

Appeal Decision

Inquiry held on 24 January 2017

Site visit made on 27 January 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/P3420/W/16/3149399

Tadgedale Quarry, Mucklestone Road, Loggerheads, Newcastle under-Lyme TF9 4DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Renew Land Developments Limited against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 15/00015/OUT, dated 9 January 2015, was refused by notice dated 12 January 2016.
 - The development proposed is described as: Outline planning application for the erection of up to 128 dwellings (including details of access).
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 128 dwellings (including details of access) at Tadgedale Quarry, Mucklestone Road, Loggerheads, Newcastle under-Lyme TF9 4DG in accordance with the terms of the application, Ref 15/00015/OUT, dated 9 January 2015, subject to the conditions attached as Annex 1 to this decision.

Application for costs

2. At the Inquiry an application for costs was made by Renew Land Developments Limited against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. In addition to my accompanied site visit on 27 January 2017, I undertook unaccompanied visits to areas around the appeal site before and during the Inquiry. As details of appearance, landscaping, layout and scale are reserved for future approval I have treated those elements of these details which are shown on the submitted plans as being illustrative only. A completed planning obligation was submitted during the Inquiry, on which I set out my findings later in my decision.
 4. The Council and Loggerheads Parish Council initially raised concerns about whether Inquiry Document APP5 should be accepted due to its length. With the agreement of the parties I allowed time during the Inquiry for this document to be read and have taken it into account.
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Main Issues

5. The main issues are:

- (a) Whether the proposed development would be sufficiently accessible, by a choice of means of transport, to jobs and services in the surrounding area;
- (b) Whether sufficient information has been submitted regarding ground conditions to demonstrate that the site is suitable and deliverable for housing development as proposed; and
- (c) The balance, having regard to relevant national and local policies, between any benefits and any harm which may arise from the proposal.

Reasons

Policy Context

- 6. The development plan for the area comprises the Saved Policies of the Newcastle-under-Lyme Local Plan (NuLLP) 2003 and the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2009. My decision must accord with these documents unless material considerations indicate otherwise. The National Planning Policy Framework (the 'Framework') is an important material consideration.
- 7. Saved Policy H1 of the NuLLP sets strict controls over the types of housing development which may be allowed outside existing urban areas or 'village envelopes'. As it would be outside the village envelope of Loggerheads and not fall within any of the other circumstances set out in this Policy, the proposal would conflict with Saved Policy H1.
- 8. Policies SP1 and ASP6 of the CSS direct new housing 'primarily' towards existing urban areas and set a maximum of 900 net additional dwellings to be 'primarily' located on sustainable brownfield land within the village envelopes of Loggerheads and two other key rural service centres. Due to its scale and rural location the proposal would conflict with the strategic direction of these Policies.
- 9. The Council has accepted that it can only demonstrate between 1.90 and 3.97 years supply of specific, deliverable sites for housing development. In such circumstances, paragraph 49 of the Framework requires that relevant policies for the supply of housing should not be considered up to date. As they guide and restrict the locations in which housing should be developed, Saved Policy H1 and Policies SP1 and ASP6 all constitute relevant housing policies in this context.
- 10. Furthermore, the village envelopes referred to in Saved Policy H1 and Policy ASP6 (criterion 1) were originally defined in the context of a Plan which was not intended to meet housing needs beyond 2011. The lack of a 5 year land supply indicates that they are incompatible with the aim set out in the Framework of boosting significantly the supply of housing. The limit of 900 dwellings in Policy ASP6 is not based on any up to date assessment of housing needs. As they restrict housing development in some settlements and prevent others from expanding, irrespective of the sustainability impacts of individual proposals, Saved Policy H1 and Policy ASP6 (criterion 1) are at odds with the Framework.

For these reasons, and in accordance with paragraph 215 of the Framework, I attribute limited weight to them.

11. Policy SP1 of the CSS also forms part of a strategy which the Council has indicated is undeliverable¹. However, it does not preclude steps being taken to boost the supply of housing outside the urban areas. I therefore attribute moderate weight to Policy SP1.
12. My findings concerning the weight to be attributed to Saved Policy H1, Policy ASP6 (criterion 1) and Policy SP1 are notwithstanding the fact that some of their effects, including directing housing generally to locations which are accessible by a choice of transport and of supporting regeneration, are positive. Policy SP3 of the CSS, covering sustainable transport matters, broadly accords with the Framework and carries substantial weight.
13. As relevant housing policies are out-of-date, paragraph 14 of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
14. The proposed Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan (the 'Joint Local Plan') is at a very early stage. In accordance with paragraph 216 of the Framework it carries very limited weight.
15. The Framework stresses the importance of neighbourhood planning to local communities. However, it is likely to be some time before the Draft Loggerheads Neighbourhood Plan completes its statutory processes. Due to its early stage it carries limited weight.

Transport accessibility

16. The appeal site is located just outside the village of Loggerheads. Whilst Loggerheads has a rural setting, it is designated in the CSS as one of 3 key rural service centres in the district. The village centre to the south of the A53 provides a Co-op food store and several other services. Although the Co-op store provides 'top up' shopping, the range of items stocked is sufficient to meet many daily needs.
17. Whilst the most convenient walking route from the appeal site to the village centre crosses several highways, except for the A53 these are not sufficiently busy to present substantial barriers to pedestrian movement. To facilitate the crossing of the A53, a new pedestrian crossing and speed reduction measures would be provided. Given the geometric constraints of the highway layout in this area the crossing would be suitably located. Whilst there are gradients along the route between the appeal site and the village centre these are not excessive. The route would also benefit from a proposed pedestrian refuge and link to the proposed dwellings at the southern end of the appeal site, and adequate lighting and footways. Cycling would also be a practicable alternative for trips from the site to various locations in the area.
18. A large proportion of children living within the proposed dwellings would be likely to use St Marys CE School due to their location within its catchment area. Whilst the route to this School along Rock Lane is pleasant when the weather is

¹ Report to Cabinet - Withdrawal of Site Allocations and Policies Local Plan and proceeding with the preparation of a Joint Local Plan with Stoke-on-Trent City Council - 11.12.2013 - CD4.8 paragraph 1.6

good, it is also unlit, isolated and poorly surfaced in places and involves crossing the B5026 Eccleshall Road. Whilst the 'walking bus' which previously operated may be re-instated this would rely on various factors such as the availability of volunteers.

19. However, I note that a high proportion of the pupils of St Marys CE School currently travel from outside its catchment². A large proportion of these trips are likely to be by motorised transport. Whilst, particularly during winter months, many trips from the appeal site to the school could be by car, these would be likely to be shorter than many of the journeys made by out-of-catchment children.
20. The Statement of Common Ground sets out distances between various parts of the site and the services in Loggerheads. Most of the dwellings would be further from the Co-op store in the core of the village centre than the distance of 800 metres which is identified as typically characterising a walkable neighbourhood in paragraph 4.4.1 of Manual for Streets (MfS)³. They would also all be further from the nearest primary school than the distance of 1000 metres which is referred to as being 'acceptable' in table 3.2 of the 'Guidelines for Journeys on Foot' document published by the Institution of Highways and Transportation (IHT)⁵. However, MfS is clear that the 800 metres walking distance which is referred to in it is not an upper limit. Furthermore, all services in the village would be closer than the distance of 2 km which is also referred to in MfS and identified as a 'preferred maximum' for schools in the IHT document.
21. The distances referred to in MfS and by the IHT are indicative only and do not constitute firm thresholds. The extract from the Department for Education document which has been provided setting out statutory walking distances does not provide definitive guidance for use in planning decisions. No guidance concerning walking distances to services has been set out in national planning policy since the former Planning Policy Guidance 13: Transport was replaced in 2012 and even that did not set firm thresholds. MfS also has a focus on urban streets rather than villages and the IHT documents are somewhat dated.
22. None of these points, however, mean that these documents are immaterial to my decision and I note the references which have been made to them, albeit in the context of the individual circumstances of specific cases, in other appeal decisions. I also note that the local highway authority considers that the site is well located in terms of walking to most services in the village.
23. In terms of access to services such as bulk food and comparison goods shopping, most evening entertainment, secondary and further education and hospital visits occupiers of the proposed development would rely on trips outside Loggerheads. However, there is a range of food shopping available only about 8 kilometres away at Market Drayton. Many shopping and other services are likely to be available in Market Drayton and Newcastle-under-Lyme town centres, to and from which there are regular daytime buses. Journeys to and from some services would not be undertaken particularly frequently.

² See letter dated 1 March 2016 from the Head Teacher of St Mary's CE Primary School – CD12.43

³ Statement of Common Ground, page 12

⁴ 'Manual for Streets', Department for Communities and Local Government/Department for Transport, 2007 - CD13.2, paragraph 4.4.1

⁵ 'Designing for Journeys on Foot', Institution of Highways and Transportation (IHT) – CD13.3, table 3.2

Some services would not be accessed by particularly large numbers of residents.

24. Occupiers of the proposed development would also, however, rely heavily on daily commuting trips to work locations outside Loggerheads. I note that, whilst it is now dated, the Census data shows that about two thirds of commuting distances for Loggerheads residents exceed 10 km and that these distances are longer than in the Borough as a whole⁶. Accessibility to locations within 1 hour by bus, as identified on the isochrones map⁷ is mainly limited to a narrow linear corridor running from Market Drayton to Newcastle under-Lyme and the bus services do not operate beyond early evening. Whilst the bus stops are within reasonable walking distance from the site, the length of bus journeys to many employment locations combined with the walk at the beginning and end of each day is likely to discourage bus use. By causing the relocation of the transport depot within the site, the proposal would also slightly reduce the limited numbers of jobs located in Loggerheads.
25. Whilst the Framework Travel Plan is likely to reduce single car occupancy commuting to some extent, its effects in this regard are likely to be limited. Although paragraphs 29 and 34 of the Framework allow some flexibility for greater car use to support sustainable development in rural areas, this is not unlimited. It should also be viewed in the context of the Framework's approach of *maximising* (my emphasis) the use of sustainable transport modes.
26. In summary, the proposal would be sufficiently accessible to a range of services and would reduce reliance of St Marys CE School on out of catchment children. It would also, by providing a safer and more convenient pedestrian crossing across the busy A53 close to Loggerheads village centre help encourage walking within the village. However, its heavy reliance on private car use for daily commuting trips, together with the distance likely to be covered by these, lead me to conclude that it would conflict to some extent with the provisions of Policy SP3 of the CSS and the Framework related to this matter.

Ground conditions

27. With the exception of a field at its south eastern end, much of the appeal site constitutes a former sand and gravel quarry which was used for landfill between the 1930s and 1990s⁸.
28. Paragraph 121 of the Framework requires planning decisions to ensure in summary that the site is suitable for its new use taking account of ground conditions, including those arising from pollution arising from previous uses. The Planning Practice Guidance (PPG)⁹ establishes that information about contamination submitted with an outline application should be '*...proportionate to the decision at the outline stage, but before granting outline planning permission a local planning authority will, among other matters, need to be satisfied that: it understands the contaminated condition of the site; the proposed development is appropriate as a means of remediating it; and it has sufficient information to be confident that it will be able to grant permission in*

⁶ Mr Lufton's proof, appendix 9, figure 7

⁷ Mr Todd's proof appendix 12

⁸ Phase I Geo-Environmental Site Assessment - CD6.15, page 2 and Mr Taylor's proof of evidence

⁹ Paragraphs: 007 Reference ID: 33-007-20140612 to 009 Reference ID: 33-009-20140306

full at a later stage bearing in mind the need for the necessary remediation to be viable and practicable'.

29. Interested parties have set out a case that the proposals are based on a lack of understanding of the extent and nature of contamination within the site. In this context I note that the Phase I Geo-Environmental Assessment contains only limited details of the former landfilling within the southern sector of the site. However, that assessment acknowledged that much of the site had been used for landfilling over an extended period and that a range of contaminants including: metals and asbestos; hydrocarbons and volatile organic compounds; phenolic compounds; ground gas; and sulphate could be present. It also included a copy of the site licence granted in 1977 which contains details of types and quantities of materials which the site was licenced to receive and of the lagoons used to accept these.
30. Initial and subsequent comments by the Environment Agency, the latter informed by additional information provided about the history of the site by interested parties, indicate that it has no objections in principle to outline planning permission being granted subject to conditions¹⁰. Given its role as a statutory consultee with a remit covering land contamination issues the advice of the Agency must carry substantial weight in my decision. When submitting its responses it would also have been aware of the un-regulated nature of much of the previous landfilling before the 1970s, the nature of the licensing regime which has operated since then, previous pollution incidents, and the fact that the site is underlain by a Principal Aquifer of high vulnerability to surface contamination
31. In its e-mail dated 24 December 2015, the Environment Agency raised substantial concerns about the Appellant's Phase II Geo-Environmental Site Investigation. Their concerns covered, amongst other matters, the adequacy of the ground water sampling regime and the level of information which had been provided about the area of the transport depot. However, the concerns of the Agency related to whether the information provided was sufficient to justify the discharge of its recommended conditions, rather than to the question of whether outline permission should be granted.
32. The fact that the Agency considers it necessary to impose conditions does not indicate that the development would cause excessive risk to the environment. The inadequacies of the Phase II study claimed by the Agency also do not do this. The approach recommended by the Agency is consistent with the PPG¹¹ and would allow for any unexpected contamination encountered during the development process to be addressed. It would be for a remediation strategy, based upon more detailed site investigation which could be required by condition, to set out in detail how the site would be remediated.
33. Further risks to the delivery of the proposed development have been drawn to my attention. In this context, a developer would need to be found who is willing to fund and undertake the extensive works which would be required, the abnormal costs of which are currently estimated to total over £2 million¹². A substantial amount of material would need to be imported into the central and northern portions of the site to create a topography which is suitable for

¹⁰ Comments from Environment Agency dated 13.04.2015 and 24.12.2015 - CD15.3 and CD15.5

¹¹ Paragraph: 009 Reference ID: 33-009-20140306

¹² Abnormal Cost Assessment dated 18 August 2015 - CD10.12

housing. The importation of any waste material would be likely to require an Environmental Permit and the CL:AIRE website provides only a snap shot of potential sources of material. Development can only commence on any part of the site following further site investigation, remediation and verification that it may do so without causing risk to the environment or to human health. On-going monitoring would be required which could identify further contamination which would need to be addressed.

34. However, none of these points mean that the proposal is not deliverable in principle. Whilst the proposed works would require co-ordination between the timing of the proposed material importation and the availability of a suitable donor site or sites, which may cause delay, there is no reason to believe that suitable material would not become available within a reasonable timescale and in sufficient quantity. I also note that the Appellant intends to start construction works within the southern part of the site, where less re-contouring would be required than in other areas. Whilst development here, as elsewhere, would be subject to the outcomes of the further investigation and remediation that would be required, I consider it likely that some of the development at least on this part of the site could be completed within 5 years of outline permission being granted.
35. Having regard to all these points I conclude that sufficient information has been submitted regarding ground conditions to demonstrate that the site is suitable and deliverable for housing development as proposed. The proposal would not conflict with the development plan in relation to this matter and would be consistent with the relevant provisions of the Framework and PPG.

Other Considerations

36. The Council has questioned how much of the site satisfies the definition of previously developed land (PDL) in Annex 2 of the Framework. In this context I note that much of the former landfill area does not contain any permanent structures or obvious signs of such structures having previously existed on it. However, the transport depot within the southern part of the site appears to fall within the definition in Annex 2 and there is little evidence before me to show that the housing needs of the Borough can be met without some green-field sites being developed. The proposal as a whole would not be inconsistent with the encouragement given to the re-use of PDL in paragraph 17 (bullet 8) of the Framework and Policy SP1 (bullet point 7) of the CSS.
37. The Parish of Loggerheads Housing Needs Assessment (HNA) identifies that the permitted potential supply of housing in Loggerheads (identified as 122 units) equates to 9.8 years of demand¹³. However, the Framework requires housing land supply issues to be assessed over a housing market area as a whole i.e. over a much broader area. Whilst the HNA refers to housing projections for Newcastle-under-Lyme borough, both these and the HNA will be subject to further assessment as the proposed Joint Local Plan and Loggerheads Neighbourhood Plan progress. The findings of the HNA do not outweigh the shortage in the 5 year land supply which is identified within the Borough.
38. The development would generate substantial traffic movements, including substantial numbers of lorry movements during the site remediation and construction phases. However, there is no substantive evidence to suggest

¹³ Ms Watkins proof of evidence, appendix 2

that there would be resultant harm to highway safety. The proposal would also lead to the removal of movements of heavy goods vehicles associated with the current transport depot use.

39. I acknowledge that a substantial amount of development on other sites has been recently proposed or approved in the Loggerheads area. However, I have considered the appeal proposal, as I must, on its own merits.
40. The eastern edge of the appeal site can be seen from the grounds of the Grade II listed building at White House Farm. However, this is located a considerable distance to the east of the site. The site slopes generally away from its eastern boundary, and mature landscaping and other buildings exist along this boundary. As a result, whilst parts of the development may be visible from White House Farm, the proposal would not adversely affect its setting.
41. With the exception of its south eastern tip the boundaries of the site are not contiguous with the current built up area of Loggerheads. In plan form the proposed development would protrude notably into the countryside from the existing settlement. By adding up to 128 dwellings to an area which is outside the village, and part of which is a green field, the proposal would have an urbanising effect. However, it would also secure the removal of the HGV yard and buildings and any permission would be subject to approval of details of design, layout and landscaping. The proposal as a whole would have a neutral effect on the character and appearance of the area.

Planning obligation

42. Under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the 'CIL Regulations') a planning obligation may only constitute a reason for granting planning permission for a proposed development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Regulation 123 requires that in most circumstances no more than 5 or more separate obligations can be entered into within a given local authority area which contribute towards funding or provision of a specific project or type of infrastructure.
43. The submitted planning obligation includes provisions relating to affordable housing, open space, education, and sustainable transport.
44. The obligation would require that 25% of the proposed dwellings would be affordable, and that no more than 70% of the open market dwellings would be occupied until all of the affordable housing has been built. This level of provision is required to satisfy Policy CSP6 of the CSS. There is no evidence to suggest that these requirements should not be met in this case. This element of the obligation satisfies the Regulation 122(2) tests.
45. The part of the obligation related to open space would require covenants to be provided to ensure satisfactory maintenance. This element of the obligation is required to accord with Policy C4 of the NuLLP and also satisfies the Regulation 122(2) tests.
46. The obligation would require the owner to pay a financial contribution to Staffordshire County Council (SCC) towards secondary education needs, of

£216,086 or £232,708. Evidence submitted by SCC¹⁴ indicates that without a contribution, the proposed development would result in the available capacity of Madeley High School being exceeded. The two alternative figures have been calculated using SCC's standard methodology, with the sum payable depending on whether the development generates a need for 13 or 14 high school places. Whilst, given the outline nature of the proposed development, its final requirement for such places is uncertain the two alternative sums appear to me to be realistic. This part of the obligation accords with Policy CSP10 of the CSS, the Council's Developer Contributions Supplementary Planning Document 2007 and the Staffordshire County Council Education Planning Obligations Policy.

47. SCC would use the secondary education contribution to help cover the cost of providing two permanent class bases to replace a double mobile classroom. Whilst 5 other contributions have already been obtained towards provision of another classroom and dining room at the same school, the project funded by the current obligation would be entirely separate and would be pooled with contributions from 2 other developments. The obligation would contribute towards a project rather than a generic type of infrastructure and SCC has shown that it has sufficiently robust mechanisms in place to ensure that the pooling restrictions in the CIL Regulations would not be breached.
48. Having regard to these points, the secondary school contribution would comply with Regulations 122(2) and 123.
49. The obligation also requires the owner to pay a sum of £6,300 to SCC to cover the costs of monitoring the submitted Travel Plan. The Council has stated that this was included in response to a request from SCC in its role as highway authority. However, the submission of reports demonstrating progress against targets set out in the Travel Plan can be required by condition. It appears to me that the highway authority activities, such as those which would be required to assess the monitoring reports which are submitted to it would be part of its normal functions. This element of the obligation does not satisfy the test of being necessary to make the development acceptable in planning terms, set by Regulation 122(2)(a).
50. The obligation also requires the owner to pay a sum of £5,000 to SCC to be used for the '*...preparation and monitoring of the St Marys School Mode Star arrangements to be agreed between the County Council and St Marys School with a view to encouraging a sustainable access to St Mary's School*'. The provision of access to the School by sustainable modes of transport is an important part of the overall planning balance and I consider that this element of the obligation would meet the Regulation 122(2)(a) test.
51. Section 7.2 of the obligation requires the owner to pay to the County Council a County monitoring fee of £437.50. It is not clear that this money would be spent on activities which fall outside the County's normal monitoring functions. I am therefore not satisfied that this would meet the Regulation 122(2)(a) test.

Conditions

52. The Council and Appellant submitted a list of suggested conditions for me to consider in the event of the appeal being allowed. The conditions in Annex 1 to

¹⁴ Mr Marsden's proof of evidence

- my decision are based upon that list but with some changes to ensure that they are precise and meet the other tests in paragraph 206 of the Framework.
53. My conditions 1, 2 and 3, covering the matters which are reserved for future approval and timescales, are standard conditions required under the terms of the relevant legislation. My condition 4 lists the approved plans to provide the necessary certainty. I have excluded those plans which relate more properly to the reserved matters.
54. My conditions 5 to 9, covering the further investigation, remediation, monitoring and reporting of contamination within the site, and controlling the nature of soils imported onto the site are required to ensure that any risks from land contamination to people and the environment are addressed. I have added a requirement into condition 6 for the submitted remediation strategy to include details of how it would be verified that it has been successfully undertaken. This is in accordance with the recommendation of the Environment Agency.
55. I have also revised condition 7 to specify that no part of the development, other than that required to remediate the site shall be started until a verification report confirming the successful completion of the remediation has been completed. The inclusion of the phrase 'unless otherwise agreed in writing by the local planning authority' allows some flexibility to start development on one part of the site whilst remediation is continuing on another part, subject to the Council being satisfied that this may be done without harm to people or the environment. I have revised condition 8, covering the steps to be taken if previously unidentified contamination is identified during construction works, so that it is more akin to the version recommended by the Environment Agency and as this is more enforceable than the wording suggested by the Council and Appellant.
56. I have added a new condition 10 to specify that no piling or other penetrative foundations shall be used except with the prior written approval of the Council. This is in accordance with the recommendation of the Environment Agency and is required to prevent risk of pollution to ground and surface waters.
57. My condition 11, requiring a Construction Method Statement to be approved and implemented, is required to protect highway safety and the environment during the construction period. My condition 12, covering the hours within which various aspects of the development may be undertaken, is required to protect the living conditions of nearby residents. I have revised this condition to ensure that it is sufficiently precise and enforceable.
58. My condition 13, concerning the provision of areas for recycling bins, is required to provide a satisfactory visual appearance. I have re-worded this condition to ensure the facilities are provided before the dwellings to which they relate are occupied.
59. My condition 14, controlling internal noise levels, is needed to ensure satisfactory living conditions for occupiers of the proposed dwellings. My condition 15, covering landscaping and tree protection, is required to protect the character and appearance of the area. My condition 16, requiring a Travel Plan to be submitted is required to mitigate the effects of the proposal on transport patterns. I have revised this condition to ensure that the submitted

Travel Plan includes monitoring arrangements, and to give greater flexibility over what these may be.

60. My conditions 17 and 18, requiring the provision of a pedestrian crossing and speed reduction features on the A53 and a pedestrian link and refuge within the site, are required to ensure a safe and convenient walking route between the proposed housing and Loggerheads village centre. I have revised the previously suggested conditions to make it clear that further details of all these works will need to be submitted to and approved by the Council. My condition 19 is required to facilitate the use of Rock Lane as a pedestrian route between the site and St Marys CE School.
61. My condition 20, covering drainage matters, is required to control surface water flood risk and in the interests of pollution control. I have added a reference to control of infiltration in response to the comments of the Environment Agency. My condition 21, covering provision of open space and play facilities, is required to ensure satisfactory provision of these facilities to future occupiers of the development. My condition 22 is needed to establish the principles which should underpin the landscaping of the site, to protect and enhance the character and appearance of the area.

Planning balance and conclusion

Benefits

62. The proposal would make a substantial contribution of up to 128 dwellings to the housing land supply. As a result it could make a notable contribution to the Government's objective of significantly boosting the supply of housing, within a district which currently lacks a 5 year deliverable supply of sites. Whilst I have identified (in my 'ground conditions' section) various risks which could impact on the rate of delivery of the housing, these are not such as to exclude all parts of the development from the deliverable 5 year land supply.
63. Furthermore, there is no substantial evidence to suggest that the shortfall in the Council's housing land supply will be addressed in advance of the adoption of the proposed new Joint Local Plan. According to the latest available estimate¹⁵ this will not be until '2019'. As the final consultation stage (prior to examination) is not scheduled to be completed until November 2018, adoption would not be likely to take place until late 2019 and this timescale could be subject to slippage. Any large sites brought forward via the Local Plan process may also have substantial 'lead in' timescales. These points emphasise the benefit of bringing forward the appeal site at the current time.
64. Within the proposed planning obligation it is confirmed that 25% of the proposed housing would be affordable. This would make a substantial contribution to meeting the need for such housing in the Borough which is identified as being for 163 affordable units per annum¹⁶. It could also help meet the needs of households in Loggerheads, 47 of which were identified as being in housing need in 2012¹⁷. By providing affordable housing which is integrated into a general housing development, the proposal could contribute to providing a mixed and inclusive community.

¹⁵ Note on Local Plan progress - document LPA6

¹⁶ Strategic Housing Market Assessment for Stoke-on-Trent City Council and Newcastle-under-Lyme Borough Council (July 2015) – CD3.2 figure 7.3

¹⁷ Reference to 2012 Housing Need Survey in Mr Weatherley's proof, paragraph 17.47

65. Having regard to all the above points, I attribute substantial weight to the contribution that the proposal would make to widening the choice and availability of housing in the area.
66. The Economic Benefits Report¹⁸ estimates that the proposal would result in there being 186 additional residents of working age, generating a total household retail expenditure of £1.69 million per annum on convenience and comparison goods shopping. However, as this is likely to constitute a modest increase compared to overall expenditure flows I attribute limited weight to these benefits.
67. The Report also states that the proposal would help sustain 54 Full Time Equivalent construction jobs, 512 indirect jobs and associated construction spending. These would be for a temporary period during the construction works and carry limited weight.
68. Due to its scale the proposed development can be expected to make a notable contribution to pupil numbers in local schools. However, there is no substantive evidence before me to suggest that the schools would otherwise be unviable. I attribute limited weight to this benefit.
69. The proposed development would result in the further investigation and remediation of a contaminated former landfill site. This constitutes a further benefit, albeit one which carries limited weight as the evidence does not show that the site poses a substantial risk to public safety or to the environment in its current form.
70. Whilst the proposal would provide public open space and play facilities, these would be primarily to meet the needs of its future residents rather than the wider community. Although it could deliver some biodiversity benefits it is not clear that a substantial net improvement in biodiversity would be provided. I attribute very limited weight to these benefits.
71. Whilst the evidence indicates that the proposal could give rise to £293,000 per annum in additional Council tax, it is not clear that this could make the development acceptable in planning terms. As a result and in accordance with the PPG¹⁹ I have given this benefit no weight.

Harm

72. Against the proposal I have found that, due to its heavy reliance on car use for daily commuting trips and the distance likely to be covered by these, it would conflict to some extent with national and local policies related to sustainable transport. However, it would be sufficiently accessible to a range of services.

Overall balance

73. Having regard to these findings, I do not consider that the adverse effects of granting permission would significantly and demonstrably outweigh the benefits of doing so. The proposal would, taking account of the points set out earlier in this concluding section, contribute to the economic and social dimensions of sustainable development. Whilst it would have adverse environmental effects it would also lead to environmental benefits including the remediation of a contaminated site.

¹⁸ Economic Benefits Report, Satplan Ltd, April 2016 – CD12.44

¹⁹ Paragraph: 011 Reference ID: 21b-011-20140612

74. Whilst the proposal would conflict with some aspects of the development plan, material considerations, including the positive outcome of the balancing exercise required by paragraph 14 of the Framework, indicate that permission should be granted. Taking account of these points, the proposal would constitute sustainable development.

75. I therefore allow the appeal.

Jonathan Clarke

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr James Corbet Burcher of Counsel	Instructed on behalf of Newcastle-Under-Lyme Borough Council by Trevor Vernon, Solicitor, Stoke-on-Trent City Council
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He called Hugh Lufton BA(Hons), DipTP, MRTPI	Principal, Lufton Associates
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FOR THE APPELLANT:

Mr John Barrett of Counsel	Instructed by Knights
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He called Martin Dyer BSc (Hons), FGS, AIEMA, MIENVSC CENV	Director, E3P Ltd
Peter Todd BSc(Hons), MSc, MCIHT	Associate Director, SCP
Ben Weatherley BA(Hons), BTP, MRTPI	Partner, Knights Professional Services Ltd

FOR LOGGERHEADS PARISH COUNCIL (RULE 6 PARTY)

Miss Nina Pindham of Counsel	Instructed by Loggerheads Parish Council
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She called Paul Taylor, MCIWM Karen Watkins, MBE	Principal, Taywaste Consultancy Clerk of Loggerheads Parish Council
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INTERESTED PERSONS:

Councillor David Loades	County and Borough Councillor
Edward Martin	Local resident
Adam Hamdy	Local resident
Andrew Marsden PGDip	County Commissioner for Access to Learning, Staffordshire County Council

DOCUMENTS

- 1 Newcastle-under-Lyme Borough Council Local Plan Rural Accessibility Appraisal (LPA1)
- 2 Court of Appeal Judgement – Gladman Developments Ltd vs Daventry District Council [2016] EWCA Civ 1146 (LPA2)
- 3 High Court Judgement – Phides Estates (Overseas) Ltd vs Secretary of State for Communities and Local Government [2015] EWHC 827 (Admin) (LPA3)
- 4 Court of Appeal Judgement – Suffolk Coastal vs Hopkins Homes

- and Richborough Estates Partnership LLP vs Cheshire East Borough Council and the Secretary of State for Communities and Local Government [2016] EWCA Civ 168 (LPA4)
- 5 Extract from Appendix IV (Local Authority Information) of E3P Phase 1 Geo-Environmental Site Assessment (CD6.15) (LPA5)
- 6 Note providing update on preparation of Joint Local Plan (LPA6)
- 7 Extract from PPG13 (LPA7)
- 8 Statement by the LPA with respect to compliance of the Section 106 agreement with the CIL Regulations (LPA8)
- 9 TRICS Research Report 14/1 (APP1)
- 10 Inclusive Mobility (APP2)
- 11 Rebuttal note of Ben Weatherley of Knights (APP3)
- 12 Rebuttal note of Peter Todd of SCP (APP4)
- 13 Appeal decision APP/Y240/W/16/3154683 and related location plan, site layout, 3D plan, access layout and transport assessment (APP5)
- 14 Report to the Secretary of State for Communities and Local Government concerning appeal APP/X0360/A/09/2097189 (APP6)
- 15 Officer report and site location plan – application reference 16/00866/DEEM4 (APP7)
- 16 Letter from White Young Green, 30/11/2016 re representation from Loggerheads Parish Council - planning application 16/00866/DEEM4 (APP8)
- 17 Extract from Framework Travel Plan submitted as part of planning application ref. 16/00866/DEEM4 (APP9)
- 18 CL:AIRE Register of Materials (as at 26.01.2017) (APP10)
- 19 E-mail from M G Benson to Loggerheads Parish Council – 22/12/2016 (TP1)
- 20 E-mail from Ms L Wallace to Mr Martin – 16/12/15 (TP2)

ANNEX 1

LIST OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule A.
- 5) Development shall not commence until a further investigation and risk assessment has been completed in accordance with a scheme to be agreed by the local planning authority to assess the nature and extent of any contamination on the site. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and agreed in writing by the local planning authority prior to the commencement of the development. The report of the findings shall include:
 - (i) a survey of the extent, scale and nature of any contamination;
 - (ii) an assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes; adjoining land; ground and surface waters; ecological systems; and archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and a proposed preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 6) Development shall not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved by the local planning authority. The scheme must include:
 - (i) all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures; and
 - (ii) a verification plan providing details of the data that will be collected to demonstrate that the works set out in (i) are complete and

identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

- 7) No part of the development hereby permitted (other than that required to undertake remedial works) shall, unless otherwise agreed in writing by the local planning authority, be undertaken unless and until:
 - (i) the approved remediation scheme has been completed; and
 - (ii) a verification report that demonstrates the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority.
- 8) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until:
 - (i) a Method Statement, detailing how this unsuspected contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority; and
 - (ii) a verification (validation) report, including results of any sampling and monitoring and demonstrating completion of the works set out in the method statement has been submitted to and approved in writing by the local planning authority. The report shall include a plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.
- 9) No soils shall be imported to the site until information on their source, the results of any soil analysis, and an assessment of their suitability for use has been submitted to and agreed in writing by the local planning authority. Prior to their import onto site, a suitable methodology for testing soils following their import and placement on the site should be submitted to and agreed in writing by the local planning authority. The methodology shall include the sampling frequency, testing schedules and criteria against which the analytical results will be assessed (as determined by the risk assessment). The agreed methodology shall then be carried out and validity evidence submitted to and approved in writing by the local planning authority.
- 10) No piling or other penetrative foundation designs shall be used except with the prior written approval of the local planning authority.
- 11) Prior to the commencement of any works, a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. This shall include details relating to:
 - (i) a site compound with associated temporary buildings;
 - (ii) routing of construction traffic to and from the site;
 - (iii) the access arrangements for vehicles entering and leaving the site;

- (iv) the removal of demolition materials from the site;
- (v) the parking of vehicles of site operatives and visitors;
- (vi) the loading, unloading and storage of plant and materials used in constructing the development;
- (vii) the proposed hours of operation, including vehicle movements to and from the site, during the construction and demolition phases;
- (vii) the control of noise and vibration emissions from construction activities including groundwork;
- (ix) the control of dust including arrangements to monitor associated emissions from the development site during the construction phase; and
- (x) measures to prevent the deposition of deleterious material (mud, debris, etc.) on the public highway including wheel wash facilities.

Development shall be carried out in accordance with the approved Construction Method Statement, unless otherwise approved in writing by the local planning authority.

- 12) Demolition and construction works, including the operation of any machinery or processes, or the movement of construction traffic shall take place only between 0700 and 1800 on Mondays to Fridays or between 0700 and 1300 on Saturdays. These activities shall not take place at any time on Sundays or on Bank or Public Holidays.
 - 13) None of the proposed dwellings shall be occupied until arrangements for recyclable materials and refuse storage, including designated areas to accommodate sufficient recyclable materials and refuse receptacles to service them, have been provided in accordance with details which have been previously submitted to and approved in writing by the local planning authority.
 - 14) Each dwelling shall incorporate design measures, in accordance with details supported by an appropriate noise assessment which have been previously submitted to and approved in writing by the local planning authority, to ensure the following noise levels are not exceeded:
 - habitable rooms - 30 dBLAeq at any time and 42 dBLAMax between 2300 and 0700 the following day; and
 - gardens, balconies and terraces – 50 dBLAeq between 0700 and 2300.
- None of the dwellings shall be occupied until the approved measures have been fully implemented. The approved measures shall thereafter be retained in full.
- 15) Any application for approval of landscaping, layout or scale shall include: a plan or plans showing which trees are to be retained and any which are to be removed; an Arboricultural Impact Assessment; an Arboricultural Method Statement; details of Root Protection Areas (RPAs) of any trees identified for retention; and details of how damage to root systems will be avoided. The submitted details shall comply with BS5837:2012 or any equivalent superseding guidance which may be applicable at the time. The submitted details shall also include: proposed boundary treatments;

- any hedgerows to be retained or planted; any water features and details of proposed levels.
- 16) No part of the development hereby permitted shall be occupied until a Travel Plan, setting out proposals (including a timetable and monitoring arrangements) to promote travel by sustainable modes, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented and monitored in accordance with the approved timetable unless otherwise agreed in writing by the local planning authority.
 - 17) No part of the development hereby permitted shall be occupied until a controlled pedestrian crossing and speed reduction features on the A53 west of the A53/Eccleshall Road/Mucklestone Road double mini roundabout junction have been provided in accordance with details which have been submitted to and approved in writing beforehand by the local planning authority.
 - 18) No part of the development hereby permitted shall be occupied until a pedestrian/cycle only access linking the site to the existing footway in the vicinity of the B5026 Eccleshall Road/Mucklestone Wood Lane junction, and a pedestrian refuge at this location, have been provided in accordance with details which have previously been submitted to and approved in writing by the local planning authority.
 - 19) Any application for the approval of reserved matters (including site layout) shall include details of the proposed pedestrian link from the development to Rock Lane. The link shall be implemented in accordance with the approved details prior to occupation of any of the dwellings.
 - 20) No development shall commence until a detailed surface water drainage scheme for the site, including measures to protect groundwater from pollution from infiltration, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development.
 - 21) No development shall commence until details of the proposed play facilities and the timing of the provision of the open space and the play facilities have been agreed in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.
 - 22) Any reserved matters application(s) pursuant to this outline planning permission shall accord with the principles of the Barrie Newcombe Associates Design and Access Statement and the PGLA & BPUD Landscape and Design Character Study dated December 2014.

SCHEDULE A – LIST OF APPROVED PLANS REFERRED TO IN CONDITION 2

<u>Drawing No.</u>	<u>Description</u>
1919-101A	Location Plan
10383-001	Topographical Survey
SCP/13100/F04	Proposed Site Access
1919-111A	Site Sections
10-383-002	Outline Remediation Landform Contour Plan

