttal to Richard Crosthwaite's evidence ~ James Donagh
- Document 19 Addendum proof and appendices ~ James Donagh
- 1 Extracts; estimating housing need, DCLG 2010
 - 2 Migration and population change
 - 3 Leicester & Leicestershire SHMA; stakeholder workshop May 2014
 - 4 Leicester & Leicestershire LEP: Strategic Economic Plan 2014
 - 5 POPGROUP user manual
 - 6 2011-based household projections quality report, DCLG 2013
 - 7 Correspondence with ONS
 - 8 2012-based household projections, report on unattributable population change 2014
 - 9 Population change 2001-2011 (see also ID14)
- Document 20 Summary proof ~ Robin Tetlow
- Document 21 Proof ~ Robin Tetlow

Document	22	Appendices ~ Robin Tetlow
	1	CoA 2002 EWCA CIV 1762; Rowlinson & Rowlinson v Warrington BC & SoS
	2	House of commons debate 24 October 2013
	3	Affordable housing supply projections 2012-2026
	4	Affordable housing consultation responses July-September 2013
	5	SoS appeal decision; Snodland, August 2004; 1094855 etc
	6	SoS appeal decision; East Leake, March 2006; 2050213
	7	SoS appeal decision; Worsley, July 2012; 2157433
	8	SoS appeal decision; Ingelby Barwick, September 2013; 2192538
	9	SoS appeal decision; Sandbach, October 2013; 2141564
Document	23	Addendum proof and appendices ~ Robin Tetlow
	10	EWHC 1283 (ADMIN); Gallagher Homes & Lionheart Homes v Solihull MBC, 2014
	11	Leicester & Leicestershire SHMA; stakeholder workshop May 2014
	12	Mendip District Council 2011 Housing Needs Assessment
	13	Appeal decision; Offenham, February 2014; 2203924
	14	Article from the Daily Express and DCLG statement, August 2013
	15	Building the homes we need, KPMG & Shelter, April 2014
Document	24	Proof of evidence ~ Michael Robson
Document	25	Appendices ~ Michael Robson
		Volume 1
	1	Committee Report
	2	Statement of Common Ground
	3	Schedule of NPPF Policies
	4	National Planning Practice Guidance
	5	Planning for Growth
	6	Ministerial Statement 31 March 2011
	7	Laying the Foundations
	8	Housing and Growth
	9	Strategic Housing Land Availability Assessments, Practice Guidance
	10	Extracts from adopted Local Plan (2001)
	11	Extracts from adopted Core Strategy (2009)
	12	Extracts from emerging Site Allocations and Development Management DPD
	13	Extracts from Hinckley and Bosworth Landscape Character Assessment
	14	HBF Housing in Crisis
	15	Extracts from Manual for Streets
	16	HBBC Residential Land Availability Monitoring Report 5 year housing land availability, October 2013 Housing trajectory, October 2013 5 year provision from sites included in the SHLAA
	17	Planning Advisory Service; Ten Key Principles
	18	Extracts from Cheshire East SHLAA
	19	Extracts from HBBC SHLAA
	20	Housing Supply Assessments Sheets
	21	Illustrative Layout
	22	Photo and CGIs Houses to be demolished for the access

The new access ~ summer

The new access ~ winter

Volume 2

- 23 Appeal decision; 26-28 Britannia Road, Burbage, July 2011, 2127585
- 24 Appeal decision; 40 Britannia Road, Burbage, October 2013, 2127652 etc
- 25 Appeal Decision: Three Pots Road, Burbage, December 2013 22022261
- 26 Plan of Alternative Burbage Sites
- 27 High Court Judgement; Anita Coleman v SoS, North Devon DC and RWE NPower Renewables Limited, 2013, EWHC 1138 (Admin)
- 28 SoS Appeal Decision: Bishop's Cleeve, July 2012, 2146206 etc
- 29 Appeal Decision: Honeybourne, December 2013, 2171339
- 30 Tetbury Judgement
- 31 Appeal Decision: Essington, March 2013, 2189442
- 32 Appeal Decision: Whetstone, July 2013, 2193758
- 33 SoS Appeal Decision: Moreton in Marsh, April 2011, 2130320
- 34 SoS Appeal Decision: Andover, June 2011, 2140962
- 35 SoS Appeal Decision: Shottery, October 2012, 2163206
- 36 Appeal Decision: Yate, April 2013, 2186546
- 37 SoS Appeal Decision: Dawlish, September 2013, 2188938
- 38 Appeal Decision: Tenbury Wells, August 2013, 21904904
- 39 Appeal Decision: Winchcombe, May 2013, 2183317
- 40 Appeal Decision: Worsley, July 2012, 2157433
- Document 26 Addendum proof ~ Michael Robson
- Document 27 Appendices to addendum proof ~ Michael Robson
- 41 High Court Judgement; Bloor Homes East Midlands Limited v SoS and Hinckley and Bosworth BC, 2014, EWHC 754 (Admin)
- 42 Appeal Decision: Stanton-under-Bardon, March 2014, 2200224
- 43 Appeal Decision: Brereton Heath, February 2014, 2192192
- 44 Draft Statement of Common Ground, June 2014
- 45 Mr Greg Clark MP speech February 2010
- 46 Plan for Growth
- 47 Mr Greg Clark MP speech March 2011
- 48 Mr Eric Pickles MP speech March 2011
- 49 Mr George Osborne MP speech February 2014
- 50 Schedule and outcome of housing appeals determined by the Secretary of State
- Document 28 Rebuttal proof of evidence ~ Justin Gardener
- Document 29 Summary, proof and appendices ~ Richard Crosthwaite
- 1 Letter from Cerda Planning to HBBC dated 21 January 2014
- 2 Court of Appeal Judgement; Hunston Properties Limited v City and District Council of St Albans, 2013, EWCA Civ 1610
- 3 Extract from Leicester & Leicestershire SHMA (2008)
- 4 Extracts from HBBC Core Strategy Inspector's Report (2009)
- 5 HBBC Housing Trajectory (October 2013)
- 6 HBBC Housing Trajectory (Core Strategy 2009)
- 7 HBBC Housing Trajectory (SUEs) (October 2013)
- 8 HBBC Earl Shilton and Barwell AAP, Submission letter 11 December 2013
- 9 Extract from HBBC Planning Committee Minutes 23 April 2013

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- 10 Email from Earl Shilton SUE Consortium to HBBC 23 January 2014
- 11 Extract from HBBC Full Council meeting January 2014 regarding Site Allocations and Development Management Policies DPD
- 12 Hinckley & Bosworth Local Development Scheme (Programme)
- 13 Appeal Decision: Preston, July 2012, 2168530
- 14 Appeal Decision: Stanton under Bardon, December 2012, 2180699
- 15 Appeal Decision: Groby, January 2013, 2180699
- 16 Appeal Decision: Barwell, May 2013, 2188915
- 17 Appeal Decision: Three Pots, Burbage, January 2014, 2202261
- Document 30 Summary, proof and appendices ~ Simon Atha
- 1 Extracts from Hinckley and Bosworth Landscape Character Assessment; Hinckley, Barwell and Burbage Fringe, Area F
- 2 Hinckley, Barwell and Burbage Fringe, Area F; map
- 3 Viewpoint locations
- 4 Appeal Decision: Alsager, October 2013, 2195201
- Document 31 Addendum proof and appendices ~ Simon Atha
- 1 High Court Judgement; Bloor Homes East Midlands Limited v SoS and Hinckley and Bosworth BC, 2014, EWHC 754 (Admin)
- 2 Appeal Decision: Three Pots, Burbage, January 2014, 2202261
- 3 Appeal Decision: Stanton-under-Bardon, March 2014, 2200224
- Document 32 Proof and appendices ~ Andrew Tryer
- 1 Leicestershire County Council — Statement of Requirements for Developer Contributions in Leicestershire (SRDCL) (interim review version, December 2007);
- 2 Minutes of the Meeting, LCC, 6 December 2006;
- 3 Appeal decisions and responses
- Appeal Decision: Market Harborough, February 2011, 2134083
- Appeal Decision: Stanton under Bardon, December 2012, 2180699
- Appeal Decision: Lutterworth, February 2013, 2179844
- Appeal Decision: East Goscote, April 2013, 2187470
- LCC Reponse Template, Director of Children & Young People's Services, 22 July 2013
- LCC Response Template, Library Services Development Manager Special Projects, 22 July 2013
- LCC Response Template, Director of Environment & Transport (Waste Management), 17 July 2013
- Document 33 Compliance of Public Transport and Travel Plan contributions with CIL Regulation 122
- Document 34 Proof ~ Michael Lambert
- 1 Compliance of Policing contribution with CIL Regulation 122
- 2 Beat maps
- 3 Crime maps in vicinity of appeal site
- 4 Crime trends
- 5 Police budget and commentary
- 6 Police funding, ACPO statement, September 2009
- 7 Growth Infrastructure Assessment: Leicester and Leicestershire HMA Authorities, Roger Tym & Partners, April 2009,
- 8 Inspector's preliminary conclusion on Melton Core Strategy, April 2013

	9	Planning Contributions and Police Contributions, advice from counsel ~ Ian Dove QC
	10	Appeal Decision: Whetstone, July 2013, 2193758
	11	Appeal Decision: Ashby de la Zouch, May 2013, 2192131
	12	Appeal Decision: Lutterworth, February 2013, 2179844
	13	Appeal Decision: East Goscote, April 2013, 2187470
	14	SoS Appeal Decision: Barrow upon Soar, May 2013, 2173673
	15	Appeal Decision: Enderby, January 2014, 2200867
Document	35	Statement ~ Cllr David Inman
Document	36	Statement ~ Cllr John Moore
Document	37	Statement and ecological evidence ~ Julie Harding
Document	38	Statement for 'Stop Welbeck Houses Action Group' ~ Kerry Shipman and Emma Holden
Document	39	Statement ~ John Greasley
Document	40	Statement ~ Gary Welland
Document	41	Statement ~ Neil Rice
Document	42	Subsequent written submissions made in June:
	1	Vistas and ecology ~ Gail Greasley
	2	Bats and the Habitats etc Regulations ~ Julie Harding
	3	Botanical survey (Graham Calow) and email on potential LWS status of the site ~ Neil Talbot, Leicestershire & Rutland Wildlife Trust
	4	Breeding bird surveys, copies of 14.3 (above) and Sue Timms' (Borough Ecologist) visit to the site in September 2013 ~ Philip Crowfoot
	5	Vistas, views and trees ~ John Greasley
Document	43	Schedule of representation in relation to the appeal; alphabetical index
Document	44	Representations in relation to the appeal
Document	45	Further appeal documents, December 2013
	1	Topographical survey
	2	Ecological appraisal, June 2013
	3	Archaeological assessment
	4	FRA
	5	Section 106, draft heads of terms, June 2013
Document	46	The adopted Core Strategy (2009)
Document	47	The emerging Site Allocations and Development Management DPD
Document	48	Closing submissions ~ Timothy Leader
Document	49	Closing submissions ~ Christopher Young
Document	50	Appeal Decision: Tewkesbury, May 2014, 2209001
Document	51	Suggested conditions, as amended for discussion
Document	52	Arrangements for the close of the inquiry and closing letter
Document	53	Additional closing submissions relating to ecology ~ Christopher Young
Document	54	Rebuttal statement and appendices ~ Kurt Goodman
	1	Original response from County Ecologist
	2	Site meeting with County Ecologist
	3	Response to site meeting from County Ecologist
	4	Proving layout
	5	Updated ecology appraisal, October 2013
	6	Comments from County Ecologist on updated ecology appraisal
	7	Emails between County Ecologist and FPCR
	8	Additional nocturnal surveys, June 2014
	9	Comments from County Ecologist on additional nocturnal surveys
	10	Ecological information from 3 rd parties, June 2014

	11	Arboricultural rebuttal, June 2014
	12	Botanical rebuttal, June 2014
	13	Comments from County Ecologist on ecological information submitted by 3 rd parties in June 2014
	14	Breeding bird rebuttal, July 2014
Document	55	Letter from Michael Robson with additional appeal decisions
	1	SoS Appeal Decision; Pebworth, July 2014, 2202364
	2	SoS Appeal Decisions; Droitwich Spa, July 2014, 2199085 & 2199426
	3	SoS Appeal Decisions; Droitwich Spa, July 2014, 2199085 & 2199426 corrected

PLANS

Plans	A	Application Plan: 1:1250, RPL/REDLINE/01
Plans	B	Illustrative layout: 1:1000, 13014/SK-02C
Plan	C	Tree retention: 1:1000, 5550-A-03 Rev B
Plan	D	Tree survey: 1:1000, 550-A-02
Plan	E	Topographical survey: 1:500, 18100-OGL(2) Rev O
Plan	F	Local character areas
Plan	G	Zone of visual influence
Plan	H	Local facilities
Plan	I	Sites of the nearest recent appeals in Burbage

Reference	Hinckley & Bosworth Borough Council; Additional Documents
HB1	Letter from HOE Planning confirming trajectory for the Barwell SUE as appropriate, February 2014
HB2	Letter from AMEC confirming trajectory for the Earl Shilton SUE in the AAP as appropriate, February 2014
HB3	Letters to agents or applicants relating to the availability and development of the Station Road site at Bagworth in the course of compiling the SHLAA 2013.
HB4	Residual housing requirement for Burbage 2013
HB5	Appeal decision; Sandiway, December 2013; 2197189
HB6	The turnover and length of housing waiting lists, Shelter 2008/9
HB7	Housing waiting list by priority bands (February 2014) and the annual number of social housing re-lets
HB8	Housing priority need
HB9	Housing completions and the CS trajectory 2001/2-2013/14
HB10	Leicester and Leicestershire HMA Employment Land Study, PACEC March 2013
HB11	Households on the housing waiting list by category of need, February 2014
HB12	Leicester and Leicestershire HMA Employment Land Study, PACEC March 2013, full report
HB13	Structure Plan housing requirements 1991-2016

INQUIRY DOCUMENTS

Reference	Inquiry Document
ID1	Section 106 Undertaking; February 2014
ID2	Housing the Next Generation; speech by Nick Boles MP, January 2013
ID3	DCLG projections for the Borough (2008, 2010 and 2011 based) and relationship to Mr Donagh's 'full objectively assessed need'.
ID4	Appeal decision; Offenham, January 2014; 2203924
ID5	Older workers in the labour market 2012; ONS, June 2012
ID6	Understanding the latest DCLG household projections; a tool prepared by Neil McDonald for the RTP1
ID7	Leicester and Leicestershire Housing Requirements Project; G L Hearn & jg Consulting, September 2011
ID8	East Midlands, January 2014; Experian
ID9	Leicester and Leicestershire SHLMA, 2007/8
ID10	Mendip District Council 2011 Housing Needs Assessment; extract from the final report, March 2012
ID11	Explanation by Justin Gardner of the difference in headship rates set out in his rebuttal proof and indicated in ID6
ID12	SoS appeal decision; Tarporley, August 2013; 2167430
ID13	Skeleton argument initially intended on behalf of the Borough Council in relation to the Three Pots appeal decision. The claim was abandoned after receiving the appeal decision at Stanton under Bardon
ID14	Population profiles for Burbage, the Borough, the County and England at 2001 and 2011 censuses and 'components of change'
ID15	Response to Justin Gardener's rebuttal proof from James Donagh
ID16	Email confirmation from ONS that 'unattributable' migration should remain 'unattributable' in estimating migration trends
ID17	SoS appeal decision; Guisborough, September 2013; 2190009
ID18	Updated Ecological Appraisal, Rev A October 2013, FPCR
ID19	a Appeal decision; Moulton, December 2013; 2198931 b Cost decision; Moulton, December 2013; 2198931
ID20	Appeal decision; Burbage, February 2014; 2202989
ID21	Lead in times assumed for 'delivery' in the SHLAA
ID22	The overall landscape strategy; Hinckley and Bosworth Character Assessment
ID23	Policy framework and objectives; Hinckley and Bosworth Character Assessment
ID24	Housing and economic development needs assessments; PPG

Reference	Inquiry Document
ID25	Speeches, reports, press releases and interviews A House prices biggest risk to economy; Mark Carney to Sky News B House prices biggest risk to economy; Mark Carney to Channel 4 News C Building growth; European Recommendations for UK economy, June 2014 D IMF concluding consultation statement, June 2014 E David Cameron alert to danger of housing bubble, BBC News May 2014 F The Queen's Speech 2014 G Mansion House Speech 2014 H UK need to double homes top 300,000 a year, Vince Cable, May 2014 I Momentum in the housing market, Sir John Cunliffe, International Bankers dinner, May 2014 J Mark carney's speech at Mansion House Banquet, June 2014 K OECD warning on UK house prices, Guardian, May 2014
ID26	Where did everybody go? Hamptons, 2014
ID27	Burbage Context Plan
ID28	Bungalow Living, Housing LIN, June 2014
ID29	Core Strategy, pp15 & 19
ID30	The effects of re-registering on the housing waiting list
ID31	Leicester and Leicestershire Strategic Economic Plan 2014-2020, LLEP, March 2014
ID32	Some details relating to applicants on the housing register, June 2014
ID33	High Court Judgement; Stratford on Avon District Council v SoS and J S Bloor (Tewkesbury) Limited etc, July 2013, CO/12539/2012
ID34	The Saving Direction, saved policies and the accompanying letter, September 2007
ID35	Comments on high bat activity identified in FPCR surveys in May 2014 by Sue Timms, Principal Ecologist for the Borough Council
ID36	Cheshire East Local Plan Strategy, submission version March 2014
	Disc 1

ANNEX 1: SUGGESTED CONDITIONS

Duration

- 1) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 18 months from the date of this permission.
- 2) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Details

- 3) The following details (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development begins:
 - i. The layout of the site including the way in which buildings, routes and open spaces are provided and the relationship of these buildings and spaces to areas outside the development.
 - ii. The scale of each building proposed in relation to its surroundings.
 - iii. The appearance of the development including details of the measures employed to create a defining identity for the buildings and spaces of the scheme.
 - iv. The landscaping of the site including the treatment of private and public spaces to enhance or protect the site's amenity through hard and soft landscaping.The development shall be implemented in accordance with the approved details. There shall be no amendments or variations to the approved details unless otherwise agreed in writing by the Local Planning Authority.
- 4) The development hereby permitted shall be carried out along the lines indicated in the Proving Layout PR/001, dated 30 January 2014 for about 127 dwellings, subject to the details to be submitted to, and approved in writing by, the Local Planning Authority in condition 3 above.

Access

- 5) The existing vehicular access to the A5 shall be permanently closed to all vehicular traffic except that to and from Sketchley House in accordance with a scheme that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented within one month of the new access to the site from Welbeck Avenue being brought into use.
- 6) The scheme referred to in condition 5 above, shall also include measures to prevent all vehicular traffic from the site or the proposed development from entering the bridleway along the eastern boundary of the site.
- 7) Before first occupation of any dwelling hereby approved, a scheme to provide visibility splays of 2.4m by 43m at the junction of the site access with Welbeck Avenue (along the lines indicated in Leicestershire County Council's 6Cs Design Guide) shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include measures to prevent any object or vegetation above 0.6m from being positioned within the visibility splays.

Car and cycle parking

- 8) Before any dwelling is first occupied, car parking shall be provided for that dwelling, hard surfaced and made available for use. For a dwelling with up to 3 bedrooms, 2 car parking spaces shall be provided: for a dwelling with 4 or more bedrooms, 3 car parking spaces shall be provided. The parking spaces so provided shall thereafter be kept permanently available for the parking of cars.
- 9) Any garage provided must have minimum internal dimensions of 6m by 3m; the garage shall, thereafter, permanently remain available for car parking.

Travel Plan

- 10) Before first occupation of any dwelling hereby approved details of a Residential Travel Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Plan shall address the full travel implications of the approved scheme and set out the facilities and measures, together with the associated measurable outputs and targets designed to:-
- a) reduce single occupancy vehicle use, vehicular travel at peak traffic times and vehicle emissions for journeys made for all purposes to and from the development site;
 - b) increase the choice and use of alternative transport modes for any journeys likely to be made to and from the development site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel;
 - c) manage the demand by all users of the developed site for vehicle parking within, and in the vicinity of, the developed site.

The Plan shall also specify:-

- d) the on-site implementation of the Plan and management responsibilities, including the identification of a 'travel plan coordinator';
- e) the arrangements for undertaking regular travel behaviour and impact monitoring surveys and for reviews of the Plan covering a period extending to at least one year after the last approved dwelling is occupied or a minimum of 5 years from first occupation, whichever is the longer;
- f) the timescales for delivery of the specified outcomes and targets to be achieved through the implementation of the Residential Travel Plan; and,
- g) the additional facilities and measures to be implemented if monitoring shows that the outcomes and targets specified in the Residential Travel Plan are unlikely to be met, together with clear criteria for invoking those measures.

The Plan shall be implemented in accordance with the approved details, and it shall include provision of at least annual reports on its progress and effectiveness, to include information from the travel behaviour and impact monitoring surveys, to be submitted to the Local Planning Authority.

Flooding and drainage

- 11) The development, hereby permitted, shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) issue 3 (dated 24 June 2013, Ref: AAC5034, undertaken by the RPS Group) and the following mitigation measures indicated within the FRA shall be implemented in accordance with a detailed drainage scheme to be submitted to and approved by the Local Planning Authority before development commences:
- 1) measures to limit the discharge rate and to provide facilities for the storage of surface water run-off from the site so that for a rainfall event with a probable recurrence of up to 1:100 years and with a 30% addition (for climate change) surface water run-off will not exceed that from the undeveloped site and, thereby, not increase the risk of flooding elsewhere, as indicated in sections 4.3-4.4, 5.4 and 6.4 of the FRA.
 - 2) finished floor levels shall be set no lower than 150mm above external finished ground levels, as indicated in sections 5.2-5.3 of the FRA.

The mitigation measures shall be fully implemented prior to the occupation of any dwelling or in accordance with timing and phasing arrangements set out in the approved scheme.

- 12) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall include:-

- a) measures and on-site storage facilities to limit the surface water run-off from the site generated by a rainfall event with a probable recurrence of up to 1:100 years and with a 30% addition (for climate change) so that surface water run-off will not exceed that from the undeveloped site and, thereby, not increase the risk of flooding elsewhere;
 - b) the provision of on-site storage facilities sufficient to limit the surface water run-off to that from the undeveloped site in the event of a critical rainstorm with a probable recurrence of 1:100 years plus 30% (for climate change);
 - c) detailed designs (plans, cross-sections, long-sections and calculations) in support of the submitted surface water drainage scheme, including details on any attenuation system, and the outfall arrangements;
 - d) details of how the on-site surface water drainage system shall be maintained and managed after completion and for the lifetime of the development.
- 13) The development hereby permitted shall not commence until a scheme for the disposal of foul sewerage has 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 first occupation of any dwelling on the site.

Noise

- 14) Notwithstanding the proposals contained within the noise impact assessment (SRL Technical Report ref: C/30501/R01v2/RM, 14 June 2014) development shall not begin until a scheme for protecting the proposed dwellings from traffic noise emanating from the A5 has been submitted to, and approved in writing by, the Local Planning Authority.

Ecology; flora and fauna

- 15) Prior to the removal of any trees identified in the ecological report prepared by FPCR dated June 2013, a bat survey shall be conducted (with appropriate mitigation measures), to be submitted to, and approved in writing by, the Local Planning Authority.
- 16) Prior to the commencement of any development a lighting scheme for the site that minimises light intrusion into bat foraging areas, in accordance with the principles set out at paragraph 4.29 of the submitted Ecological Appraisal (Rev A), October 2013 prepared by FPCR, shall be submitted to, and approved in writing by, the Local Planning Authority.
- 17) Prior to the commencement of development and the removal of any trees, 20 bat boxes and 20 bird boxes of varying designs (but including a range of bat boxes suitable for Leisler's bat) shall be provided on the retained trees, in areas not subject to light intrusion or disturbance. Those bat and bird boxes shall be provided in accordance with a scheme to be submitted to, and approved in writing by, the Local Planning Authority.
- 18) Prior to the commencement of any development, an updated badger survey shall be undertaken and its results, together with a scheme for appropriate mitigation measures derived from those results, shall be submitted to, and approved in writing by, the Local Planning Authority. The mitigation measures shall be carried out in accordance with the approved details.

Landscaping and boundary treatment

- 19) Prior to the occupation of any dwelling, hereby approved, a 'Landscape and Landscape Management Plan', including long term objectives and management responsibilities, together with maintenance and planting schedules for all landscaped areas (other than small privately owned domestic gardens), shall be submitted to and approved in writing by the Local Planning Authority.
- 20) All planting, seeding or turfing comprised in the approved 'Landscape and Landscape Management Plan' shall be carried out in the first planting and seeding seasons following

the occupation of the dwellings or the completion of the development, whichever is the sooner; and 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 give written approval to any variation.

- 21) No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority details indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable to be agreed in writing with the Local Planning Authority before the first occupation of any dwelling, hereby permitted. Development shall be carried out in accordance with the approved details.
- 22) No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority details of the landscaping, boundary treatment and measures to maintain security at the dwellings adjacent to the new access (Nos.9 and 15 Welbeck Avenue). The approved details shall be completed in accordance with a timetable to be agreed in writing with the Local Planning Authority before construction of the access commences.

Trees

- 23) In this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the first occupation of any dwelling, hereby approved.
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS3998:2010 (Tree Work).
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
- 24) The plans and particulars submitted in accordance with the condition 19 above shall include:
 - i. a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
 - ii. details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;
 - iii. details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

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- iv. details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree;
 - v. details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

In this condition 'retained tree' means an existing tree which is to be retained in accordance with the plan referred to in paragraph (i) above.

- 25) Before construction of the access commences, an Arboricultural Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority specifying the method of construction to be employed for any part of the access within, or within 5m of, the identified 'root protection area' of any 'retained' tree, including specification of:
 - i. the extent of the relevant 'root protection areas';
 - ii. the installation and removal of tree protection measures;
 - iii. supervision by a suitably qualified arboriculturalist and arrangements for monitoring;
 - iv. methods of excavation and the areas to be hand dug only;
 - v. ground levels;
 - vi. the storage of plant and equipment.

Archaeology

- 26) No demolition or development shall commence until a programme of archaeological work, commencing with an initial phase of trial trenching and subsequent appropriate mitigation, has been detailed within a Written Scheme of Investigation, to be submitted to, and approved by the Local Planning Authority in writing. Thereafter no demolition or development shall commence other than in accordance with the Written Scheme of Investigation. The scheme shall include an assessment of the archaeological significance of the site and of any archaeological remains identified and indicate potential lines for further research. The scheme will also include:
 - a) the programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
 - b) the programme for post-investigation assessment;
 - c) the means of securing provision for analysis of the site investigation and recording;
 - d) the means of securing provision for publication and dissemination of the analysis and records of the site investigation;
 - e) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - f) the nomination of a competent person, persons or organisation to undertake the works set out within the Written Scheme of Investigation.

The Written Scheme of Investigation (WSI) must be prepared by a suitably qualified archaeologist.

Control of construction traffic and construction

- 27) Development shall not begin until a 'Construction Traffic Management Method Statement' has been submitted to, and approved in writing by, the Local Planning Authority. The 'Construction Traffic Management Method Statement' shall include provisions for construction vehicle routing, the management of junctions and crossings of any public right of way. The 'Statement' shall aim to prevent any construction traffic from using Newstead Avenue and to minimise the number of construction vehicles using Brockhurst and Beechwood Avenues. As far as reasonably possible, the details listed in the 'Construction Traffic Management Method Statement' shall be carried out as approved.
- 28) No development shall take place, including any works of demolition, until a Construction Method Statements have been submitted to, and approved in writing by, the Local

Planning Authority. One Statement shall deal with the construction of the access from Welbeck Avenue to a point aligning with the western edge of the bridleway: another separate Statement shall deal with the construction works required everywhere else. The approved Statements shall be adhered to throughout the construction periods. The Statements shall provide for:

- i. the parking of vehicles of site operatives and visitors;
- ii. loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v. wheel washing facilities;
- vi. measures to control the emission of dust and dirt during construction;
- vii. a scheme for recycling or disposing of waste resulting from demolition and construction works.

- 29) Except for the construction of the access, construction works and traffic movements to or from the site associated with the construction of the development, hereby permitted, shall not take place other than between the hours of 08.30hrs and 18.00hrs on weekdays and 09.00 hrs and 13.00 hrs on Saturdays and not at all on Sundays and Bank Holidays, except that emergency works may be carried out at any time provided that the developer retrospectively notifies the Local Planning Authority of the emergency works.
- 30) Works for the construction of the access to the site from Welbeck Avenue and traffic movements to or from the site associated with the construction of that access, shall not take place other than between the hours of 09.00hrs and 17.00hrs on weekdays and not at all on Saturdays, Sundays and Bank Holidays, except that emergency works may be carried out at any time provided that the developer retrospectively notifies the Local Planning Authority of the emergency works.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

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

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