



**Ministry of Housing,  
Communities &  
Local Government**

Mr George Machin  
Grace Machin Planning & Property  
5 Malin Hill  
Plumtree Square  
Nottingham  
NG1 1 JQ

Our ref: APP/B3030/W/17/3169436 &  
APP/B3030/W/17/3179732

Your ref: Mansfield Road, Farnsfield

26 April 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS MADE BY TRUSTEES OF THE MRS G M MURDOCH SETTLEMENT  
LAND AT MANSFIELD ROAD, FARNSFIELD, NEWARK NG22 8JH  
APPLICATION REFs: No 16/01575/OUTM and No 17/00299/OUTM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs J A Vyse DipTP DipPBM MRTPI, who held a public local inquiry on 14 –17 November 2017 into your client's appeal against the decisions of Newark and Sherwood District Council ("the Council") to refuse your client's applications for planning permission for land at Mansfield Road, Farnsfield, Newark for:  
  
**Appeal A:** development comprising up to 20 No dwellings, in accordance with application ref: 16/01575/OUTM, dated 26 September 2016; and  
  
**Appeal B:** for development comprising up to 60 No dwellings, in accordance with application ref: 17/00299/OUTM, dated 13 February 2017.
2. On 20 April 2017, these appeals were 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.

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

3. The Inspector recommended that both appeals be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendations. He has decided to dismiss both appeals. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

5. The Secretary of State notes that the original proposal the subject of Appeal A was for up to 60 dwellings and that the scheme was amended prior to determination and reduced to 20 dwellings on a smaller site. However, the Secretary of State does not consider that this raises any matters that would require him to refer back to the parties for further representations prior to reaching his decisions on these appeals, and he is satisfied that no interests have thereby been prejudiced.

## **Policy and statutory considerations**

6. In reaching his decision, 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.
7. In this case the adopted development plan consists of the saved policies of the Newark and Sherwood Core Strategy Development Plan Document (CS) (March 2011), the Newark and Sherwood Allocations and Development Management Development Plan Document (ADMDDP) - July 2013, and the Farnsfield Neighbourhood Plan (FNP) made in October 2017. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR6.5–6.21.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement on Neighbourhood Planning of 12 December 2016 (the WMS), and associated Guidance.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess; and, in accordance with section 72(1) of the LBCA Act, he has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### *Emerging plan*

10. The emerging plan comprises the Newark and Sherwood Plan Review – Core Strategy. This was submitted for Examination at the end of September 2017, but no date has yet been fixed for any hearing (IR6.22).
11. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Newark and Sherwood Plan Review – Core Strategy has yet to reach an advanced stage and could be subject to a significant number of unresolved objections, the Secretary of State gives it limited weight.

## **Main issues**

### *Relationship to the Development Plan*

12. The Secretary of State has carefully considered the Inspector's analysis of the relationship of the appeal schemes to the development plan (IR15.3-15.9). As the appeal sites are not allocated in any part of the development plan and there is no dispute that the development would be outside the village envelope, the Secretary of State agrees with the Inspector's conclusion (IR15.9) that the appeal proposals are not in accordance with the development plan as a whole.

### *Consistency with the Framework*

13. The Secretary of State has carefully considered the Inspector's analysis of the consistency of the CS policies with the Framework, which they predate (IR15.10-15.16); and he agrees with the Inspector that the relevant policies broadly conform to the Framework (IR15.16).

### *Housing Land Supply (HLS)*

14. The Secretary of State has carefully considered the Inspector's analysis of the Objectively Assessed Need (OAN) (IR15.18–15.34), noting that there was no agreement as to which of the various OAN figures promoted provides the most appropriate basis against which to assess housing supply. However, for the reasons given by the Inspector, the Secretary of State agrees with her conclusion at IR15.35 that planning for more than an OAN of 454 dpa would be inconsistent with both current advice and emerging advice on housing need.
15. The Secretary of State has gone on to consider the matter of supply (IR15.36-15.50). He shares the Inspector's misgivings about the application of average completion rates (IR15.39-15.43) and agrees with her conclusion with regard to C2 accommodation (IR15.44-15.50). Furthermore, having carefully considered the Inspector's analysis of the potential deliverability of individual sites identified in the Council's HLS (IR15.51–15.79), the Secretary of State agrees with her conclusion at IR15.80 that an OAN of 510 dpa or lower would give a HLS of between 5.25 to 6.36 years.

#### *Character and Appearance*

16. The Secretary of State has carefully considered the Inspector's analysis of the impact on the character and appearance of the area (IR15.82-15.99) and, for the reasons which she gives, he agrees with the Inspector's conclusion at IR15.100 that both appeal schemes would result in substantial material harm to the established character and appearance of the area, bringing them into conflict with policies CP13, DM5, FNP7 and FNP8.

#### *Heritage Assets*

17. The Secretary of State has carefully considered the Inspector's analysis of the potential impact on heritage assets at IR15.101–IR15.119. In relation to Farnsfield Conservation Area, he agrees with the Inspector that that the harm to its heritage significance can be considered as less than substantial (IR15.112). With regard to the Grade II listed St Michael's Church (IR15.113-15.117), the Secretary of State agrees with the Inspector that the harm to the asset would be much greater in relation to the Appeal B scheme; but that the impact of either scheme on the setting of the heritage asset would be less than substantial. The Secretary of State also agrees with the Inspector at IR15.119 that neither of the schemes would result in any harm to the significance of the Grade II listed Old Vicarage. Overall, the Secretary of State agrees with the Inspector's conclusions at IR15.122-15.123 that, as the Council can demonstrate a five year HLS, the benefits of either of the appeal schemes are not sufficient to outbalance the identified 'less than substantial' harm to the significance of the heritage assets.

#### ***Accessibility and the Operation of the Highway Network***

18. The Secretary of State shares the Inspector's concerns (IR15.131–15.139) and her conclusion at IR15.140 that there is no certainty that either of the appeal schemes would not give rise to any material harm to highway safety, or to the free flow of traffic through the village; and he gives this a small amount of weight in the overall planning balance.

#### **Planning conditions**

19. The Secretary of State has given consideration to the Inspector's analysis at IR13.1-13.2, the recommended conditions set out at Appendix B of the IR and the reasons for them and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing these appeals and refusing planning permission.

## **Planning obligations**

20. Having had regard to the Inspector's analysis at IR14.1–14.12, the planning obligation dated 20 November 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion (IR14.11) that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing these appeals and refusing planning permission.

## **Planning balance and overall conclusion**

21. For the reasons given above, the Secretary of State considers that neither appeal scheme is in accordance with CS Policies SP1, SP2, CP13, CP14, ADMDPD Policies DM1, DM5, DM9, and FNP Policies FNP1, FNP2, FNP7 and FNP8 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that whether either proposal should be determined other than in accordance with the development plan.
22. The Secretary of State considers that the Council can demonstrate a five year supply of housing of between 5.25 to 6.36 years and that the relevant policies for the supply of housing are up to date, so that paragraph 49 of the Framework is not engaged. Although, the Secretary of State considers that the provision of additional market and affordable housing carries significant weight in favour of the schemes, with limited additional weight to the economic social and environmental benefits of the proposals, he does not consider that these are sufficient to outweigh the failure to accord with the development plan along with the substantial harm to the character and appearance of the area and the less than substantial harm to the significance of the heritage assets.
23. The Secretary of State therefore concludes that both Appeal A and Appeal B should be dismissed.

## **Formal decision**

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your clients' appeals and refuses planning permission for i) Appeal A: development comprising up to 20 No dwellings; and ii) Appeal B: for development comprising up to 60 No dwellings.

## **Right to challenge the decision**

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
26. A copy of this letter has been sent to Newark and Sherwood District Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Jean Nowak

Authorised by the Secretary of State to sign in that behalf



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

**by Mrs J A Vyse DipTP DipPBM MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 22 January 2018**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEALS BY**

**THE TRUSTEES OF THE MRS G M MURDOCH SETTLEMENT**

**AGAINST THE DECISIONS OF**

**NEWARK AND SHERWOOD DISTRICT COUNCIL**

Inquiry opened on 14 November 2017

Land off Mansfield Road, Farnsfield, Newark NG22 8JH

Appeal Refs: APP/B3030/W/17/3169436 and APP/B3030/W/17/3179732

### **Appeal A: APP/B3030/W/17/3169436**

#### **Land off Mansfield Road, Farnsfield, Newark NG22 8JH**

- 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 the Trustees of the Mrs G M Murdoch Settlement against the decision of Newark and Sherwood District Council.
- The application No 16/01575/OUTM (previous Ref PP-05424240), dated 26 September 2016, was refused by a notice dated 9 February 2017.
- The development proposed is described on the application form as comprising up to 60 No dwellings.

**Summary of Recommendation: That the appeal be dismissed.**

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### **Appeal B: APP/B3030/W/17/3179732**

#### **Land off Mansfield Road, Farnsfield, Newark NG22 8JH**

- 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 the Trustees of the Mrs G M Murdoch Settlement against the decision of Newark and Sherwood District Council.
- The application No 17/00299/OUTM, dated 13 February 2017, was refused by a notice dated 22 June 2017.
- The development proposed comprises up to 60 No dwellings.

**Summary of Recommendation: That the appeal be dismissed.**

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## **1. APPLICATIONS FOR COSTS**

- 1.1 No applications for costs were made by any party to the Inquiry.

## **2. PROCEDURAL AND BACKGROUND MATTERS**

- 2.1 The Inquiry sat for four days (14–17 November 2017). I returned to undertake an accompanied visit to the site and its surroundings on 20 November 2017, following an itinerary agreed between the main parties and local residents (Doc 25).<sup>1</sup>
- 2.2 In order to allow the main parties time to agree amendments/additions to the suggested conditions, to make minor alterations to the planning obligations and prepare closings, I left the Inquiry open. In addition, whilst the Inquiry was sitting, a Written Ministerial Statement (WMS) was issued,<sup>2</sup> which has potential implications for Mansfield, one of three authorities that comprise the local Housing Market Area. Adjourning the Inquiry, as opposed to closing, also afforded time for the parties to make submissions on the WMS if necessary.
- 2.3 The outstanding documents and closings were submitted within the agreed timetable (Docs 27 -34) and I closed the Inquiry in writing on 12 December 2017 (Doc 35).
- 2.4 Both applications were submitted in outline, with only access to be considered at this stage. In both appeals, matters relating to appearance, landscaping, layout and scale were reserved for future consideration.

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<sup>1</sup> References prefaced with 'Doc' are to documents handed up during the Inquiry, listed at the end of this Report.

<sup>2</sup> Local Plans: Written Statement – HCWS254 made on 16 November 2017

- 2.5 As set out in the header above, the original proposal the subject of Appeal A was for up to 60 dwellings. However, the scheme was amended prior to determination of the application following discussions with officers. The number of dwellings proposed was reduced to up to 20 on a smaller site (CD1.17).<sup>3</sup>
- 2.6 As part of the appellant's case at appeal, revised illustrative layout plans were submitted in relation to both schemes to inform the related discussion (Drawing No P17.2155 001 REV A (20 units) and P17.2155 002 REV A (60 units) accompanied by a revised development brief.<sup>4</sup> No objection was raised to the appeals being considered in the light of those revised plans and, since both proposals are in outline, with matters of layout etc reserved for future consideration in any event, I am satisfied that no interests would be prejudiced by proceeding on that basis, which is what I have done.
- 2.7 A local resident raised a query at the outset as to whether the appeals had been advertised correctly. The Council confirmed that individual letters had been sent out, with press notices having been placed in the local paper. In addition, the appellant had posted a site notice close to the site on a nearby bus stop. Whilst the bus stop does not immediately abut the site boundary, there is no footway along this side of Mansfield Road. Had the notice been posted on a lamp post adjacent to the site, I agree with the main parties that it would, in all likelihood, have gone unnoticed. It was a pragmatic decision to post the notice on the nearby bus stop, where it was more likely to be seen by pedestrians.
- 2.8 Copies of the press notice and a plan showing the location of the posted site notice, were before me. The Council also confirmed that appeal notification letters had been sent out to those who had objected to the planning application. Again, details of that notification were before me.<sup>5</sup> Those in attendance on the first day of the Inquiry included a District Councillor, Parish Councillors and a number of local residents. I was handed lists of signatures of objectors to the schemes,<sup>6</sup> each list containing some 270-280 signatures. Both documents make very clear reference to the Inquiry. Written objections in relation to the appeals were also before me, all of which demonstrates that local residents were aware of the appeals and the Inquiry. I am satisfied, therefore, that the appeals and the related Inquiry were properly advertised and that the interests of those local residents opposing the schemes were fully represented at the event.

### **3. THE SITES AND THEIR SURROUNDINGS**

- 3.1 The appeal sites and their surroundings are described in detail in, among other places, the appellant's Landscape and Visual Assessment (CD1.8) and Planning Design and Access Statement (CD1.13) the Influence Landscape and Visual Impact Assessment (CD1.25) and later Landscape Statement (CD1.39) the officer's reports to the planning committee (CD1.33 and 1.36), the Statement of Common Ground (CD2.5) and the proofs of Miss Kurihara and Tom Jonson for the Council and of Mr Denny and Mr Machin for the appellant.

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<sup>3</sup> The pre-fix 'CD' in this Report relates to Core Documents listed at Appendix A below.

<sup>4</sup> Appendices 1 and 2 to the proof of Mr Denney

<sup>5</sup> Copies of the press notice, letters of notification and location of the site notice can be found at Doc 26.

<sup>6</sup> Docs 3 and 8

- 3.2 The appeal sites lie within a shallow roughly east/west oriented valley and are located near to the western periphery of, but outside the currently defined settlement boundary for the village of Farnsfield (Doc 36). The land the subject of Appeal B extends to some 4.15 hectares and comprises two hedged strip-fields that extend back from the southern side of Mansfield Road, rising to meet with the Robin Hood Way long distance public footpath (FP18) which runs east/west along the top of a low ridge. The land the subject of Appeal A extends to some 1.37 hectares and consists of the front portion of both the fields that comprise the larger site, adjacent to Mansfield Road.
- 3.3 Mansfield Road is the main western approach to Farnsfield from the A614. The northern boundary to the sites is characterised by hedgerow planting along the road boundary - there is no footway along this side of the highway here. On the north side of the road, opposite to the appeal sites, is post-war and more recent housing on gently rising land. As a consequence of the changes in levels, the houses opposite are elevated in relation to the appeal sites. To the east are a further three strip-fields, which together with walled stallion paddocks, separate the appeal sites from the historic heart of the village. To the west is a further strip field beyond which, and to the south beyond the Robin Hood Way, are larger arable fields, with land to the south rising up to a steep wooded scarp in the distance.

#### **4. THE PROPOSALS**

- 4.1 The Appeal A scheme, as amended, comprises the erection of up to 20 dwellings, whilst Appeal B proposes the erection of up to 60 dwellings on a site which includes the Appeal A land. Both schemes would include a mix of market and affordable housing. As set out in the evidence of the appellant,<sup>7</sup> both are intended to provide a full mix of dwelling types and sizes, including 2, 3, 4 and 5 bedroom properties, with a range of detached, semi-detached and terraced style dwellings, with some bungalows. Both schemes would be served by the same proposed vehicular access point off Mansfield Road, as shown on Drawing No 16209-001 (CD1.7).
- 4.2 Whilst both applications were made in outline form, with all matters other than access reserved for future consideration, each was accompanied by an indicative layout plan (CD1.15 and 1.17). As noted above, those plans were revised during preparation of the appellant's evidence for the Inquiry.<sup>8</sup> The related evidence to the Inquiry was based on those revised layouts, albeit that they were confirmed as being illustrative only.

#### **5. PLANNING HISTORY**

- 5.1 In 2010 an outline application for the erection of 33 affordable dwellings on the northern half of the western of the two strip-fields described above as comprising the site of the current appeals, was lodged with the Council by the current appellant. (Doc 13)
- 5.2 Permission was refused on the grounds that the site was not directly adjacent to the main built up area of Farnsfield, contrary to relevant policies at the

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<sup>7</sup> eg Mr Denny at paragraphs 4.6 and 4.7

<sup>8</sup> Appendix 1 to the proof of Mr Denny

time; that the scheme had not been developed in conjunction with and did not benefit from any firm support from a registered social landlord; that due to its isolated location the development would appear visually intrusive in the open countryside, resulting in harm to the Special Landscape Area; potential harm to badgers; the absence of any provision for play space etc; and the absence of required infrastructure contributions.

## **6. PLANNING POLICY AND GUIDANCE**

- 6.1 The planning policy context for the development proposed is set out in the officer's reports (CD1.33 and 1.36) at section 3 of the Statement of Common Ground (CD2.5), and in the various proofs, particularly those of Mr Machin for the appellant and Miss Kurihara for the Council.
- 6.2 At the time of the Inquiry, the development plan included the saved policies of the Newark and Sherwood Core Strategy Development Plan Document (March 2011) the Newark and Sherwood Allocations and Development Management Development Plan Document (July 2013) and the Farnsfield Neighbourhood Plan, which passed Referendum in September 2017 and was duly made in October 2017, shortly before the Inquiry opened. In addition, the Council has produced supplementary planning documents that are relevant.
- 6.3 Whilst the Statement of Common Ground sets out a raft of development plan policies, those referred to below are those I consider to be most relevant to the issues raised by these appeals, in addition to the National Planning Policy Framework.

### ***The Newark and Sherwood Core Strategy Development Plan Document (CD3.3)***

- 6.4 The appeal sites lie close to but outwith the settlement boundary for Farnsfield as currently defined by the Core Strategy.<sup>9</sup> Thus, they lie in open countryside for the purposes of planning policy.
- 6.5 Spatial Policy 1 (SP1): Settlement Hierarchy – the policy defines the settlement hierarchy for the District. It identifies which settlements are central to the delivery of the Spatial Strategy, setting out the roles of the relevant settlements in delivering that Strategy. Farnsfield is classed as a Principal Village (a third tier settlement). Principal Villages are identified as having a good range of day to day facilities (primary school, food shop, health facilities, employment or access to nearby employment and complement the role of Service Centres). They act as a secondary focus for service provision in each area to assist rural accessibility.
- 6.6 Spatial Policy 2 (SP2): Spatial Distribution of Growth – the spatial distribution of growth in the District is focused on supporting the Sub-Regional Centre of Newark Urban Area, which is the main location for new housing and employment growth. Farnsfield is identified as a Principal Village where an approach of Securing Sustainable Communities is to be adopted, where

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<sup>9</sup> The settlement boundary as currently defined is shown on Doc 36. It also corresponds with the village envelope shown on Map 7 (page 62) of the ADMDDP.

provision will be made for new housing to meet local housing need and provide support for employment to provide local jobs.

- 6.7 The policy identifies that 10% of overall housing growth will be met within Principal Villages, with 10% of that, equating to 142 dwellings, to be accommodated in Farnsfield. Sites to accommodate that are provided for on Map 7 in the Allocations and Development Management DPD.
- 6.8 Spatial Policy 3 (SP3): Rural Areas – among other things, the policy confirms that local housing need will be addressed by focusing housing in sustainable accessible villages. Beyond Principal Villages, proposals for new development will be considered against specified criteria relating to location, scale, need, impact and character. Development away from the main built-up areas of villages, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. The Allocations and Development Management DPD will set out policies to deal with such applications.
- 6.9 Core Policy 13 (CP13): Landscape Character – among other things, the policy expects development proposals to positively address the implications of the Landscape Policy Zone within which it is located and demonstrate that such development would contribute towards meeting Landscape Conservation and Enhancement Aims for the area.
- 6.10 Core Policy 14 (CP14): Historic Environment – among other things, the policy seeks to secure the continued preservation and enhancement of the character, appearance and setting of the District's heritage assets and historic environment, including listed buildings and conservation areas.

***The Newark and Sherwood Allocations and Development Management Development Plan Document (CD3.4)***

- 6.11 Policy DM1: Development within settlements central to delivering the Spatial Strategy – this policy is supportive of housing development within defined development boundaries, including within the village envelopes of Principal Villages where it would be appropriate to the status, size and location of the settlement.
- 6.12 Policy DM5: Design – all proposals for new development are to be assessed against specified criteria relating to access, parking, amenity, local distinctiveness and character, trees, woodlands, biodiversity and green infrastructure, crime and disorder, ecology, unstable land, flood risk and water management, and advertisements.
- 6.13 Policy DM8: Development in the Open Countryside – giving effect to policy SP3 of the Core Strategy, development away from the main built-up areas of villages, in the open countryside, will be strictly controlled and limited to specified types of development.
- 6.14 Policy DM9: Protecting and Enhancing the Historic Environment – in accordance with Core Strategy policy CP14, all development proposals concerning heritage assets will be expected to secure their continued protection or enhancement, contribute to the wider vitality, viability and regeneration of the areas in which they are located and reinforce a strong sense of place.

- 6.15 Policy DM12: Presumption in Favour of Sustainable Development – the policy sets out a positive approach to the consideration of development proposals, reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework.
- 6.16 Policies Fa/Ho/1 and Fa/MU/1 allocate land for a total 105 dwellings, representing the residual required under SP2, after taking account of completions and commitments.

***The Farnsfield Neighbourhood Plan (CD3.5)***

- 6.17 Policies FNP1 and FNP2 are supportive of new housing and infill development within the defined village envelope.
- 6.18 Policy FNP7: The Quality of Development – new development should demonstrate how it has taken account of the character of the village in its design approach with specific regard to scale, materials, density, landscapes and designing out crime. Development is required to demonstrate how it has considered and responded to the Farnsfield Conservation Area Appraisal and the Farnsfield Character Appraisal and Design Principles document (January 2017).
- 6.19 Policy FNP8: Landscape – development should ensure that it has considered and appropriately responded to the implications of the relevant Landscape Policy Zone. Proposals must demonstrate how they have considered the landscape setting and character of the site.
- 6.20 Policy FNP9: Access to the Countryside – among other things, development should maximise site specific opportunities to enable or improve access to the countryside for recreational purposes; ensure, where possible, that connections into the existing footpath network are provided; and maximise opportunities to link to the wider Green Infrastructure Networks of the District.
- 6.21 Policy FNP10: Community Facilities – contributions towards community facilities identified by the Parish Council as local priorities in the Parish Council Strategy will be sought through planning obligations.

***The Newark and Sherwood Plan Review – publication amended Core Strategy (CD3.7)***

- 6.22 The Core Strategy is currently under review. The most recent version of the emerging plan was submitted for Examination at the end of September 2017 although, at the time of the Inquiry, the Examination had not taken place. The policies in the emerging Plan have not yet been tested at Examination. Moreover, some are subject to unresolved objections and may be subject to change. That limits the weight they can be afforded. Nevertheless, given its relatively advanced stage, it provides a useful indication of the 'direction of travel' for the District.
- 6.23 Spatial Policy 1 is similar to policy SP1 referred to above and continues to identify Farnsfield as a Principal Village in the settlement hierarchy.
- 6.24 Spatial Policy 2 is similar to policy SP2 above. However, whilst the housing requirement for the District is reduced, with 10% of overall growth still to be

accommodated within Principal Villages, 24% of that is to be accommodated at Farnsfield which continues to be identified as a Sustainable Community.

- 6.25 Spatial Policy 3 continues to address local housing need by focussing housing in sustainable accessible villages. Beyond Principal Villages, proposals for new development are considered against similar criteria to those specified in policy SP3 above. Development away from the main built-up areas of villages, in the open countryside, continues to be strictly controlled, restricted to uses which require a rural setting, with the Allocations and Development Management DPD setting out policies to deal with such applications.
- 6.26 Among other things, Core Policy 13 seeks to secure new development that positively addresses the implications of the relevant Landscape Policy Zone and is consistent with the landscape conservation and enhancement aims for the area.
- 6.27 Similarly, Core Policy 14 seeks, among other things, to secure the continued conservation and enhancement of the character, appearance and setting of the District's heritage assets and historic environment, including listed buildings and conservation areas.

***Landscape Character Assessment Supplementary Planning Document (CD3.8)***

- 6.28 This document was adopted in December 2013 in a revised form following public consultation. It provides a District-level assessment of landscape character and forms part of a wider assessment for the County. It provides an explanation of the differences between landscapes that is based around a sense of place, local distinctiveness, characteristic wildlife and natural features. In identifying Landscape Policy Zones and related actions, the document is intended to play an important role in the planning framework and in decisions over new development.

***Developer Contributions and Planning Obligations Supplementary Planning Document (CD3.6)***

- 6.29 Adopted in 2013 following revision in response to comments received during consultation, it sets out the Council's approach to developer contributions and identifies the relevant policy basis and types of development to which the obligations will apply, together, where possible, with the basis for the calculation of contributions.

***An Appraisal of the Character and Appearance of Farnsfield Conservation Area (CD5.1)***

- 6.30 The Appraisal was adopted in March 2000 following consultation with local residents. It is largely a descriptive document describing the character and appearance of the Conservation Area.

***Farnsfield Neighbourhood Plan Character Appraisal and Design Guidance (CD5.3)***

- 6.31 This document was produced by the Parish Council in November 2016, informing preparation of the Neighbourhood Plan. It identifies five different character areas within the village, setting out a brief description of each.

Appended to the document is design guidance for new developments, with different priorities for each character area.

## **7. AGREED MATTERS**

7.1 The appeals were accompanied by a Statement of Common Ground (CD2.5). Main areas of agreement between the main parties set out therein include:

- i) Farnsfield is classed as a Principal Village in the Core Strategy (policy SP1);
- ii) whilst detailed layout and design would be considered at reserved matters stage, the entire site area is capable of accommodating 60 dwellings and the reduced site area is capable of accommodating 20 dwellings whilst ensuring that there would be no unacceptable adverse impacts upon the residential amenities of occupiers of nearby properties;
- iii) although the reason for refusal in both cases is almost identical, the word 'landscape' has been deliberately added in the reason for refusal relating to the up to 60 dwelling scheme - the up to 20 dwelling scheme was not refused on landscape grounds;
- iv) the Highways Authority has concluded that, in highway terms, the proposal is acceptable subject to conditions and the proposed access point on Mansfield Road would not have any adverse impact on highway safety or traffic capacity;
- v) the appeal sites are not at risk of flooding and the proposals would not exacerbate flood problems in the village itself;
- vi) both schemes would deliver a fully policy compliant Section 106 developer contribution package;
- vii) the developments would affect the setting of the grade II listed St Michael's church in a way that would cause less than substantial harm to its significance as a heritage asset;
- viii) whilst the Council considers that there would be harm to the heritage significance of Farnsfield Conservation Area, which harm would be less than substantial, the appellant maintains that there would be no material harm.

7.2 At my request, a Statement of Common Ground relating to OAN and Housing Land Supply was submitted during the Inquiry.<sup>10</sup> It sets out agreement that:

- i) in relation to considering whether a housing site is deliverable, it is relevant to take account of the judgement in *St Modwen Developments Ltd v SSCLG, East Riding of Yorkshire Council and Save our Ferriby Action Group* [2017] EWCA Civ 1643; and.
- ii) there has been a persistent record of under-delivery of housing in the District and it is therefore appropriate to apply a 20% buffer to both

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<sup>10</sup> Doc 16, as amended by Doc 23

the housing requirement and any shortfall using the 'Sedgefield' method.

## **8. MATTERS NOT AGREED**

- 8.1 As set out in both Statements of Common Ground, the main areas of disagreement between the main parties relate to:
- i) whether the Authority is able to demonstrate a five year housing land supply having regard to objectively assessed need and considerations of the amount of time that should be allowed for the determination of planning applications, delivery lead-in times, any contribution in relation to C2 units, the contested supply sites and the application of a non-implementation/lapse rate;
  - ii) the weight to be applied to development plan policies;
  - iii) whether the appeal sites comprise an appropriate location for development and whether the proposed schemes represent sustainable development;
  - iv) whether the developments proposed would cause unacceptable harm to local landscape character and other local receptors; and,
  - v) whether the developments proposed would result in unacceptable harm to the significance of the grade II listed St Michael's church and Farnsfield Conservation Area through change to those elements of their respective settings which contribute to significance.

## **9. CASE FOR THE TRUSTEES OF THE MRS G M MURDOCH SETTLEMENT**

### **Introduction**

- 9.1 To a large extent, the appellant and Council discussing what the Secretary of State is going to do with amendments to the National Planning Policy Framework (the Framework); reforms set out in the Housing White Paper; standardised methodology for calculating of housing need; poor performing Local Planning authorities such as Mansfield; and central government aspirations for 300,000 new homes per year, is a little artificial in this instance. Both appeals have been recovered and it is likely that decisions on all five of these structural issues will be made before decisions are reached on these particular schemes. The Secretary of State will be able to say what he means rather than advocates speculating what they think that he means. The timing of these appeals falls within a period of greater uncertainty than normal, which may well result in the need for further submissions in the early part of 2018. However, we are where we are.

### **Key legal principles**

- 9.2 2017 has been a busy year for the Planning Court and a number of important principles have been clarified. The most important decisions here are:
- *Suffolk Coastal District Council v Hopkins Homes Ltd UKSC 2016/0076 and Richborough Estates Partnership LLP v Cheshire East Borough Council UKSC 2016/0078*

- *Barwood Strategic Land II LLP v (1) East Staffordshire Borough Council (2) SSCLG* [2017] EWCA Civ 8932
- *St Modwen v SSCLG & ERYC* [2017] EWCA Civ 1643

9.3 To these can be added the recent decision in:

- *Keith Langmead Ltd v SSCLG* [2017] EWHC 788

9.4 The adopted development plan has primacy. The appellant accepts that even where there is a lack of a five year supply of housing land, policies which restrict the supply of housing land may still carry weight and this is a matter for the decision maker. National planning policy and practice guidance in relation to neighbourhood plans should also be applied. Pertinent considerations to the amount of weight to attach to restrictive policies will include the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it and the particular purpose of a restrictive policy. These basic legal principles are not in dispute and a proper understanding of them has been embedded in the planning applications and in the appellant's case at this appeal.

#### **Nature of the appeal schemes**

9.5 Amidst what may be changing policy and legal principles, what the appellant does know is that the proposed developments remain exemplar schemes and would create high quality and sustainable residential developments. They would:

- be sensitive to the existing settlement and countryside setting
- create pedestrian linkages that would provide additional connectivity with the village
- be well connected, readily understood and easily navigated, promoted through layouts that are efficient, safe and user friendly
- create strong landscape and open space structure
- provide a range of dwellings sizes, types and tenures that offer an accessible and acceptable choice of lifestyles
- promote the objectives of sustainable development through layout and design

9.6 The applications sought to provide up to 20 and up to 60 dwellings respectively, along with roads, drainage, footways and various public open space options.

9.7 As part of the appeal process, and in direct response to consultation responses received, further work was undertaken by Pegasus Group, which positively responds to the comments made by the Council's Conservation Officer and its Landscape consultants in particular.<sup>11</sup> New illustrative site

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<sup>11</sup> CDs 1.8, 1.9, 1.25, 1.26, 1.28-1.32, 1.38 and 1.39

layouts have been produced, together with a bespoke Development Brief.<sup>12</sup> These revised materials demonstrate that high quality, sympathetic designs which respect both location and heritage interests are deliverable in both formats. The appellant has positively wished to be tied to the high quality principles set out in the Development Brief by way of a planning condition.

9.8 It remains the case that, even without such enhancements, planning application No 16/01575/OUTM in respect of the up to 20 dwelling scheme was reported to the Council's Planning Committee on 7 February 2017 with an officer recommendation to approve, subject to the completion of a section 106 Agreement.<sup>13</sup> These are the professional planning officers who know Farnsfield, the Local Plan and the housing situation on the ground. At that stage, the Amended Core Strategy had not been subject to public examination. It still has not.

9.9 Based on the work of external landscape consultants Influence, who had been paid to review the applications, the officer's report to committee stated that:

*'Through the support of independent landscape advice, officers have identified that the revised proposal would no longer equate to harm to the landscape character of the policy zone in principle. It is fully appreciated (and indeed has been relayed to the applicant) that if Members are minded to grant permission, then any reserved matters application would have to be carefully designed (and ultimately fundamentally altered in respect of the indicative site layout currently presented) in order to be deemed acceptable in landscape terms.'*

9.10 The overall recommendation for approval was against what officers understood to be a five year housing land supply at the time. It clearly demonstrates that, for the up to 20 dwelling format at least, professional officers felt that the principle of locating housing on the appeal site, the spatial relationship of the appeal site with the settlement, settlement limits, landscape character and heritage assets and the numerical addition of up to 20 units were all acceptable. It cannot be that the proposal was unacceptable in principle but somehow would be rendered acceptable by redesign during the reserved matters process. Unsurprisingly, the Council drafted in a new landscape consultant as late as September 2017 and used external consultants on all topics at the Inquiry. It is extremely difficult for the Council to escape what has gone and been said before.

9.11 Based on the old illustrative layout, the planning application in respect of the up to 60 dwelling scheme (No 17/00299/OUTM) was refused planning permission under delegated powers.<sup>14</sup> Whilst the appellant readily accepts that slightly more harm to landscape character and heritage assets would be caused by the larger scheme, the degree of harm to both interests has been exaggerated by the Council and the benefits underplayed. The illustrative layout has been carefully designed and fundamentally altered such that planning permission can safely be granted.

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<sup>12</sup> Appendices 1 and 2 to the proof of Mr Denney

<sup>13</sup> CD1.33

<sup>14</sup> CD1.36

### **Adopted development plan**

- 9.12 The starting point for decision making is the adopted development plan. The main policies for the purpose of these appeals are Policies CS SP1, SP2, SP3, CP13, and CP14 of the Core Strategy, policies DM1, DM5, DM8 and DM9 of the Allocations and Development Management DPD and policies FNP1, FNP2 and FNP8 of the Neighbourhood Plan.
- 9.13 As a matter of law, the Secretary of State needs to be informed regarding the consistency of every relevant policy with the Framework pursuant to paragraph 215. This is the case irrespective of whether or not the planning witness for the Council or the appellant did so in its written work or Statement of Case. It is not determinative that the Allocations and Development Management DPD post-dates 2012; each policy still has to be tested. Nor does it matter that Mr Machin for the appellant adopted the conclusions of Inspector Napier in an earlier appeal relating to residential development on Southwell Road on the eastern side of Farnsfield (Farnsfield 1).<sup>15</sup> As a matter of law, the Inspector and Secretary of State must assess the relative weight to be afforded to any policy in relation to the instant appeals. This will vary with the degree of consistency or otherwise.
- 9.14 The appellant submits that all relevant policies for the supply of housing are out of date by reason of the deeming provisions in paragraphs 47 and 49 of the Framework. The Planning Advisory Service (PAS) assessment supplied by the Council noted some inconsistency between the Core Strategy and the Framework.<sup>16</sup> In addition, policies CP13 and DM5 in relation to landscape, and policies CP14 and DM9 in relation to heritage, are inconsistent with the Framework because they do not allow for acceptable levels of residual harm; they do not contain any provision for a balance between harm and wider benefits to be struck. The PAS assessment missed out Policy CP14. Reduced weight should be placed on them accordingly.
- 9.15 In Mr Machin's professional view, the proposed developments would both comply with those relevant adopted development plan policies and parts of policies which are, in themselves, consistent with the Framework. The case demonstrating the acceptability of the appeal proposals in the context of the above policies has previously been set out in detail within Sections 5.2 and 5.3 of the appellant's Statements of Case.<sup>17</sup> Detailed evidence is provided by Messrs Denney and Bradwell in respect of potential impacts on landscape character and heritage respectively.
- 9.16 The Submission Version of the Farnsfield Neighbourhood Plan went to referendum on the 28th September 2017 and was subsequently made by the Council. As a result, the Neighbourhood Plan now forms part of the development plan and should be used in the determination of planning applications within the Neighbourhood Area. Whilst not specifically referenced in the Decision Notice, the appellant acknowledges the content of the Farnsfield Neighbourhood Plan and both of these schemes have been developed in full knowledge of and are consistent with the content of what was then an emerging Neighbourhood Plan.

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<sup>15</sup> Appeal Ref APP/B3030/W/15/3006252 (CD4.3)

<sup>16</sup> Doc 9/CD5.13

<sup>17</sup> CD2.1 and 2.2

- 9.17 The Neighbourhood Plan reiterates the role of Farnsfield as a Principal Village within the Southwell Area and confirms that such villages have a good range of day to day facilities including primary school, food shop, health facilities, employment or access to nearby employment and complement the role of Service Centres. The Principal Villages are considered to act as a secondary focus for service provision in each Area and offer support for service provision in these locations to assist rural accessibility.
- 9.18 The Neighbourhood Plan does not allocate any additional sites for housing. Thus, the terms of the Written Ministerial Statement dated 12 December 2016<sup>18</sup> do not apply. Whilst the appellant accepts that even if the Council cannot demonstrate a five year housing land supply, the decision maker may still afford weight to the Neighbourhood Plan, this is nowhere near the full weight that the Council was suggesting. Paragraph 198 of the Framework provides that planning permission for a development which conflicts with a neighbourhood plan should not normally be granted but in this case, there are compelling reasons why it should be. Other than the settlement limit policy, the proposed development complies with the policies of the Neighbourhood Plan.

### **Other material considerations**

- 9.19 Policies contained within the submission draft Amended Core Strategy should be given moderate weight. The submission draft has not been examined and relevant policies, specifically Policy SP2, are subject to objection.
- 9.20 Designated heritage assets are potentially affected and the provisions of section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged. Detailed legal submissions on the meaning and interpretation of these statutory provisions, as articulated by the Court of Appeal in recent high profile cases, have been submitted on behalf of the appellant.<sup>19</sup> Where any degree of harm to a listed building has been found, the 'strong presumption' against the grant of planning permission needs to be applied and given considerable weight. However, the presumption is rebuttable and the strength of it will vary according to the importance of the asset and the degree of harm.
- 9.21 The policies contained within the Framework, as expanded upon in the National Planning Practice Guidance (the Guidance) are also a significant material consideration. At the heart of the Framework is the presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making (paragraph 14), with Councils approving development proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date, then planning 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; or

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<sup>18</sup> Neighbourhood Planning: Written statement – HCWS346 Made on 12 December 2016

<sup>19</sup> CD2.6

- specific policies in the Framework indicate that development should be restricted.

9.22 In relation to heritage impacts, paragraph 134 of the Framework is acknowledged to be a policy of restriction. Recent case law has determined that if a development passes the test contained within the policy of restriction, then the benefit of the tilted presumption which would otherwise have applied is reinstated. After some initial hesitation on the part of the Council, this legal principle is now agreed.

### **Principal issues**

#### ***Housing need and supply***

##### *Full Objectively Assessed Need*

- 9.23 The Inspector and the Secretary of State are entitled to reach their own conclusions on Full Objectively Assessed Need (FOAN) balancing the Farnsfield 1 appeal decision and the Council's response to it.
- 9.24 The appellant does not provide an alternative FOAN but instead is content to rely upon the misgivings of Inspector Napier in Farnsfield 1. It is for the Council to demonstrate that the issues raised in the first Farnsfield appeal have been addressed. The burden of the evidence is that it has not. It is not for the appellant to address them.
- 9.25 The appellant accepts that there has been some movement toward a Memorandum of Understanding in relation to the FOAN,<sup>20</sup> but this does not change the primary obligation on the Inspector and Secretary of State to consider Newark and Sherwood District's FOAN at this appeal. Having a Housing Market Area (HMA) does not make it immune from critical review and amendment, including at a future EiP. Each component element of the HMA housing target can, and should, be assessed. Mr Gardner stated that it is not possible to use data at a HMA level, so it has to be done on an administrative area basis only.
- 9.26 Mr Calvert gave evidence with regards to the DCLG consultation upon 'Planning for the right homes in the right places' (September 2017)<sup>21</sup> particularly with respect to the 'outlying' position of Mansfield District Council (MDC) in comparison to Newark and Sherwood District Council (NSDC) and Ashfield District Council (ADC) in their respective Local Plan preparations.
- 9.27 Mansfield has concluded on the Consultation Draft of its Local Plan, the Council's Local Development Scheme setting out that the next stage is to consider the comments from the Preferred Options and prepare a publication draft for consultation in Spring 2018. The submission of the Local Plan is expected in summer 2018.
- 9.28 The hearing sessions for the examination of the Ashfield Local Plan have been completed. However, it is understood from the Programme Officer that the Inspector is awaiting additional information and main modifications before proceeding any further with the examination process.

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<sup>20</sup> The Memorandum of Understanding has since been signed by the three authorities (Doc 32)

<sup>21</sup> Doc 15

- 9.29 In Newark and Sherwood, the Publication Draft Core Strategy was submitted for examination at the end of September 2017.
- 9.30 Paragraphs 52-55 of the DCLG consultation set out proposed transitional arrangements. Where new plans have been submitted to the Secretary of State on, or before, 31 March 2018, or before the revised Framework is published (whichever is later) there will be no transitional arrangements. This applies to ADC and NSDC, but not to MDC who would not 'benefit' from the transitional arrangements and would be expected to adopt the standard methodology.
- 9.31 Mr Calvert for the appellant correctly noted that, in respect of ADC and NSDC, a Local Plan Inspector must consider the housing needs of each authority (Framework para 159 'Local planning authorities should have a clear understanding of housing needs in their area') whilst being mindful of any HMA. The EiP for ADC and then NSDC offers an opportunity for this interrogation to take place. The approval of one OAN for an administrative area does not automatically mean that the OAN of HMA neighbours would also be found sound. The rigours of an EiP must be followed.
- 9.32 Mr Calvert also noted that it was a matter of serendipity that the tri-party SHMA figure was almost the same as the cumulative total arising from the DCLG methodology (1,310 v 1,320). The Inquiry was advised by Mr Calvert that the DCLG standard methodology has no reference to any HMA and each Council's housing target has been provided on a singular basis. This confirms that any correlation between the collective target and the standard methodology is coincidental. The DCLG consultation (paragraph 68) itself acknowledges that the proposed approach to assessing local housing need shifts the focus away from housing market areas.
- 9.33 In respect of the construction of the tri-party housing target from both the SHMA and the standard methodology, the following is applicable:

| <b>District</b> | <b>SHMA OAN</b> | <b>DCLG OAN</b> |
|-----------------|-----------------|-----------------|
| NSDC            | 454dpa          | 510dpa          |
| ADC             | 480dpa          | 519dpa          |
| MDC             | 376dpa          | 291dpa          |

- 9.34 As can be noted, NSDC and ADC's housing target increases from that set out within the SHMA, whilst that for MDC decreases.
- 9.35 Notwithstanding the realistic potential that the OAN for either ADC or NSDC could be found unsound (in the case of NSDC this potential is much heightened by the Farnsfield 1 decision) even if both are found sound at EiP, it is evident that MDC's DCLG derived OAN would be an outlier to the other two Councils. The net effect would be a deficit of 95dpa compared with the SHMA target of 1,320dpa. This would have a critical effect upon the function of the SHMA and its HMA. It can only function if the three authorities are aligned and collectively meeting their identified needs. The transitional arrangements would not allow this to happen. The SHMA fails on that basis.

- 9.36 Paragraph 46 of the DCLG consultation identifies that *'plan makers may put forward proposals that lead to a local housing need above that given by our proposed approach. This could be as a result of a strategic infrastructure project, or through increased employment (and hence housing) ambition as a result of a Local Economic Partnership investment strategy, a bespoke housing deal with Government or through delivering the modern Industrial Strategy'*. No reference is made to the role of a HMA.
- 9.37 Both Mr Gardner and Mr Calvert agreed that NSDC is an authority that would wish to promote economic growth. Mr Gardner advised that economic growth was factored into the SHMA, albeit not revisited as part of the SHMA July 2017 version,<sup>22</sup> an approach which was criticised by Mr Calvert.
- 9.38 Given the opportunity to deviate from the DCLG consultation, the 95dpa deficit could be made up by Mansfield, but only if it were to add an economic 'boost' to its target. Such a boost would have to be above the economic level set out by the SHMA, and thus in excess of that for ADC and NSDC. This would compound the incompatibility and could only be rectified if ADC and NSDC applied the same boost to ensure consistency. Mr Calvert set out in evidence that the standard methodology figure of 510dpa for NSDC (already above the SHMA 454dpa) would only increase with the economic 'boost'.
- 9.39 Mr Calvert identified that the continuation of a 95dpa deficit across the HMA would intensify the issue of affordability that the standard methodology seeks to address. For these reasons, NSDC could elect to make up the shortfall, but this would clearly result in a deviation from its SHMA OAN and the 510dpa standard methodology approach.
- 9.40 The Government expects plans to be renewed every five years. Paragraph 38 of the DCLG consultation states that Councils can rely on the evidence used to justify local housing need for a period of two years from the date on which they submit their plan. In the case of NSDC, its emerging LP was submitted on 29 September 2017.
- 9.41 On 7 February 2017 the Secretary of State issued a Written Ministerial Statement (WMS).<sup>23</sup> Within this WMS, he identified 15 Councils that have failed, for various reasons, to meet the deadlines set out in their Local Development Schemes. MDC is one of these Councils. The Secretary of State advises that he has written to those 15 Councils and we are advised that these letters will start the formal process of intervention set out in the Housing White Paper. MDC and the 14 other Councils will have the opportunity to reply, but those that fail to justify their position will face intervention. The position of the Secretary of State could not be clearer; the Government will not tolerate a failure to deliver an up to date Local Plan.
- 9.42 The WMS confirms that one of the trio of SHMA Councils here, namely Mansfield, is lagging significantly behind. It further highlights the realistic scenario that the HMA will fail and that the direction of travel of the DCLG standard methodology is such that the OAN for MDC will become detached from its neighbours. This poses a fundamental risk to the SHMA and the HMA approach as a result.

<sup>22</sup> CD5.54

<sup>23</sup> Local Plans: Written Statement – HCWS254 made on 16 November 2017

9.43 In other points relevant to FOAN and specific concerns expressed by Inspector Napier in Farnsfield 1:

- paragraph 17 of Farnsfield 1 states '*...from the evidence provided, the overall assessment for the HMA is generated in part from an approach that requires a combined assessment of the relevant data sources of the respective individual local authority areas.*' This is consistent with paragraph 159 of the Framework which states that '*Local planning authorities should have a clear understanding of housing needs in their area.*' (emphasis added) The FOAN for Newark and Sherwood will be assessed at EiP in due course and that will be a rigorous process. Objections have been submitted in respect of the FOAN and will need to be taken into account.
- in Farnsfield 1, the Inspector accepted the appellant's argument that likely job growth in Newark and Sherwood had been under estimated. The SHMA 2017 update was an opportunity to address this. It is agreed from paragraph 3.9 of the SHMA 2017, that economic impacts were not revisited to consider 'likely future economic growth' (paragraph 32 of Farnsfield 1). The appellant would have expected this matter to be covered in more detail than it has been in the update.
- evidence in relation to market signals was given by Mr Calvert in paragraph 2.13 of his main proof and amplified in oral evidence
- affordable home supply is still a key issue, emphasised by the DCLG figure, that takes the OAN over 454 to 510
- in relation to economic effects, the ONS statistics show that there has been a +1.3% per annum growth in the District between 2005 and 2015. This is higher than the LEP (0.9%) and regional figures (0.8%) respectively, but the same as Great Britain's annual change. The SHMA 2015 forecasts 0.6% growth, which is less than half the growth currently being experienced. As was the case in Farnsfield 1, the SHMA does not account for a positive economic growth of the District. The LEP has set a target of 55,000 new jobs to be created between 2013 and 2023, and it is suspected that NSDC would want to be part of the delivery of this. As such, there cannot be an absence of connection between new homes and improving economic performance.

9.44 Taking all matters into account, the appellant submits that, as a matter of planning judgment, the Inspector and Secretary of State should adopt the approach of the Inspector in a recent appeal at Blidworth and apply the alternative OANs of 454, 500, 510 and 550 to test five year housing land supply. That appeal involved a very partial review of supply sites in Blidworth only and not the whole District.<sup>24</sup> The Council's supply position dropped by 34 units which, at 550dpa, would have resulted in a supply position of 4.6 years. The Council argued that this would be picked up by windfalls. In short, the Inspector did not rule out the alternative figures, but used them against the level of supply that was arrived at.

<sup>24</sup> Appeal Decision APP/B3030/W/17/3168018 (Millcroft Homes – Blidworth) CD4.4

- 9.45 As Mr Machin indicated, this is the pragmatic approach which is being applied by Council officers in development management decisions. For the reasons given by Mr Calvert, the appellant submits that the FOAN for Newark and Sherwood is somewhere in the range between 500 and 550. The figure of 510 dwellings per annum has provenance, is realistic, appropriate and justifiable. However, as Mr Calvert indicated in evidence, it makes no allowance for 'economic boost' and the correct figure should be higher and towards the upper end of the range.

*Supply*

- 9.46 Detailed matters in relation to supply were covered in the hearing session and cross-examination, including lead-in times, C2 units and lapse rate and it is not necessary to repeat all of that evidential material here. The base date for assessment is agreed to be 1 April 2017 and a 20% buffer should be applied. The round table discussion was held in light of the decision by the Court of Appeal in the St. Modwen case, which was handed down on 20 October 2017. Mr Calvert confirmed that he had reviewed the issues in light of that case to determine whether or not there was a realistic prospect of delivery from a site within five years. To do so, he and Mr Mortensen (who assisted the appellant in relation to the discussion at the Inquiry) adopted a trajectory in a similar way to the Council.
- 9.47 Where the Council has identified a clear change in circumstances, the appellant has changed its position fairly. Mr Calvert continues to apply his 'lead-in' assessment to each case, as does the Council:
- the appellant considers that the Council underestimates inherent delays in the planning process and the lead in times to implement a consent. Mr Calvert looked at the range of lead in times for planning applications.<sup>25</sup> He found that the average time for determination of outline applications to be 8.81 months,<sup>26</sup> full applications 6.86 months and reserved matters applications 5.18 months. Taking a mean (average) approach is representative of what has happened for a variety of residential schemes within the District. This has been applied to the delivery rates for the sites that he assessed
  - in relation to implementation, Mr Calvert adopted a reasonable position based on feedback and experience, namely 12–18 months. The Council considers that the delivery lead in times would be much shorter. They provided some examples of this, but Mr Calvert questioned their validity as in almost all cases, pre-commencement conditions had not been dealt with. They are not truly representative and skew the figures
- 9.48 In the normal way, from the round table discussion, the Inspector and Secretary of State will need to make planning judgments on the issue of 'realistic prospect'.

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<sup>25</sup> Appendix 1 to his proof.

<sup>26</sup> Paragraph 1.3 of Miss Kurihara's rebuttal proof indicates that the period for determination of outline application 16/01478/OUT was 3 months not 15 months. When this corrected figure is used, the mean (average) figure reduces slightly.

### *Five Year housing land supply*

- 9.49 The impact of the various FOAN figures and supply assumptions put forward by both parties are captured in the agreed table (Doc 23). Having heard all of the evidence, the appellant robustly asserts that the Council cannot demonstrate a five year housing land supply and that the deeming provisions contained in paragraphs 47 and 49 of the Framework are engaged.

### *Policy support for meeting housing needs*

- 9.50 It is a clearly established principle that meeting housing needs is now imperative for the country, with National Planning Policy setting the framework for Local Planning Authorities to deliver the housing required to fulfil the needs of current and future residents within their areas.
- 9.51 It is also true to say that housing targets are not ceilings. The proposed developments would contribute towards the clearly stated aim of the Framework to boost significantly the supply of housing, to further the 'avowed' objectives identified by Government in the Housing White Paper,<sup>27</sup> the March 2011 Ministerial Statement,<sup>28</sup> and the Housing and Growth Statement of September 2012.<sup>29</sup> Delivery of housing to meet the District's identified housing needs is fundamental to the delivery of the Council's emerging spatial strategy and to meeting the aims of the Framework. Moreover, the proposed housing is in line with the Council's strategy for housing in terms of the type and tenure and adds further to the sustainability benefits of the proposals, including the delivery of affordable housing.

### *The 'tilted' planning balance*

- 9.52 By reason of the shortfall against a target of five year housing land supply, all relevant policies for the supply of housing within the adopted development plan are deemed to be out of date. In turn, and subject to the specific policy of restriction point in relation to heritage, this means that the tilted balance contained in the second bullet point in the decision making part of paragraph 14 of the Framework applies.
- 9.53 Based on the evidence of Mr Bradwell, the unweighted planning balance set out in paragraph 134 of the Framework is passed by both schemes. When the tilted balance is reinstated, planning permission should be granted unless the harm caused by the developments would significantly and demonstrably outweigh the wider benefits of the schemes. Even based on the Council's assessment of harm to landscape and heritage, such harm does not do so. On the appellant's assessment, it doesn't come close to doing that.
- 9.54 Both of the proposed schemes represent sustainable development within the meaning of the Framework. Both the developments provide for a sustainably located development, which would perform a sustainable function.

### ***Landscape***

- 9.55 The Council screened both applications and determined that they were non-EIA developments because no significant effects would arise. Mr Jonson

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<sup>27</sup> CD5.9

<sup>28</sup> CD5.11

<sup>29</sup> CD5.12

acknowledged this, but nevertheless concluded that there would be locally significant effects arising from the schemes. From the outset, this appeared to put his evidence in conflict with the Council's position.

- 9.56 Mr Jonson may well have misled himself. He concludes in his proof of evidence that *'It is my view that the site can almost be considered a 'valued landscape' under the ambit of paragraph 109 of the Framework.'* Almost, presumably, means not quite enough to make the site a valued landscape. The additional policy protection within paragraph 109 either applies or it does not and Mr Leader clearly accepted on behalf of the Council that it did not.
- 9.57 In this regard, in his own assessment at Volume 2 of his Proof, Mr Jonson concludes that the site is of 'medium' sensitivity, which he defines as being *'a landscape of moderately valued characteristic, some tolerance of change.'* Use of the term 'moderately valued' is noted. This judgement is also repeated at para 5.3 of his main proof. It is not therefore a valued landscape, which has a bearing on his views on Historic Landscape.
- 9.58 Mr Jonson referred to the fact that GLVIA 3 suggests that a stated strategy of conservation is usually a good indicator of landscape value (paragraph 5.27 GLVIA3). This may be true, but it clearly was not enough to raise the value beyond the moderate level he himself subsequently ascribes the site. The value is medium.
- 9.59 Indeed, Mr Jonson referred to the site being within an area of intact historic fieldscape and seemed to think it important. For the purpose of a contemporary landscape and visual impact assessment, the historic landscape is just the landscape. Almost all landscapes are a function of their past and man's changes and modifications over time. This leads to its present landscape character. If it is more than this, then it would be a matter of identified cultural heritage significance, which is not the case here and which matter is addressed below. There were a number of times when Mr Jonson appeared to stray in to the province of heritage protection, setting and significance.
- 9.60 Mr Jonson also refers to the appeal sites as forming an important rural setting to Farnsfield Village. This is an important matter of dispute and was dealt with comprehensively by Mr Denney in paragraph 6.39 of his evidence. It is not accepted that the schemes would urbanise the rural setting and weaken the appreciation of Farnsfield's historic context and its relationship with the countryside in any way. As a particular point, the up to 20 units scheme would not extend across the depth of the site and would not serve to separate the paddocks from the wider landscape to the same extent.
- 9.61 Mr Jonson's analysis of impact was based on the original illustrative layouts, not on the Development Brief or revised illustrative layouts prepared by Pegasus, submitted as part of the appeals. The chance to submit a rebuttal proof was not taken. His evidence that he had not done so because he did not consider the revised layouts to lessen the impacts was surprising. For the detailed reasons given by Mr Denney, the revised layouts clearly represent progression and an improvement. Specific criticisms of the design in Mr Jonson's written work can largely be ignored as being out of date.

- 9.62 Mr Jonson concluded his written evidence by saying that *'In my view the Applicant's assessment fails to recognise the value of this landscape and underestimates both the landscape and visual effects arising from the Scheme. For the aforementioned reasons I consider that the appeal should be dismissed.'*
- 9.63 The point Mr Jonson was making on landscape value was not clear, as he identifies this to be medium and ultimately reaches the same level of sensitivity for the site as ASH at 'medium' and subsequently the same level of effect on landscape character as ASH 'moderate'. It is inappropriate for Mr Jonson to be drawing a planning balance in any event.
- 9.64 For the up to 60 units scheme, Mr Jonson identified 'significant adverse visual effects' (which he defines as moderate or substantial effects) on completion of the development for 64 receptor locations out of a total of the 157 included in the assessment. He confirmed, in cross-examination, that the 64 receptor locations are formed of 57 residential properties, six locations on the footpath network and one road. The ASH LVIA identified equivalent 'moderate or major effects' on properties within 100m of the site to the north, footpaths within 300m of the site and Mansfield Road within 300m of the site.
- 9.65 This being the case, the only difference between ASH and Mr Jonson relates to the extent of 'moderate or major' effects on residential properties. Mr Jonson suggests that the views from any properties would be no greater than moderate/minor due to the screening of intervening vegetation and built form.
- 9.66 For the up to 20 units scheme, Mr Jonson identifies 'significant adverse visual effects' (again defined as moderate or substantial effects) on completion of the development for 37 receptor locations out of a total of the 157 included in the assessment. The 37 receptor locations are formed of 32 residential properties, four locations on the footpath network and one road.
- 9.67 The ASH LVIA did not consider the up to 20 units scheme, but Mr Denney provided common sense evidence that some of the visual effects would be further reduced when compared to the 60 dwellings format. Therefore, there is very little difference between the findings of Mr Jonson in relation to visual effects and those of Mr Denney, the essential difference being that Mr Jonson considers there would be a moderate or substantial effect on slightly more existing residential properties. The Council has never raised an objection based on impacts on existing residential amenity and for good reason.
- 9.68 Bringing all of these points together, the respective positions of the various parties can be summarised as follows:
- Effect on landscape character
- Council**
- Mr Jonson*
- 9.69 Considered effects on the Halam Village Farmlands Landscape Character Area (LCA) in which the site is located. His findings are the same for both the up to 60 units and up to 20 units schemes:

- Sensitivity – medium (based on: susceptibility – medium; and value – medium)
- Magnitude – medium
- **Significance – moderate adverse**

*Influence LVIA*

- 9.70 The up to 20 units scheme (did not undertake an LVIA of the 60 units scheme)
- **Medium effect**

***Appellant***

*ASH LVIA (August 2016)*

- 9.71 Findings only for the up to 60 unitsscheme (did not undertake an LVIA of the up to 20 units scheme). Considered effects on a series of Local Landscape Types. The site was identified to lie within the 'Undulating Lowland Farmland with Shallow Valleys and Hedgerow Trees' landscape type:
- **Level of effect – moderate adverse**

*Mr Denney*

- 9.72 Up to 60 units scheme – agrees with moderate effect identified by ASH.
- 9.73 Up to 20 units scheme – identifies that effects would be reduced (when compared to the up to 60 dwellings scheme) and potentially substantially so.
- 9.74 Both the up to 60 and up to 20 units schemes – accepts substantial effect on the site itself.

*Visual effects*

***Council***

*Mr Jonson*

- 9.75 60 units scheme: 'significant' (moderate/substantial) effects on 64 receptors (properties/footpaths or roads) between year one and year 15. Of these, 57 are residential properties, six are footpath locations and one is a road.
- 9.76 Up to 20 units scheme: 'significant' (moderate or substantial) effects on 37 receptors properties/footpaths or roads) between year one and year 15. Of these, 32 are residential properties, four are footpath locations and one is a road.

*Influence LVIA*

- 9.77 Up to 20 dwelling scheme (did not undertake an LVIA of the up to 60 dwelling scheme)
- footpath FP18 (Robin Hood Way): medium adverse
  - users of Mansfield Road: high magnitude effect
  - no assessment on any other receptors

***Appellant***

*ASH LVIA (August 2016)*

9.78 Findings for the up to 60 units scheme (did not undertake an LVIA of the up to 20 dwellings scheme):

- effects on properties: visual effects (either moderate or major) limited to a small number of properties within 100m of the site to the north, primarily those on Mansfield Road across the road from the northern boundary of the site
- effects on footpaths: visual effects (either moderate or major) limited to small sections of footpaths within 300m of the site. These include the Robin Hood Way long distance trail which passes to the south of the site and the footpath which crosses Bells Fields (FP2) to the east of the site
- effects on roads: visual effects (either moderate or major) limited to a short extent of Mansfield Road within 300m of the site

*Mr Denney*

9.79 Up to 60 dwellings scheme: agrees with extent of effects identified by ASH.

9.80 Up to 20 dwellings scheme: identifies that some effects would be further reduced when compared to the up to 60 dwelling format.

9.81 Bringing all these points together, the appellant submits that:

- the appeal sites at Farnsfield are able to accommodate a development of the type proposed with no more than an overall moderate effect on local character that will be limited in its extent;
- the sites can be developed whilst maintaining and incorporating the majority of landscape features;
- the visual impacts that would arise are also limited in extent and localised, being mainly associated with Mansfield Road and short sections of the local footpaths;
- although the up to 60 dwellings proposal will give rise to greater impacts on character and views when compared to the up to 20 dwellings proposal, both are comparatively limited and can be mitigated through good design;
- the Council's landscape advisors, Influence, considered that for the twenty dwelling proposal, a form of appropriate development could be accommodated on the site;
- through good design, a form of development can be accommodated on the site which responds to local character and makes a positive contribution to the village;
- a design response, such as that shown on the revised illustrative master plans, can reduce the level of effect from that previously considered by Influence and the Council, notwithstanding that it is considered to be localised and limited.

## ***Heritage***

9.82 Ms Conway's assessment of harm to Farnsfield Conservation Area was out of step with the other professional judgments, including that of the Council's own Conservation Officer. The reason for this is straightforward and illuminated by two particular answers she gave in oral evidence. Firstly, when asked to explain why her finding of harm to the Conservation Area was so much higher than the Council's previous assessment, she singled out her reliance on the historic field enclosure map. Secondly, when asked by the Inspector whether she considered the fields which form the appeal site should be treated as a heritage asset in their own right, she said yes.

9.83 It was obvious from reading Ms Conway's proof of evidence that she had attributed greater importance to the fields than they merit. Ms Conway's professional background and the explicit focus of her interest in this case was on historic landscapes rather than in the built environment. This clearly showed. In summary:

- the fields are not a designated heritage asset
- the fields are not a locally designated heritage asset
- the fields are not a non-designated heritage asset
- the fields do not have a setting
- the local landscape has not even been the subject of a historic land classification project

9.84 In order to make good her assessment, the burden falling on Ms Conway is to demonstrate that so much of the overall heritage significance of the Conservation Area is reposed in the long distance views from Mansfield Road that the proposed developments would come close to the threshold of substantial harm, a high test and a threshold she agreed was akin to total loss or destruction. Properly analysed in this way, Ms Conway's position is untenable.

9.85 By contrast, Mr Bradwell has undertaken a straightforward and methodologically sound assessment, the results of which correspond, in very large part with what the Conservation Officer had to say. Whilst it is not a numbers game, the fact that the Conservation Officer and Mr Bradwell reach very similar conclusions gives confidence in their results.

### *St Michael's church (Grade II)*

9.86 St Michael's church is located in a relatively prominent position towards the western end of the village and is surrounded by existing properties within the core of the village. The church was rebuilt in 1859-60 after a fire and only the lower portion of the tower survives from the earlier C15<sup>th</sup> church. The present church was rebuilt with a greater eminence in terms of its architectural form and overall scale than its more modest medieval predecessor.

9.87 The significance of St. Michael's church relates principally to its built fabric and its architectural composition. Its close associations with Farnsfield Hall,

Church Farm and the green, together which formed the nucleus of social, spiritual and political life of Farnsfield also make a contribution to its overall significance. The prominence of the church and particularly its spire, within its wider surroundings, contributes to an understanding of the church as a spiritual and communal focal point and therefore to its significance.

9.88 The contribution that the setting of the church makes to its significance can be informed at three different levels:

- the immediate setting of the church provided by the churchyard allows the architectural qualities of the building to be appreciated at close range
- its more intermediate setting, provided by short-range views around the church and its position within the historic core of the village, allows the building to be appreciated as part of this group of historically related buildings and spaces
- long range views of the church, particularly of its tower from outside the village, illustrate its visual prominence within its wider surroundings

9.89 Development on the appeal sites would have no impact on the immediate or intermediate setting of the church or the factors contributing to its significance.

9.90 Long range views of the church on the approach into the village along Mansfield Road have been recognised in the Council's Conservation Area Appraisal, which identified a 'significant view' towards the village from Mansfield Road to the east of the appeal sites. This view lies to the east of the appeal sites and it is evident that this view would not be affected by the proposed development.

9.91 During consideration of the appeals, the Council extended the viewing corridor to include the view towards the church from the junction of Cockett Lane with Mansfield Road, to the west of the appeal site. This long range view of the church spire from Cockett Lane cuts across the frontage of the appeal sites. The proposed housing developments would stand within the foreground of this more distant view of the church resulting in some change to its wider setting.

9.92 The contribution which this one long distance view makes to the overall significance of the church is minor. It conveys little of the church's building fabric and architectural composition or its position within the historic settlement core, which are factors identified by Mr Bradwell as making the major contribution to significance.

9.93 Any degree of harm to the setting of the church in this longer view to the west of the appeal sites would be extremely low. The impact on the overall heritage significance of St. Michael's church would fall lower still and be at the lower end of the 'less than substantial harm' threshold.

9.94 The revised illustrative layouts demonstrate that the appeal sites can be developed whilst retaining a dedicated viewing corridor towards the church that will focus and channel views on its spire and emphasise its landmark qualities. The front of the layout which is common to both formats would

mitigate the impact of development on the appeal sites. By maintaining the overall prominence of St. Michael's and its spire on the approach into Farnsfield, the changes to the Cockett Lane/Mansfield Road view resulting from any development on the appeal sites would not affect the already minor contribution that this view makes to the overall significance of the church.

- 9.95 The changes to this view would have a limited impact on the overall significance of St. Michael's church, falling at the low end of the 'less than substantial harm' category.

#### Farnsfield Conservation Area

- 9.96 The historic core of Farnsfield forms the Conservation Area. The Council prepared an appraisal of the Area's character and appearance in 2000.<sup>30</sup> Paragraph 3 of the Appraisal makes clear that '*the quality of the townscape in Farnsfield justifies its designation as a conservation area*'. The document goes on to describe the historical development of the village and to identify those elements that contribute to its special architectural and historic interest. This document is well executed and whilst the Council sought to down play its importance by reason of age, this criticism is not accepted; were the document to be written in 2017, it would say very similar things. It is the primary source for understanding the significance of the Conservation Area and what is good about it.
- 9.97 The Appraisal provides a detailed description of the historic settlement and its contribution to the character and appearance of the Conservation Area. There is no equivalent summary of the contribution made by its setting. The appraisal describes the village as sitting 'in a shallow valley within an undulating farmland landscape and is not visible within the wider scene' (paragraph 13) although it does refer to Bells Fields, noting that these 'form a significant open area allowing fine views in and out of the area' (paragraph 29). The particularised reference to landscape that there is, relates to the relatively intact landscape to the south of the village.
- 9.98 The appeal sites are not a particularly prominent feature in views out of the Conservation Area. There are no views of the sites from within the Conservation Area from the western end of Main Street, but public footpath FP2 which runs through Bells Fields between Mansfield Road and Blidworth Lane on a north-south alignment does allow views westwards, towards the appeal sites. Given the undulating nature of the landscape to the west of Farnsfield, the proposed developments are unlikely to be seen as a particularly prominent feature in any views out of the Conservation Area, although the larger scheme would be more visible than the smaller scheme.
- 9.99 The proposed developments would have a limited visual impact and would not encroach on the open space provided by Bells Fields and would not diminish the more open and rural setting of the Conservation Area on its western margins, which contributes to its overall character and appearance, or its overall significance, which derives primarily from the buildings and spaces within the Conservation Area.

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<sup>30</sup> CD5.1

- 9.100 In the opposite direction, views of the Conservation Area from Mansfield Road are extremely limited and the view towards Farnsfield from Cockett Lane is focused on St Michael's church. As Mr. Bradwell went back to check and as will have been evident from the site visit, the Conservation Area itself is much less apparent, with only the tops of the houses at the western end of the village visible through the trees. These limited views of the Conservation Area do not convey its character or appearance. The ability of anyone to experience the heritage significance of the Conservation Area from this point is very limited. The Appellant maintains that it is difficult to see how the view from Cockett Lane contributes to the setting and to the overall significance of the Conservation Area.
- 9.101 The proposals would provide an opportunity for an attractive gateway feature on the approach into Farnsfield. They would not harm the character, appearance or overall heritage significance of the Conservation Area.
- 9.102 Development on the appeal sites would be in general accordance with the objectives of Core Strategy 14 and Plan Policy DM9 of the Allocations and Development Management DPD and has had full regard to the Farnsfield Conservation Area as required by Policy FNP7: The Quality of Development of the Farnsfield Neighbourhood Plan. This is not a case where the interest of building more houses trumps the interest in preserving heritage assets. This is a case where both interests would properly be served by means of successfully managing change in the local environment.

### ***Benefits***

- 9.103 There are a series of benefits which would accrue in the event of planning permission being granted for the proposed developments. These include:
- the provision of much needed housing
  - high quality design
  - promotion of Healthy Communities including provision of significant Public Open Space and enhanced pedestrian links
  - New Homes Bonus
  - local economic benefits
  - environmental benefits including improved surface water drainage
  - provision of much needed affordable housing
- 9.104 The Council's criticism that these benefits are what any housing development would provide in any event was somewhat exaggerated and is not accepted. A good example relates to the provision of a footpath linking to the Robin Hood Way; Ms Kurihara seemed to indicate that any modern housing development would provide this sort of link to a promoted long distance footpath and provide alternative access to a village centre. Clearly this is not the case. Both formats would deliver such a link – the up to 20 dwelling format will provide this by way of permissive footpath route, secured pursuant to a planning condition.<sup>31</sup>

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<sup>31</sup> Docs 27 and 30

- 9.105 Section 106 legal obligations have been submitted for both formats and are relied on by the appellant.<sup>32</sup>

***Concluding Remarks***

- 9.106 The Council cannot demonstrate a five year housing land supply. As such, the deeming provisions in paragraphs 47 and 49 of the Framework are engaged. Relevant policies for the supply of housing are out of date.
- 9.107 The appellant recognises that paragraph 134 of the Framework is a policy of restriction, but the test set out in that paragraph is passed by both schemes and the tilted balance in paragraph 14 of the NPPF is reinstated.
- 9.108 The proposed developments represent sustainable development from which important benefits would flow. These two appeal schemes represent high quality housing developments and the benefits flowing from them should therefore be given substantial weight. In particular, the contribution made by the proposed developments to the provision of housing to meet open market and affordable housing needs is very important. Any suggestion by the Council that either format would undermine the plan-led strategy lacks credibility.
- 9.109 Based on the detailed assessments undertaken by Messrs Denney and Bradwell, Mr Machin's view is that any resultant harm to landscape character from both schemes would be moderate in effect and localised in extent; that any resultant harm to visual amenity would be limited in extent and localised; and that any harm to the significance of St. Michael's church would be minor and at the low end of the less than substantial category. The harm latterly identified by the Council is exaggerated and in terms of landscape is at odds with what ASH, Influence and the planning officers found when assessing the up to 20 units format.
- 9.110 The appellant has paid particular regard to the provisions of section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and applied the strong presumption against the grant of planning permission, according significant weight to any harm to significance which might arise.
- 9.111 The appellant submits that both developments comply with those policies in the adopted development plan, which are themselves up to date and consistent with the Framework. When taken as a whole, the benefits of the proposed developments far outweigh the limited harm that might be caused by them to landscape and heritage interests. The larger scheme would cause slightly more, but still acceptable levels of harm to landscape character and heritage. Nevertheless, both of the appeal proposals constitute sustainable developments in accordance with the Framework.
- 9.112 Given the primacy of the adopted development plan, the important provisions in the heritage legislation and all other material considerations, planning permission should be granted for both developments without delay. In the event that the larger scheme is found to be unacceptable, the appellant maintains that planning permission should still safely be granted for the smaller scheme of up to 20 dwellings.

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<sup>32</sup> Docs 29a and 29b

- 9.113 Even if the Inspector and Secretary of State conclude that the Council is able to demonstrate a five year housing land supply, and that all relevant policies for the supply of housing in the adopted development plan are up to date, the Court of Appeal has made plain that there remains a residual discretion to grant planning permission for development which is inconsistent with a plan. There would be clear and compelling reasons to do so in the case of both the up to 20 and up to 60 dwelling format schemes. Demonstration of a shortfall in housing supply is an important factor in this case, but is not determinative.
- 9.114 In all the circumstances, the appellant respectfully requests that the Inspector recommends, and the Secretary of State grants, planning permission in the form in which it has been sought.

## **10. CASE FOR NEWARK AND SHERWOOD DISTRICT COUNCIL**

### **The key issues**

10.1 The key issues in this appeal are:-

- does the proposal accord with the policies of the development plan?
- is the Council able to demonstrate that it possesses a five year supply of deliverable land for housing? There are 2 sub-issues:-
  - what is the correct value of the FOAN?
  - is the supply of sites relied on deliverable?
- would the proposals harm the landscape and the character and appearance of the area?
- would the proposals cause less than substantial harm to the significance of the Grade II listed Church of St Michael and the Farnsfield Conservation Area?

## **ISSUE 1**

### **The planning policy framework**

10.2 The development plan is the Newark and Sherwood Core Strategy (adopted March 2011) (CS)<sup>33</sup>, the Allocations and Development Management DPD (adopted July 2013) (ADMDPD)<sup>34</sup> and the Farnsfield Neighbourhood Plan (FNP) (made October 2017)<sup>35</sup>.

### ***Weight to be accorded to the CS and ADMDPD***

10.3 The CS has been independently assessed by PAS (Doc 9) as consistent or broadly consistent with the Framework. That does not mean each policy exactly mirrors the relevant parts of the Framework. But that is unnecessary. The Framework is not prescriptive. Development plan policies can and should reflect local circumstances and priorities. Therefore, provided a policy read as a whole and in its proper context accords with the objectives of the Framework, it may attract full weight.

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<sup>33</sup> CD3.3

<sup>34</sup> CD3.4

<sup>35</sup> CD3.5

#### 10.4 Four other factors indicate the PAS assessment is correct:-

- (i) the absence of any reliance on Framework paragraph 215 in the appellant's pre-Inquiry statements (CD2.1 and 2.2) or proofs of evidence, notwithstanding that Mr Machin was aware of the PAS review when he wrote them<sup>36</sup>. NB the appellant's opening statement puts its case on the 'tilted balance' solely on the basis of paragraphs 47 and 49 of the Framework.<sup>37</sup>
- (ii) the appellant's adoption of the Farnsfield 1 appeal decision<sup>38</sup> in its entirety. Mr Machin accepted that the Inspector in that case did not find that SP3 (or any other policy) was out of date because of inconsistency with the Framework.<sup>39</sup>
- (iii) Mr Machin accepted<sup>40</sup> there is no other decision by a planning Inspector which indicates SP3 (or any other CS policy) is out of date because of any inconsistency with the Framework.
- (iv) Mr Machin agreed<sup>41</sup> that the policies of the Publication (Submission) draft Amended Core Strategy (ACS)<sup>42</sup> ought to be accorded moderate weight. However, that Plan has not been examined. Relevant policies (and specifically SP2) are subject to objection. Draft CS policies SP1-SP3 are similar in key respects to the equivalent adopted policies. That tends to indicate the adopted plan ought to be accorded greater (i.e. full) weight.

10.5 The PAS review concluded the ADMDPD accords fully with the Framework. That is plainly right. The ADMDPD post-dates the Framework and was adopted having regard to its policies (NB Mr Machin did not contend to the contrary).

#### ***Weight to be accorded to the FNP***

#### 10.6 Mr Machin agreed that<sup>43</sup>:-

- (i) a neighbourhood plan may allocate additional sites to a Local Plan where that is supported by evidence to demonstrate need above that identified in the Local Plan (Planning Practice Guidance (the Guidance) Paragraph: 044 Reference ID:044-20160519).
- (ii) where there is no such evidence of need, the second bullet point of Paragraph: 083 Reference ID: 41-083-20170810 does not apply ('the neighbourhood plan allocates land for housing').
- (iii) the CS allocated land for 148 dwellings. Section 4.3 of the FNP records that four years into the plan, 196 dwellings have been permitted (in fact 214 have now been permitted on large sites<sup>44</sup>).

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<sup>36</sup> Mr Machin XX

<sup>37</sup> See Opening Submissions, paragraphs 3.1 and 4.1 (Doc 2)

<sup>38</sup> Decision APP/B3030/W/15/3006252 dated 7 January 2016 at CD4.3

<sup>39</sup> Machin XX and *ibid* [at p.12, para. 63]

<sup>40</sup> Machin XX

<sup>41</sup> Machin XX

<sup>42</sup> CD3.7

<sup>43</sup> Machin XX

<sup>44</sup> Kurihara EIC

- (iv) there being no evidence of need over and above that identified in the ADMDPD, the FNP could not allocate more housing land in Farnsfield.
  - (v) accordingly, the FNP satisfies the tests in Paragraph: 083 Reference ID: 41-083-20170810.
  - (vi) it being no part of the appellant's case the Council is unable to demonstrate a three year supply, and the FNP being less than two years old, then even if there is less than a five year supply, the FNP should still be given "significant weight."
  - (vii) the importance of neighbourhood plans is underlined by Framework paragraph 198 which provides that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.<sup>45</sup> Equivalent advice is given in the Guidance at Paragraph: 001 Reference ID: 41-001-20140306. Mr Machin acknowledged that neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community, where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider area. He also expressly agreed that this condition is satisfied<sup>46</sup>.
- 10.7 Having regard to the forgoing submissions, then provided the Council has a five year of land for housing:-
- (i) the Plan as a whole ought to be regarded as "up-to-date" and attract full weight.
  - (ii) on the appellant's case, the so-called tilted balance is not engaged.
- 10.8 The standing of the Plan is important. Section 38(6) of the PCPA 2004 requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. The High Court has held this means that where development would conflict with a plan, the starting point is that it is not consistent with the presumption of sustainable development<sup>47</sup>. There is a residual discretion to approve development which is inconsistent with a plan. However, the primacy of the Plan requires it should be exercised cautiously. There should be demonstrable, objective and substantial reasons that justify a departure.

### ***The relevant development plan policies***

- 10.9 The main policies for the purpose of these appeals are policies SP1, SP2, SP3, CP13 and CP14 of the Core Strategy, policies DM1, DM5, DM8 and DM9 of the ADMDPD and policies FNP1, FNP2 and FNP8 of the Neighbourhood Plan.

#### The Core Strategy

- SP1 defines the District's settlement hierarchy. Farnsfield is designated a Principal Village, which are intended to act as a secondary focus for service provision within the wider rural hinterland served by the Newark

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<sup>45</sup> CD3.1, p.46

<sup>46</sup> Machin XX

<sup>47</sup> See *East Staffordshire Borough Council v SSCLG and another* [2016] EWHC 2973 (Admin) at paragraphs 42 and 43 (which refer to paragraphs 30-33) per Green J, expressly endorsed by the Court of Appeal (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council, SSCLG* [2017] EWCA Civ 893 at para 48 per Lindblom LJ).

Sub-Regional Centre and five Service Centres. The extent of the main built up areas of the Principal Villages is defined by village envelopes. That for Farnsfield is identified on the Farnsfield Proposals Map in the ADMDPD and given effect by DM1.

- SP2 balances economic growth, social wellbeing and the protection of the environment by directing a particular level of housing and employment to each level of the settlement hierarchy. Farnsfield is earmarked to receive 142 dwellings between 2006 and 2026. Sites are to be allocated to meet this need in the ADMDPD.<sup>48</sup>
- SP3 sets out the policy for the District's rural areas. Housing is to be focused "within" sustainable villages. Development in the open countryside will be strictly controlled and restricted. This object is given effect by DM1
- CP13 is a counterpart to SP3. It requires development proposals to demonstrate how they would contribute towards meeting the Landscape Conservation and Enhancement Aims for the Landscape Policy Zone within which they lie. The appeal sites lie within the Halam Farmlands Policy Zone. It is in a "very good condition" and is of "moderate sensitivity". The appellant's Mr Denny agreed the policy "Aim" is therefore to "conserve and reinforce" the landscape.
- In a similar vein, CP14 requires the preservation and enhancement of the District's heritage assets, including listed buildings, conservation areas and historic landscapes.

#### Allocations and Development Management DPD

10.10 DM1, in combination with DM5, DM8 and DM9 applies the strategic objectives of the CS to development management. Specifically:-

- DM5 applies CP13. It requires "the rich local distinctiveness of the District's landscape and character of built form" to be reflected in proposals for development.
- DM8 gives effect to SP3 by imposing strict controls on development away from the main built up areas of villages.
- DM9 reflects the requirements of CP14. It expressly requires that development should protect or enhance heritage assets and reinforce a strong sense of place.
- ADMDPD policies Fa/Ho/1 and Fa/MU/1 allocate land for 105 dwellings, representing the residual required under SP2, after taking account of completions and commitments.

#### Farnsfield Neighbourhood Plan

10.11 In accordance with the CS and ADMDPD, policies FNP1 and FNP2 direct new development, including infilling, onto land within the Farnsfield village envelope. FNP8 requires that proposals located within or adjacent to a

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<sup>48</sup> See ADMDPD p.59, para 3.18. Principal villages take 10% of the overall growth, and Farnsfield takes 10% of the growth allocated to those villages (ie 1% of the District total).

Landscape Policy Zone as defined in the Landscape Character Appraisal SPD, should demonstrate how they would address and further the Aims of a particular Landscape Zone.

- 10.12 Mr Machin conceded the proposals lie outside the village envelope. On that basis, he agreed they conflict with FNP1 and FNP2.<sup>49</sup> That is significant, because the policies draw on and reflect SP1-SP3, CP13, CP14, DM1 and DM5.

#### Overall position

- 10.13 Overall, the agreed position is that the Council possesses an up to date development plan. It defines the scale and location of new housing development that is required in Farnsfield over the plan period to meet local needs, maintain the village's vitality and protect its character. It expresses what local people have determined is to be regarded as sustainable development, described in terms of its scale, location and purpose. Because the Plan is Framework compliant, recent and up-to-date, local people are entitled to expect it to provide an efficient and predictable framework for decision making. The appeal proposals are admitted to conflict with the Plan. It follows that they are not sustainable. Therefore, they ought to be rejected, absent compelling countervailing considerations.
- 10.14 The appellant does not advance any material consideration in favour of its scheme which is said to be a singularly compelling justification for departing from the Plan. Instead, its case hinges absolutely on being able to prove the Council is unable to demonstrate a five year supply of land for housing.

## **ISSUE 2**

### **The five year supply of land for housing**

#### ***The FOAN***

- 10.15 For the appellant, Mr Calvert's PoE contemplates three FOANs:

- (i) 454dpa, derived from the 2015 SHMA<sup>50</sup>, validated by GL Hearn's "Nottingham Outer Demographic Update Paper" of May 2017.<sup>51</sup>
- (ii) 510dpa, derived from the DCLG September 2017 Consultation Paper and the associated Housing Need Consultation Data Table.
- (iii) 550dpa, derived from the decision of Inspector Napier in Farnsfield 1.

- 10.16 Mr Calvert did not contest the SHMA assessment of the FOAN for the HMA. He accepted that if the FOAN is assessed by reference to the HMA, it is 454dpa. However, his proof of evidence contended the FOAN should not be assessed by reference to the HMA. At the Inquiry he relied on Inspector Napier's decision in an earlier appeal relating to residential development on the eastern side of Farnsfield (Farnsfield 1)<sup>52</sup> to maintain that position.

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<sup>49</sup> Machin XX

<sup>50</sup> CD 5.6

<sup>51</sup> Gardner Appendix 12

<sup>52</sup> Appeal Ref APP/B3030/W/15/3006252 (CD4.3)

10.17 The Framework and the Guidance indicate that the FOAN should be assessed across the HMA.<sup>53</sup> However, the courts have held that a decision maker is not bound to do so; the approach to be adopted in a particular case is a matter of planning judgment<sup>54</sup>. Each case is fact specific. However, the recent case of *St Modwen Developments Ltd v SSCLG*<sup>55</sup> illustrates that an important consideration is likely to be the extent of the cooperation between the councils that make up an HMA.

10.18 The Inquiry in relation to Farnsfield 1 was held in November 2015 when the SHMA was less than a month old.<sup>56</sup> Mr Gardner's uncontested evidence was that at that time, none of the three Outer Nottingham Authorities had committed to adopt the SHMA, let alone cooperate to deliver it. The FOAN was not incorporated in any adopted or draft plan. It was also untested. In those circumstances, Inspector Napier decided to assess the FOAN for the District in isolation. At the time, that was an entirely reasonable approach.

10.19 Inspector Napier found that when the FOAN was assessed at District level:-

- (i) an adjustment was required to reflect ten year migration trends. That produced a demographic starting point of 499dpa<sup>57</sup>.
- (ii) a further adjustment was required for projected economic growth, market signals and increased affordability.<sup>58</sup> In her view, that raised the FOAN to 550dpa. NB Mr Gardner's unchallenged evidence (which was expressly accepted by Mr Calvert)<sup>59</sup> was that:-

- viewed across the HMA, the SHMA makes an adequate adjustment for economic growth, market signals and affordability.

- the Inspector's bespoke increase for economic growth drove the FOAN up to 550dpa. Only this element of the Inspector's decision is inconsistent with the FOAN derived from the SHMA (ie 454dpa).

10.20 More than two years have elapsed since the Inquiry into Farnsfield 1 and the picture is very different today. The Outer Nottingham HMA Authorities have undoubtedly adopted the FOAN specified in the SHMA. Mr Calvert agreed<sup>60</sup> that this is evidenced by:-

- (i) the Outer Nottingham Authorities' publicly documented commitment to cooperate to actually deliver the FOAN through:-
  - (a) The duty to cooperate for the Ashfield Local Plan.<sup>61</sup>
  - (b) The duty to cooperate for the Newark and Sherwood ACS.<sup>62</sup>

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<sup>53</sup> See Gardner, PoE, p.9 paragraphs 3.1-3.3

<sup>54</sup> *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040 [at 33]

<sup>55</sup> [2017] EWCA Civ 1643

<sup>56</sup> Gardner EiC

<sup>57</sup> CD4.3, paragraphs 18 and 32

<sup>58</sup> *Ibid* [at 32]

<sup>59</sup> Calvert XX

<sup>60</sup> Calvert XX

<sup>61</sup> Gardner Appendix 6 at paragraph 3.12

- (c) The Ashfield Local Plan Statement of Common Ground.<sup>63</sup>
- (d) A Memorandum of Understanding between the three Outer Nottingham Authorities. This document was in draft at the time of this Inquiry.<sup>64</sup> It was formally signed on 30 November 2017.<sup>65</sup>
- (ii) the FOAN has been adopted in the submission draft Ashfield and Newark and Sherwood Local Plans and the consultation draft Mansfield Local Plan.<sup>66</sup>
- (iii) the recent DCLG consultation paper arrives at a FOAN for the HMA that is almost identical to FOAN for the HMA in the SHMA. Mr Calvert conceded<sup>67</sup> that this is because each assessment is based on a demographic projection and market signals uplift, the balance between projected jobs and the population of working age being insignificant at the level of the HMA. The consultation paper is thus compelling evidence that the SHMA's assessment of the FOAN across the HMA is robust and that, even if it is assessed at District level, it does not exceed about 510dpa.
- (iv) the Nottingham Core HMA and Nottingham Outer HMA Authorities collaborated with Nathaniel Lichfield and Experian to explore Inspector Napier's approach on the balance between projected jobs and the working age population<sup>68</sup>. The resulting Position Paper of July 2016<sup>69</sup> explains that because job growth is constrained by the available labour force (forecast through an integrated suite of local, regional and national models) then if (as Inspector Napier found) activity rates are too high, the result is that the labour force must be smaller, job growth lower and the need for housing reduced. Crucially, the Paper demonstrates that in a "balanced model," it is not technically permissible to "import" workers from elsewhere by assuming higher in-migration, since that would result in lower growth than forecast in the places of origin. Mr Calvert quite properly conceded that he did not seek to challenge this analysis, and that he had advanced no evidence on the point.<sup>70</sup>
- (v) the decision of Inspector Stone in the Red Lion Lodge, Blidworth appeal, dated 22 August 2017.<sup>71</sup> Inspector Stone declined to follow Farnsfield 1 citing:-
  - a) changes of circumstances
  - b) the appellant having, '...not provided any independent evidence to challenge these figures' [the 454dpa].

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<sup>62</sup> Gardner Appendix 8

<sup>63</sup> Gardner Appendix 9

<sup>64</sup> Gardner Appendix 8

<sup>65</sup> The signed MoU is listed as Doc 32

<sup>66</sup> Gardner Appendix 6

<sup>67</sup> Calvert XX

<sup>68</sup> See Gardner Appendix 4, pp.5-7, esp. p.5 paragraphs 16-19

<sup>69</sup> CD5.5

<sup>70</sup> Calvert XX

<sup>71</sup> Gardner Appendix 14

- c) the appellant 'Only relying on the outcome of the previous appeal decision and not providing any of the background information on which it is based.'

10.21 Points (b) and (c) are especially relevant in this case. Mr Calvert conceded that his PoE and his rebuttal proof:-

- i) do not contain any independent evidence to critique the 454dpa;
- ii) merely repeat the conclusions of Inspector Napier; and
- iii) do not provide any of the background information on which the appeal was based.

10.22 In short, Mr Calvert's evidence is infected by the same defects that caused Inspector Stone to reject the appellant's case in Red Lion Lodge. Mr Gardner's evidence on the FOAN is therefore to be preferred. He is a highly experienced and qualified demographer. His knowledge of need in Newark and the HMA is unparalleled. He contributed to the SHMA and the 2017 Update. His PoE and rebuttal contains a detailed assessment of the principal controversial issues in Farnsfield 1, the effect of various change in circumstances, and cogent reasons for following the approach of Inspector Stone.

#### The 2014-based population and household projections

10.23 Mr Calvert's proof also asserted the 2014-based household and population projections imply the FOAN has increased since the SHMA was published (it was based on the 2012-based projections). However, under cross-examination he very fairly conceded that in point of fact they demonstrate the adjustments made in the SHMA to the 2012-based demographic baseline were well judged and accurate. Consequently, the appellant is not assisted at all by the 2014-based projections. On the contrary, they demonstrate that the methodology that was used to prepare the SHMA and its outputs ought to be viewed as robust.

#### The 2016 national population projections

10.24 Another relevant consideration is the 2016-based national population projection. Mr Gardner stated, and Mr Calvert conceded,<sup>72</sup> that the 2016-based projection of England's population in 2033 indicates a smaller population than that indicated by the 2012-based projection. Mr Calvert agreed that he is not aware of any fact that suggests Newark and Sherwood's population will grow faster than that for England as a whole. That indicates the FOAN derived from the SHMA is likely to be robust.

### **Summary**

10.25 Mr Gardner was a most impressive witness. He is genuinely expert and highly experienced in this field. He has a longstanding and in-depth knowledge of population trends across the HMA and the District. His proof and rebuttal contained a balanced, detailed, properly supported critique of Farnsfield 1. His evidence was clear, unexaggerated and straightforward. It is to be

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<sup>72</sup> Calvert XX

preferred to that of the appellant, which did little more than highlight certain passages from Farnsfield 1.

- 10.26 Mr Gardner states that there are compelling reasons to assess the FOAN by reference to the HMA. He is correct. The appellant does not contest the SHMA's assessment of the Council's FOAN at an HMA level of 454dpa.
- 10.27 The recent DCLG consultation paper indicates the SHMA's assessment of the FOAN for the HMA is consistent with the sum of those for each authority. That is not serendipity. It results from the application of similar methodologies and demonstrates the SHMA's assessment of the FOAN is robust.
- 10.28 However, even if the FOAN is assessed for the District in isolation, a substantial uplift for economic growth based on a pessimistic view of economic activity rates must not be made. Instead, lower activity rates imply a lower rate of economic growth and a need for fewer homes. On that basis, the FOAN would be the demographic starting point of 499dpa. That is corroborated by the DCLG's assessment of 510dpa.
- 10.29 Thus the FOAN should be taken to be 454dpa. Its very upper limit is about 510dpa. For the avoidance of doubt, the Council says the correct figure is 454dpa.

### **The assessment of supply**

- 10.30 The parties agree that the base-date is 1 April 2017; that a 20% buffer should be applied; and that the requirement should be determined using the Sedgfield methodology. The principal areas of dispute concern:-
- whether each category of supply should be reduced to reflect an alleged lapse rate.
  - whether the trajectory ought to be modified by reference to the Appellant's view of lead-in times.
  - whether development falling within Class 2 of the Use Classes Order should be included in the supply.
  - whether a small number of contested sites should be regarded as deliverable to the extent relied on by the Council or at all.

### **Lapse rates**

- 10.31 Mr Calvert's PoE applies a blanket 10% lapse rate to each category of site. Under cross-examination, he said he understood this to be necessary and to be justified by paragraph 130 of *Bloor Homes*<sup>73</sup>. Subsequently he properly conceded that *Bloor Homes* does not say that. He then properly conceded that a discount to any category of supply must be justified by clear evidence. He further accepted that the information contained in his PoE at Tables 6.1 and 6.2 does not evidence a lapse rate because they do not measure the rate of non-commencement and lapse of particular sites. On that basis, he candidly accepted the appellant had not produced any evidence to support the application of a lapse rate, and that one ought not therefore to be

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<sup>73</sup> *Bloor Homes (East Midlands) v SSCLG and Hinckley and Bosworth BC* [2014] EWHC 754 (Admin)

applied. The Council agrees. The evidence does not support the further discounting of supply from any category of site beyond that detailed in Ms Kurihara's rebuttal note at paragraph 8.1.

### ***Decision making and lead in times***

10.32 Decision making and lead-in times were discussed at a round-table session held as part of the Inquiry. The appellant's approach is to cut back supply indicated by the trajectory to reflect its view of the impact of lead-in times. They are drawn from an analysis of the arithmetic mean of the lead-in times for a sample of 67 outline, full and reserved matters approvals.<sup>74</sup> In support of this approach, the appellant cites Paragraph: 031 Reference ID:3-031-20140306 of the Guidance, which states that plan-makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust housing supply. However, that approach ignores Paragraph: 023 Reference ID: 3-023-20140306, which states that the advice of developers and local agents will be important in assessing lead-in times and build out rates by year. That highlights a key difference in the way in which the parties assess anticipated delivery from each site:-

- (i) the Council has made regular and repeated enquiries of developers and agents to obtain a detailed understanding of the timing and rate of development on each site. Those assessments are informed by the parties' knowledge of when applications will be made and when they are likely to be determined. This information is likely to be more reliable and more useful than building in an 'average' delay by reference to conditions on other sites.
- (ii) the force of this is underlined by the appellant's use of the arithmetic mean to average derived lead-in times. That will inevitably distort the statistic in the direction of extreme outliers. A more useful statistic would have been any analysis of distribution about the mean, or an assessment of the median and upper and lower quartiles.<sup>75</sup> However, even those statistics possess limited utility unless and until it is shown that the sample from which they were derived is representative of the sites contained in the stock of sites without planning permission. The appellant's evidence contains no such analysis. It merely assumes the rate at which its 67 sites progressed through the planning system is a good guide to the progress of others in the future.
- (iii) however, in Newark and Sherwood the past is not a good guide to the future. The progress of the Local Plan will ensure allocated sites progress through the development management system more quickly; the plan-making process has identified any issues with the deliverability of allocated sites, so those that are judged undeliverable have been sifted out.

<sup>74</sup> Calvert PoE, p.22, paragraph 4.4

<sup>75</sup> Miss Kurihara's rebuttal proof sets out the median time taken to determine application, having first removed a significant outlier (an outline application that took nearly double the time of any other for determination). On that basis, she found that the determination period for outline applications was 5 months, full applications 5.5 months and reserved matters 4.5 months.

- (iv) therefore, the Council's assessment of the timing of delivery is to be preferred to that of the appellant. Indeed, consultation with developers and an understanding of delivery on a site by site basis makes an analysis of lead-in times redundant.

## **C2 development**

10.33 Paragraph: 037 Reference ID: 3-037-20150320 of the Guidance states that Councils *should* count housing provided for older people, including residential institutions in Use Class C2, against their local housing need.

10.34 Policy C3 of the ACS and the written justification also states the Council will "seek to secure new housing development which adequately addresses" the District's need for housing for the elderly.<sup>76</sup> This approach is validated by paragraph 10.49 of the SHMA which states that:

*"Some older households will require specialist housing solutions. The SHMA identifies a need for a 3,803 additional specialist units of housing for older people between 2013-33, including sheltered and extra care homes (emphasis added) – this represents about 15% of the need shown through the conclusions on OAN. This need forms part of the OAN."*

10.35 The Council recognises that merely counting the *bed spaces* that will be provided may overstate supply because some may be occupied by one member of an elderly household without necessarily freeing up a unit of accommodation that is occupied by their partner. Therefore, the Council has only counted C2 units that will be provided as self-contained dwellings as part of its supply.<sup>77</sup>

10.36 At the round table discussion, the appellant was unable to advance a principled argument against this approach. The appellant's principal concern was that C2 units are bound by occupancy conditions. However, the issue of who lives in a C2 unit is immaterial, provided that accommodation frees up other dwellings, thereby adding to the total stock of housing.

## **The contested sites**

10.37 At the round table discussion, the appellant contested the deliverability of ten sites.<sup>78</sup> Thirteen sites were contested when proofs were exchanged. A schedule at the end of the Housing SoCG (Doc 16) records why three sites, totalling 74 dwellings, have been added back into the agreed supply. One is actually under construction.<sup>79</sup> Another said to be undecided and, subject "to comments" by NCC, has been approved subject to the completion of a S106 agreement.<sup>80</sup> The third was actually submitted by Pegasus (not the same office as Mr Calvert's) on behalf of Harworth Estates, who Mr Calvert accepts

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<sup>76</sup> CD3.7, pp.47 and 48

<sup>77</sup> Evidence of Debbie Dickinson on behalf of the Council at housing round table and CD5.6, SHMA 2015 at paragraphs 10.48 to 10.50

<sup>78</sup> See paragraph 3.5 of the Five Year Housing Land Supply and OAN Statement of Common Ground (Doc 16 as amended by Doc 23. Also CD2.7)

<sup>79</sup> NAP2a (16/210/RMAM)

<sup>80</sup> ST/MU/1

has a strong record of delivery. The whole site is expected to be built out in five years.<sup>81</sup>

10.38 Those concessions illustrate an important point. The Council's officers have an intimate knowledge of the housing sites that make up the supply, and the aspirations of their owners, agents and developers. That knowledge has been honed by preparations for the submission of the ACS. It may be trusted. In comparison, the appellant's conscientious efforts to portray an alternative picture is inevitably hindered by their remoteness, their limited participation in day to day plan-making and development management across the District and by their limited access to the range of relevant information that is available to officers on the ground. The Inspector and the Secretary of State are therefore invited to conclude that the Council's evidence of deliverability is generally more reliable and ought to be preferred to that of the appellant.

10.39 The parties' final positions in respect of each of the ten sites are recorded in the Housing SoCG.<sup>82</sup> The Inspector and the Secretary of State are invited to take account of that document in reaching a conclusion on the quantum of supply. Accordingly, the following observations are intended merely to amplify and sharpen the reasons why the Council contends each site is deliverable:

- (1) NAP2A (10/01586/OUTM): This site has planning permission. An application for approval of reserved matters has been made. It may therefore be presumed to be deliverable: see Paragraph: 031 Reference ID: 3-031-20140306 of the Guidance. The appellant is unable to point to any clear evidence that shows the site is not deliverable within five years. It merely suggests a degree of uncertainty. That approach was deprecated by the Court of Appeal in the recent case of *St Modwen's Development Ltd v SSCLG* (paragraph 42)<sup>83</sup>. The Council's evidence is to be preferred.
- (2) CO/MU/1: This site has planning permission and may be presumed to be deliverable. The appellant's objection to this site is limited to the principle of counting of Class C2 accommodation in the supply. The Council repeats paragraphs 10.29-10.32 of these submissions.
- (3) NUA/HO/8: This is another Class C2 site. It has planning permission. The Council repeats its observations in respect of CO/MU/1.
- (4) NAP2B: The site is allocated in the CS. Thus it may be presumed to be deliverable. However, the appellant contends deliverability is contingent on "ensuring appropriate access from a number of routes". That is simply wrong. It fails to recognise the 170 houses specified in the trajectory can and will be delivered via an access which is controlled by the Council. The Council's evidence is the more reliable.
- (5) NAP2C: The site is allocated in the CS. Therefore, it may be presumed to be deliverable. Part of this site benefits from outline planning

<sup>81</sup> BI/MU/1

<sup>82</sup> The amended summary table of the SoCG was added on the last day of the Inquiry (Doc 23). It indicates that the appellant accepts the higher level of delivery that the Council anticipates for site NAP2C.

<sup>83</sup> [2017] EWCA Civ 1643

permission for 1,800 dwellings, subject to the completion of a section 106 agreement (Persimmon). Barratts and David Wilson Homes have submitted an outline application in respect of 1,050 dwellings and a reserved matters approval will be issued in the near future: all signatories to a draft S106 Agreement have now agreed the terms of that document, the landowners having granted the parties a short extension of time to enable two banks to execute the document.<sup>84</sup> Larkfleet Homes have made an outline application for 350 dwellings and another part of the site, controlled by Strawsons, can be delivered in five years. On this basis, it is clear the site has a realistic prospect of delivery within five years. Against this, the appellant simply relies on a number of inchoate and unevidenced concerns, which conflict with the approach of paragraph 42 of *St Modwen*. Therefore, the Inspector and the Secretary of State are invited to accept the Council's evidence.

- (6) NUA/HO/10: The site is allocated in the ADMDPD. Therefore it may be presumed to be deliverable. It is partly controlled by the Council. The remainder is in the process of being acquired. It will be brought forward by the Council's development management company. The appellant does not adduce any evidence to rebut the Council's case that it will be straightforward to develop. It simply grasps at uncertainties. That is not sufficient to displace the presumption it is realistic to envisage it will be deliverable within five years.
- (7) SO/HO/4: This site is allocated in the ADMDPD and thus may be presumed to be deliverable. The appellant's only points are that the Council has not stated when an outline planning application which was made earlier this year will be determined, and to draw attention to an objection by the Town Council. Neither amounts to robust evidence that the site is not deliverable.
- (8) SO/HO/7: The site is allocated in the ADMDPD and may be presumed to be deliverable. Indeed, the appellant expressly accepts that there is sufficient time to deliver it, and that it will deliver houses. The difference between the parties is the appellant's vague allegations of uncertainty as to the timing and quantum of delivery.
- (9) BI/HO/2: The site is allocated in the ADMDPD and may be presumed to be deliverable. The appellant accepts pre-application discussions are under way, and that work has begun on preparing a planning application. The trajectory defers delivery until 2020-2021. That is realistic. Therefore the site ought to be regarded as deliverable.
- (10) BL/HO/3: The site is allocated in the ADMDPD and may be presumed to be deliverable. A planning application will be made in November 2017. The appellant does not deny the site is deliverable. It merely contests timing and quantum. Since the Council's statistics are based on discussions with the landowner and prospective developer, they are likely to be more robust.

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<sup>84</sup> Personal communication between Mr Matt Lamb and T. Leader dated 30.11.17 by way of an update

## **Summary**

10.40 For the reasons that have been given, the Inspector and the Secretary of State are invited to adopt the Council's assessment of the deliverable supply of land for housing and the rate at which it will come forward for development. Table 1.3 of the Housing Statement of Common Ground (Doc 16 as amended by Doc 23) illustrates that:-

- (i) assuming the total supply of land is not discounted by the application of a lapse rate
- (ii) assuming a FOAN of 454dpa or 510dpa
- (iii) adjusting the backlog to take account of the size of the FOAN
- (iv) then the supply of deliverable land for housing is:-
  - (a) 6.36 years at 454dpa
  - (b) 5.25 years at 510dpa

10.41 Therefore, the tilted balance is not engaged in these appeals.

## **ISSUE 3**

### **Would the proposals harm the character and appearance of the area?**

#### ***Preliminary observations***

10.42 The short answer to this question is yes; the appellant's landscape witness, Mr Denny, frankly conceded that the development of up to 20 or up to 60 new homes would have a moderate but localised adverse impact on the landscape and visual amenity. That concession broadly accords with Mr Jonson's evidence on behalf of the Council. It follows that each proposal cannot sensibly be said to accord with CP13, which requires the development to contribute towards meeting the Landscape and Conservation Enhancement Aims for the Halam Village Farmlands LCA. The stated Aims are to "conserve" the "very good" quality landscape. The proposals also conflict with DM5, which requires development to be "considered against the assessments contained in the LCA".

10.43 However, to avoid the effect of s.38(6) of the 2004 Act, the appellant relies on the dicta of Lord Gill in *Suffolk Coastal District Council*<sup>85</sup> (paragraph 85) which indicates that where the tilted balance is engaged, a decision maker may attach less weight to any policy to give effect to the object of significantly boosting the delivery of new homes. Therefore, it is necessary to consider how much weight should be given to the harm that it caused to the landscape and the setting of Farnsfield in the overall planning balance.

10.44 The starting point is to focus on the particular allegation that is set out in the reasons for refusal. In each case, the harm that is alleged is that development would:-

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<sup>85</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37

*"...unacceptably harm the character and appearance of the area by introducing built form on the southern side of Mansfield Road, making it difficult to then resist other adjoining development opportunities which would introduce similar built form."*

10.45 The notice of Decision in respect of the up to 60 units scheme also states

*"...that it is necessary to assess the application against all material considerations, which includes...character/ landscape..."*

10.46 Thus, harm to character is bound up with harm to the landscape. Moreover, consideration of the impact on character necessarily requires that the site is considered in its wider context, rather than in isolation.

***The character of Mansfield Road to the west of Farnsfield***

10.47 The landscape to the west of Farnsfield is not designated. Nor is it a valued landscape in the terms of paragraph 109 of the Framework. However, Mr Denny does not contend that the LCA's characterisation of the landscape as "very good quality", or a strategy of "conservation", are wrong. In any event, landscape quality is only a component of character. What is that character? The key points are as follows:-

- (i) the western approach to Farnsfield is strongly rural.
- (ii) that rural quality derives from the attractive open, rolling, agricultural landscape to the south of Mansfield Road, which has remained virtually intact since Parliamentary inclosure in the late eighteenth century. Those views are presently uninterrupted by built development.
- (iii) the eye is drawn to this agrarian setting by the spire of St Michael's church, which is a striking landmark, and by the western edge of the Conservation Area with which it contrasts. Thus the edge of the Conservation Area acts as a visual full stop to views from the west.
- (iv) although housing has been built to the north of Mansfield Road, it has very little impact on the village's rural character approaching from the west because it is set back and obscured by hedges and trees as far as Cockett Lane.
- (v) the rural landscape is made more characterful and meaningful because of its "time-depth", which derives from:-
  - a) its association with Farnsfield's historic roots as a farming village;
  - b) the views across the farmland of the appeal site and neighbouring fields to the western edge of the conservation area, the spire of the church of St Michael, and the roofs of buildings and trees within the conservation area, of which it forms part of the setting.
  - c) the character of the setting described in (a) and (b) is made more important because it is a "remnant" which cannot be enjoyed or appreciated along any other main route into the

village. The fact that the setting is a remnant means it is distinctive. That imparts character.

10.48 The character that has been described is appreciated by large numbers of people, including:-

- (i) users of Mansfield Road, which is the main east-west thoroughfare in and out of the village for motorists and pedestrians.
- (ii) users of the Robin Hood Way, which is a very well used part of the strategic footpath network. Users of a footpath across Bells Fields would also obtain clear views of both schemes looking out of the village towards the west.
- (iii) the occupants of residential properties that front onto the north side of Mansfield Road.

10.49 The appellant makes much of the fact that views of the appeal site and its environs are localised. That is not a strong point. Views of almost any site in any English lowland landscape are likely to be contained within a relatively local area by trees, hedges and the effects of flat or undulating topography. The critical point is that the character of the western edge of Farnsfield can only be appreciated from places which include the appeal site. Thus whilst views of the appeal site are localised, it cannot be developed without affecting the entire setting of the western edge of the village.

***The extent of the harm***

10.50 Both proposals will result in the total loss of the very high quality landscape of the appeal sites. That will disrupt and degrade the appearance of a wider area, comprising the last remnant of an agrarian setting to Farnsfield's historic core. A rural, agrarian scene, comprising an undisturbed Parliamentary inclosed field system, will be displaced by suburban development. Whilst certain landscape elements, such as hedges, might notionally be retained the Appellant's illustrative masterplans indicate they will be fragmented and absorbed into a new housing estate. Consequently, they will cease to be legible as landscape features.

10.51 If development is allowed the western approach to Farnsfield would lose its special character. The distinctive open, rural backcloth to the village would be lost. That would cause substantial harm to the character of this edge of the village as well as landscape *per se*.

10.52 That harm would be particularly conspicuous in the local area by virtue of the proximity of the appeal sites to, and visibility from, Mansfield Road, Robin Hood Way, Bells Fields and houses to the north of Mansfield Road.

10.53 The appellant's various masterplans and the design brief do not assist its case. The original masterplans sought to screen the site by blocks of screen planting. It is doubtful whether the narrow band of screening that is illustrated would actually obscure the up to 20 units scheme, especially at the higher western end of the site. It would certainly not obscure houses forming part of the up to 60 units scheme, which would be clearly visible in the higher southern and western sectors of the site. In any event, screening would diminish openness as surely as the development of houses, and replace an agrarian scene with a suburban village edge.

- 10.54 The revised scheme takes the opposite approach. It opens up the site. Mr Denny aspires to create a “gateway”, the visibility of development being regarded as a good thing. This approach probably reflects the appellant’s belated realisation that the site cannot be screened. However, it is equally unsuitable. For the reasons that have been given the open, rural setting of the western edge of the village and views across countryside to the historic core will be seriously degraded by both schemes. The aspiration to create a suburban gateway overlooks a critical point: the southern edge of Farnsfield is already an attractive and more appropriate “gateway” to the village.
- 10.55 That last point is illustrated by the conflict of the schemes with the FNP. It sets out the aspirations of local people through a positive vision for the future. The Plan aims to conserve the landscape by promoting infilling and restricting development outside the village envelope. However, if either appeal succeeds that would create a new axis of development into the countryside west and south along Mansfield Road and the Robin Hood Way. That would undermine the FNP and confidence in the plan-making process. It would also fly in the face of the Secretary of State’s policy in paragraphs 17(1) and 198 of the Framework.
- 10.56 In summary, the harm that would be caused to Farnsfield’s distinctive character cannot be mitigated by screening or by creating a suburban gateway. Each approach would degrade the last remaining open, rural, landscaped setting to the historic core. The land is simply unsuitable for development. The Inspector and Secretary of State are invited to conclude this harm ought to weigh heavily in the planning balance.

#### **ISSUE 4**

##### **Would the proposals cause less than substantial harm to the significance of the Grade II listed Church of St Michael and the Farnsfield Conservation Area?**

- 10.57 The Council alleges that each proposal would affect the setting and significance of the church and the Conservation Area, thereby causing less than substantial harm to each.
- 10.58 The appellant agrees that less than substantial harm would be caused to the church. On behalf of the appellant, Mr Bradwell rates the degree of harm as being towards the lower end of that bracket. Ms Conway considers the harm is towards the upper end. The difference is probably academic. Either way, the law requires that this harm is given considerable importance and weight. So the real issue is, what in substance is the harm? The appellant denies that any harm would be caused to the significance of the conservation area. The issue is whether that is right, and if not, what is the substance of the harm?

##### ***Harm to the significance of the church***

###### The contribution of the site to setting and significance

- 10.59 The parties agree that the significance of the church derives primarily from its built fabric and architectural composition. Mr Bradwell also accepted<sup>86</sup>

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<sup>86</sup> Bradwell XX (developing his PoE at p.16, paras 6.6 and 6.7

that its significance derives from its role as the spiritual and communal focal point of a rural, agrarian community, which is underlined by the prominence of the church as a local landmark.

10.60 Mr Bradwell's PoE suggests the setting of the church contributes to significance through short, intermediate and long range views<sup>87</sup>. He concludes that the development of the appeal site would have no impact on the first two categories, which are concerned with an appreciation of the church's architectural qualities and its relationship to the village's historic core respectively.

10.61 The impact of each proposal on the function of the church as a landmark is agreed by both parties to be caused by its obstruction or "framing" of views from Mansfield Road across the appeal site which are presently, open, rural and agrarian. In that context, Ms Conway contended, and Mr Bradwell agreed, that the approach to Farnsfield from the west provides the only remaining opportunity to experience and appreciate the church across an intact, historic landscape on a main approach to the village. Twentieth century development has obliterated comparable views to the north, east and south.

10.62 Seen in that way, the difference between the parties is twofold. First, Ms Conway argued that the effect of the change in setting is wider and thus more substantial than contended by Mr Bradwell. Second, Ms Conway asserts longer range views also reveal the church's architectural qualities and its relationship to the Conservation Area.

The extent of the impact of development on setting and significance

10.63 Mr Bradwell accepted that when he wrote his proof of evidence, he limited his consideration of the church's function as a landmark to views from just two particular locations - the entrance to Merrins Barn and the junction of Cockett Lane with Mansfield Road.<sup>88</sup> He further conceded that the heritage statement which accompanied the planning applications only considered the impact of development on setting from Merrins Barn.<sup>89</sup> That approach caused him to underestimate the impact of each proposal.

- (i) the church tower is visible in a succession of multiple views towards the east which begin immediately the village comes into sight from Mansfield Road.
- (ii) the focus on two views as if they represent the sum of the experience of the church as a landmark feature seriously understates its function as a landmark.

10.64 Neither did Mr Bradwell appreciate that views of the church from Mansfield Road reveal:

- i) its architectural form and a certain amount of detailing, such as the clock which appears on all four faces of the tower;

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<sup>87</sup> P.17, para 6.9

<sup>88</sup> Bradwell XX and see PoE at p.18 paras 6.10-6.11

<sup>89</sup> Bradwell XX

- ii) its location at the centre of the conservation area, framed by mature trees and buildings of the historic core, which are seen to possess a variety of scale, colour, orientation, massing and styles of the domestic buildings that surround the church, creating a most attractive composition.
- iii) the historic field system, which remains largely intact.

10.65 As a consequence, his assessment of the proposals on setting and significance is incomplete and inadequately informed as to the facts. The reality is that both proposals will introduce modern housing into the setting of the church and an historic rural scene will be replaced by suburban development, changing the way the asset is experienced. The developments will obstruct multiple views of the spire. Mr Bradwell agreed that where views would be “framed”, “focused and channelled” by the development (i.e. at Cockett Lane) they would be degraded, not preserved or enhanced.<sup>90</sup> That form of mitigation simply does not work.

### ***Harm to the significance of the Conservation Area***

#### The significance of the Conservation Area

10.66 The reasons for the designation of the Farnsfield Conservation Area are set out at page 2 of the Council’s appraisal of its character and appearance, which dates from 2000 (CD5.1). It records that<sup>91</sup>:-

- (i) the original village layout is still clearly identifiable and this is reflected in the boundary of the area.
- (ii) the village is linear in form along an east-west axis, located within an undulating farmland landscape.
- (iii) the prominent Parish church creates an interesting and attractive historic settlement.

#### The contribution of the appeal sites to setting and significance

10.67 The appeal sites contribute to the setting and significance of the conservation area in four ways:-

- (i) the function and appearance of the sites as part of the historic, undulating farmland landscape which demonstrates and evidences Farnsfield’s agricultural origins.
- (ii) the contribution of the sites to the conservation area’s historic and aesthetic qualities. They afford clear, uninterrupted views over farmland towards the church, which is seen set within the historic core of the village. That allows people to better identify and appreciate the composition of the whole travelling east-west along Mansfield Road.
- (iii) the sites contribute to the quietude and rural outlook of Bells Fields. They provide the immediate setting of this attractive and tranquil

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<sup>90</sup> Bradwell XX

<sup>91</sup> *Ibid*, p.2 [at 1-3]

component of the conservation area, which is accessible to the public via a public footpath (FN2) running north-south from Mansfield Road to the Robin Hood Way.

- (iv) the sites are part of a continuum between the tightly packed historic core, the looser grain of the pasture of Bells Fields and the final transition into the surrounding arable farmland, which is of historic, evidential and aesthetic value.

10.68 Ms Conway's evidence identifies the ways in which the appeal sites contribute to the setting and significance of the Conservation Area in paragraphs 3.40 to 3.46 of her evidence. Her analysis is detailed and compelling. Mr Bradwell's assessment of their contribution to setting is less so. It is limited to three short paragraphs at pp.21 to 22 of his evidence. His focus is on identifying significant views in and out of the conservation area. He concludes that:-

*"...the surroundings in which the heritage significance of the Farnsfield Conservation Area can be experienced are quite limited. ...The only significant view looking towards the Conservation Area is from the entrance to Merrins Farm off Mansfield Road...."*

*...The appraisal does not identify any views looking out from Bells Fields towards the appeal sites, suggesting that the views westwards are not so significant...*

*Therefore given the local topography and the existing settlement framework of the Conservation Area enclosed by more modern development, the surroundings in which this asset can be experienced are quite limited with few opportunities for views either out of or into the Conservation Area."*

10.69 With the greatest of respect to Mr Bradwell, that assessment is plainly wrong.

- (i) it fails to appreciate the church is a focal point of the conservation area, and, when viewed from the west, draws the eye to the attractive composition of the historic core over its related countryside. The experience offered by such views, and the aesthetic, historic and evidential value that is derived from them, are not limited to just one or two locations. Approaching from the west along Mansfield Road, if Farnsfield is in view, so too is the Conservation Area in its historic farmland setting.
- (ii) it fails to recognise the value of the appeal sites as part of the transition from the historic core of the village into the surrounding farmland.
- (iii) it underplays the contribution that the appeal sites make to the enjoyment of Bells Fields as an open, quiet area which affords close views of the conservation area (looking east) in an open, rural, agricultural setting (looking west).
- (iv) more generally, Mr Bradwell's assessment falls into the trap of relying on the 2000 Designation Statement as a definitive statement of the setting of the Conservation Area and its contribution to significance. Read fairly and as a whole, the document does not really grapple with

this issue. As Ms Conway explained<sup>92</sup>, it is a document of its time, and if it were to be re-written today it might be expected that fuller consideration would be given to setting.

#### Impact on setting and significance

10.70 The impact of both schemes is set out in Ms Conway's evidence at pp.18-19. She concludes each would harm setting and significance as follows:-

- (i) modern housing would disrupt the only remaining opportunity to view the conservation area in its historic farmland setting. That would degrade part of the conservation area's historic and evidential value.
- (ii) more particularly, development of either scheme would interrupt open views of the church, the historic core and the edge of the village and destroy an area of historic landscape which Ms Conway judged to be a heritage asset in itself.<sup>93</sup>
- (iii) the development would degrade the transition from the historic core into open countryside.
- (iv) the development would harm the enjoyment of Bells Fields, which would be less tranquil and partly hemmed in by the up to 20 units scheme or substantially enclosed by the up to 60 units proposal.

10.71 The significant, less than substantial harm that would be caused by the proposals to the character and setting of the church and the Conservation Area conflicts with policies CP14 and DM9 of the development plan.

10.72 For the reasons that are set out below, the benefits of the scheme do not outweigh the harm that would be caused to each asset. Therefore, paragraph 134 of the Framework does not weigh in favour of the proposals.

#### **Conclusions: the planning balance**

10.73 Each proposal plainly conflicts with policies SP3, CP13 and CP14 of the Core Strategy, policies DM5 and DM9 of the ADMDPD, and policies FNP1, FNP2 and FNP9 of the Neighbourhood Plan. This is not some notional policy conflict. Given the extent of the conflict with the development plan, it is impossible to argue sensibly that the proposed schemes accord with the development plan as a whole. Applying s.38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should therefore be refused unless other material considerations indicate otherwise.

10.74 Faced with this difficulty, the appellant's case is critically dependent on being able to prove the Council is unable to demonstrate a five year supply of deliverable land for housing. That would allow it to engage the tilted balance, which will usually be a very important material consideration. However, viewed objectively, it is clear the authority possesses a healthy housing land supply. The appellant cannot and does not argue the tilted balance is engaged in any other way. The question that then arises is, does either

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<sup>92</sup> Conway EIC

<sup>93</sup> Conway, answer to question posed by Inspector Vyse

proposal give rise to any kind of clear and substantial benefit that might outweigh the conflict with the plan? The benefits claimed are:-

- (i) delivery of market and affordable housing
- (ii) the provision of public open space and a footpath link through the site to Robin Hood Way.
- (iii) the provision of a sustainable drainage scheme
- (iv) financial benefits in the form of New Homes Bonus
- (v) local economic benefits
- (vi) good design

10.75 Taking each point in turn:-

- (i) as a generality, the provision of market and affordable housing is a good thing. However, the weight to be afforded to that which is proposed on the appeal sites is tempered by the absence of need for additional land in an unsustainable location. Indeed, the FNP indicates planning permission has been granted for substantially more housing than is required by the Core Strategy nine years before the end of the plan period.
- (ii) the provision of public open space is required to mitigate the impact of development. It is relatively isolated from other housing areas. It is doubtful whether it would confer a wider benefit. Similarly, the footpath link through the sites is unlikely to be attractive to many potential users other than those who live on one of the appeal sites; most people are more likely to use the more attractive route offered by FP2 through Bells Fields to travel between Mansfield Road and Robin Hood Way. Neither "benefit" ought to be accorded more than slight weight.
- (iii) the provision of a sustainable drainage scheme is necessary to mitigate the impact of development. It is a minimum requirement. There is no evidence that it would confer a wider benefit; there is no history of flooding in the vicinity of the site. It ought to attract very little weight.
- (iv) New Homes Bonus ought to be accorded little weight. It will not necessarily be spent in the local area or even on overcoming planning issues.
- (v) the construction of houses on the appeal sites would generate direct and indirect expenditure and create jobs. The appellant has not sought to quantify the benefits that would arise. There is no evidence that more expenditure is needed to maintain or enhance local services and facilities, none of which are said to be struggling to remain viable. Jobs created during construction are necessarily temporary. There is no evidence that they would benefit local people. Therefore this benefit ought to be afforded only limited weight.
- (vi) good design is not a benefit at all. It is to be expected of every scheme. In any event, design is a reserved matter. The appellant's design brief is interesting but unexceptional, and cannot overcome the essential unsuitability of the sites for development.

10.76 The significant and demonstrable harm that would be caused to the landscape and designated heritage assets undoubtedly outweighs the package of contestable and generally limited benefits of each proposal.

10.77 Thus, if the appellant desires to bring the sites forward in this plan-led planning system, it can and should do so through the ACS, having recently elected (for reasons that remain unclear) not to participate in the FNP.

10.78 For all the above reasons, the Inspector is respectfully invited to recommend that each appeal should be dismissed.

## **11. THE CASES FOR INTERESTED PARTIES APPEARING AT THE INQUIRY**

11.1 Oral representations made in addition to any written submissions of the respective parties both at application and appeal stage are set out below:

### ***Mark Spencer MP***

11.2 The main topics that get raised in relation to Farnsfield are housing, parking at the school, the speed and volume of traffic on Main Street and flooding round the church due to sewage issues.

11.3 There has been a lot of public engagement with the development plan process and, whilst not all residents are happy at the outcome, it is accepted that it was a democratic process and it is their plan. The development proposed would be outside what is planned for and allowing it would be contrary to that democratic process and would reduce confidence in the plan-led system.

11.4 The development would be on a greenfield site, outside the village boundary in a significant open space across which, on the approach along Mansfield Road, are views of the church. There are significant heritage concerns in relation to the proposals.

11.5 Either scheme would create a precedent for infilling of the space that would remain between the development sites and the heart of the village. The village has already taken much more housing development than was indicated in the development plan. The scale of that development is already eroding the character of the village – Farnsfield should stay as a village.

### ***Councillor Roger Blaney***

11.6 In opening, Mr Hardy referred to the officer's recommendation for approval in relation to the Appeal A scheme. However, if that is all that is required, there would be no need for a planning committee or Members. Councillors have local knowledge that they bring to decision making and are in touch with local issues. Over 90% of applications are dealt with by delegated powers, with only the most contentious/marginal cases brought forward to committee. The officer's report says that the judgement was finely balanced and noted that there was uncertainty at the time in relation to the five year housing land supply position. The recommendation for approval was a pragmatic view taken in the light of those circumstances. After careful consideration, Members took a different view.

11.7 The 2017 Housing White Paper *Fixing our broken housing market* confirms that development should be plan-led. It seeks to stop situations where one day an authority has a five year housing land supply and the next it is found not

have a supply. That is reinforced in the consultation proposals *Planning for the right homes in the right places*, which endorses a clear and transparent planning system.

- 11.8 The scale of new housing is a challenge for Farnsfield. The Core Strategy allocates 10% of the assessed housing need to Principal Villages, with 10% of that to be accommodated in Farnsfield, equating to some 142 dwellings. Around 37 homes have already been built/consented leaving a residual requirement of 105. The Allocations and Development Management DPD allocates two housing sites in the village – land off The Ridgeway (Fa/Ho/1) around 35 dwellings and Cockett Lane (Fa/MU/1) around 70 dwellings plus employment development – to meet that residual requirement up to 2026. That is a clear and transparent system.
- 11.9 It is accepted that the numbers are not maxima. If more properties can be accommodated, they should be on the allocated sites. The approved scheme for Fa/Ho/1 permitted 66 dwellings (an additional 31 homes), whilst 88 dwellings were originally permitted at the Cockett Lane site, with an additional 18 dwellings later permitted in lieu of employment land there (an additional 36 dwellings). The community believed that they would be asked to accommodate 142 dwellings up to 2026. Now, within three years of the Allocations DPD being adopted, and taking account of the Farnsfield 1 appeal decision on non-allocated land on Southwell Road (up to 48 dwellings) the village has taken some 80% more housing than what residents were led to believe would be the case following the plan-led process.
- 11.10 The developments proposed will have implications for the settlement hierarchy, the development schemes being opportunistic. Each application is to be considered on its particular merits. The original scheme was for up to 60 dwellings, but was then reduced to up to 20. A few days later a separate scheme for 60 dwellings was submitted. As recognised by the officer in relation to the smaller scheme, the decision was finely balanced. At that time though, the Council was still trying to get to grips with the unexpected outcome of the Southwell Road appeal decision (Farnsfield 1).
- 11.11 Since the application was considered, the Council now has more up-to-date information on housing with regards to the SHMA etc and it is hoped that the latest figures will be endorsed as part of the Examination into the emerging Ashfield Local Plan (Ashfield being one of the three joint Outer Nottingham HMA authorities, together with Mansfield and Newark and Sherwood).
- 11.12 The Council's conservation officer considered that the schemes would result in less than substantial harm to heritage assets, but that does not equate to no harm. The officer also commented on the setting of the Conservation Area and the character of the area on the approach to Farnsfield. Entering from the west, those approaching are conscious of the existing development to the north on the left hand side of the road, which has an impact, especially the more recent Cockett Lane development with its tall, three storey properties on higher land that are uncharacteristic of the village. To the south of the road is a very open vista with open fields leading into the heart of the village with the church as a backdrop. The church is very important and is central to the character of the village. It is clearly seen on the approach along Mansfield Road.

11.13 The Conservation Area is defined by a line on a map but that line is not seen on the ground. The eye sees the view of the Conservation Area across an unchanged open landscape. Those views would be destroyed if either appeal was to succeed. The developments are not required to meet housing numbers and the appeals should be dismissed.

***Councillor Mrs Lesley Healey*** (Doc 10)

11.14 These are speculative applications. Screen planting will not soften the effect of either of the developments proposed on the entrance to our village. Even less than substantial harm in terms of impact on heritage assets is still a negative impact. Quite simply, we are well over our allocation already.

11.15 Neighbourhood planning is a right for communities to shape developments in their area. The National Planning Policy Framework requires that Neighbourhood Plans ensure that development is based on an understanding and evaluation of the defining characteristics of the area and should help establish a strong sense of place. This was the reason the Councillor joined the steering group in January 2014. The Cockett Lane development of 88 houses had just gone through a lengthy application process and the mood in the village was one where a vision for the next 20 years was needed in order to preserve its unique character, to protect its landscapes and continue to be a thriving, vibrant and sustainable village. A place where people enjoy living.

11.16 In 2014 we did not anticipate that the mixed use land on Cockett Lane would lead to 18 extra houses being built instead of acting as useful employment land, or that another 48 houses would be built following a successful appeal on land at Southwell Road outside the village envelope in 2016.

11.17 A questionnaire distributed to 1,700 households in the village in preparing the Neighbourhood Plan elicited a 25% response rate. In answer to the question *'Do you think Farnsfield requires more housing beyond the 142 planned additional dwellings up to 2040?'* 77% said no. A further question asked *'In any new development what type of housing would you like to see?'* with a range of type and size of housing offered for selection. Only 2.6% wanted 4+ bedrooms and yet what we have is exactly the opposite and does not meet local needs.

11.18 In relation to questions on the environment, conservation of the countryside around the village came top of the list of priorities, followed by preservation of the character of the village and preservation of the Conservation Area. Again, as things stand, these have already been adversely affected. If either of these appeal schemes were to go ahead, one of our most iconic views as you come into the village could be destroyed for ever.

11.19 Also in 2014, there was an opportunity in the village survey for people to state their concerns. Over 70 comments were received connected to issues of parking in the village, speeding vehicles, vans mounting the pavements to get down the High Street, difficulties using mobility scooters on pavements and walking to the village. There were also comments about flooding.

11.20 Throughout the Neighbourhood Plan consultation process and in the pre-submission consultation, issues around transport and parking and pressure on infrastructure appeared in people's responses and over the last year, as

development has continued, the Parish Council has had to address complaints about speeding traffic and lack of parking in the village. On occasion, there is gridlock in the centre of the village. More recently, there has been extra pressure on our medical services.

11.21 The Neighbourhood Plan referendum resulted in a 28.8% turnout, with 620 voting yes in favour of the Plan. Only 40 voted no. People voted for housing development being contained within the village envelope and developing existing allocations only; development should be small. The Southwell Road development went ahead despite the wishes of Farnsfield residents and the District Council.

11.22 79% agreed with policy FNP1 of the Neighbourhood Plan. 79% agreed with infill development as per policy FNP2, as long as there was no adverse impact such as parking congestion. There have been such developments and it is happening on Broomfield Lane now.

11.23 FNP5 – 85% of respondents agreed with this policy for a thriving parish. Comments suggest a preference for maintaining and supporting existing facilities, the idea being that new facilities grow to keep pace with existing development. Farnsfield should not have to make up the shortfall in housing development elsewhere.

11.24 In relation to FNP7, new development should integrate into the natural, built and historic environment (paragraph 61 of the National Planning Policy Framework). 89% agreed and yet the plans for Mansfield Road do not achieve this.

11.25 Farnsfield must not lose its unique character as a village by obtrusive developments such as this; overdevelopment is possibly the biggest threat to the village and new housing must be compatible with the character of Farnsfield; we have too many big brick houses all looking the same; the development at Cockett Lane includes three storey tall narrow town houses that are completely out of keeping with the village setting and its approaches in addition to a lack of chimneys; previous developments have not been sympathetic to that of a village setting such as Farnsfield.

11.26 The stated vision of the Neighbourhood Plan says that 'Planning must be more than an exercise in meeting housing supply numbers by the addition of characterless estates in the fringes of the villages more typical of suburban developments.' It needs to protect rural landscape character and produce a sustainable community where needs can be met locally.

***Councillor Paul Woods***

11.27 The purpose of planning policy is to protect the community and developers alike. In this instance though, the appellant is not doing the village or the District Council a favour in terms of affordable housing or other alleged benefits. The community recognises that it has a role in relation to planning and new development. Indeed, the Core Strategy allocates sites for development and indicates that Farnsfield should accommodate some 142 additional dwellings over the plan period (being 10% of the 10% of 14,162 dwellings to be accommodated in Principal Villages). However, the housing development at the eastern end of the village on Southwell Road (allowed on

appeal) together with other individual developments approved in the village, have already resulted in a 24% increase in dwellings over and above the numbers planned. It is accepted that there is a need to grow the village, but that is in response to local need. The developments now proposed are opportunistic and exploit the village, with any link between the development proposed and the settlement boundary being tenuous at best.

- 11.28 No additional infrastructure is planned to any existing facilities to accommodate the uplift in population. Neither is there any uplift in local employment opportunities. The development on Cockett Lane, which was meant to be mixed business and housing, is now all housing, with no employment uses at all. Future occupiers will be required to drive elsewhere to gain employment.
- 11.29 The developments would set a precedent whereby any future applications to develop the adjacent fields between the site and the village would be difficult to resist. A quick glance at the cul-de-sac arrangements shown on the indicative layouts show ready-made connections into those adjacent fields to facilitate future development there.
- 11.30 Other new developments in the village are characterless estates with walls of red and grey. The old village is being boxed in by new development. Whilst any harm to the heritage assets may be less than substantial, that is still a high bar.
- 11.31 Were the appeals to succeed, that would increase development within the Minster Secondary School catchment area. However, there is no additional capacity at that school to accommodate new development. Although parents would have an expectation that their children would go to the Minster School, they would have to travel to secondary schools in Ollerton, Mansfield and Arnold to where pupils are already bussed or driven because the Minster School is full.

***Neil Mayo***

- 11.32 Mr Mayo confirmed that he was speaking on behalf of around some 280 local residents who were unable to attend the Inquiry (Doc 8).
- 11.33 Yes, the country needs more housing but it should not all be at Farnsfield. This is the wrong place to build new houses. The appellant has made confusing and repeated attempts to build here for profit. Profit is not a problem of itself but it needs to be accompanied by a social and moral conscience. There should be an equitable and balanced housing distribution. Much more sustainable sites than this are available.
- 11.34 The Neighbourhood Plan supports new development, but within the village boundary. The appeal sites are outside the village envelope. They do not adjoin the village, being separated by open farmland to the east and by Mansfield Road to the north. There is no support for development outside the village envelope.
- 11.35 Three new housing developments have already been approved in Farnsfield, all of which have been/are being built out. The total number of new houses in the village far exceeds what was envisaged in the development plan.

11.36 The appeal sites are close to a sensitive edge of the Conservation Area. There are dominant views across the site of the church and the hills to the south. Those views inform and define the character of the village on its western side. Development comprising up to 20 or up to 60 new dwellings here could not be concealed and would destroy the landscape character and the setting of the conservation area.

11.37 If allowed, further applications for development of the fields between the appeal sites and the village would be made, which would be difficult then to resist. The development would set an undesirable precedent for infilling on that land, further eroding the character and setting of the village.

11.38 The Neighbourhood Plan confirms that the village wants a planning voice. We support appropriate development. This is not appropriate.

***Mrs Kathryn Thompson*** (Doc 6)

11.39 Mrs Thompson advised that she represented some 270 residents who could not attend the Inquiry.(Doc 3)

11.40 Recognising the need for more housing and that people have to live somewhere, most people are sympathetic and tolerant of some increase in population and housing. However, if the appeal schemes go ahead, we will be well over the allocation for the village for the period 2009-2026. Enough is enough. The main complaint relates to the lack of planning to extend local infrastructure needed to accompany the changes taking place. The developments proposed do not provide for the needs of the village.

11.41 There is a desperate demand for affordable housing for first time buyers, lower income families and the elderly of Farnsfield and yet developers continue to build 3, 4 and 5 bed homes. The elderly feel isolated and trapped in their family homes which many now live in alone. They want to stay in Farnsfield where many were born, but have nowhere to move to. Why can't small units or bungalows be built so that they can down-size to free up their homes for families, which would be more compact housing developments.

11.42 Waiting up to four weeks or longer for a doctor's appointment at the local surgery is a huge concern, which will only get worse with any population increase in the village. Threats that their children will not get into their preferred choice of school has angered new residents who were led to believe they were in a guaranteed catchment for the Minster Secondary School. This cannot be guaranteed if the village continues to grow.

11.43 Water and sewage run down the street on occasion, with service companies being unable to rectify existing problems. There is only one supermarket in the village now, whereas there used to be two for fewer people. There is no promise of increased sport and leisure facilities. The village centre/hall, once the focal point of any village, is now too small for large events or community cohesion. It is fully booked up and used more and more by people who do not even live in the village. Unsafe narrow footpaths have to be negotiated, especially with prams, next to increasingly busy roads.

11.44 Traffic related problems are a significant concern, including illegal parking and dangerous manoeuvres from frustrated drivers trying to get to work. Vehicles have been seen mounting the Main Street pavement, next to house

entrances and speeding up to escape congestion. The small car park on Hadleigh Park, a five minute walk from the shops is not used, resulting in excessive parking and consequent narrowing of Main Street.

- 11.45 If the developments go ahead there is potential for 120 more cars (parking spaces are promised for two cars per household). Unfortunately, the appeal sites are just a little too far away from the centre, so vehicles will be used to visit the shops, increasing existing tensions and dangers on the roads.
- 11.46 Newark and Sherwood gathered data on the travel habits of Farnsfield residents. Multiple vehicle ownership is above county and national figures. Only 2.4% use public transport to get to work, significantly below the national average. Lack of employment within the village explains this. Although there has been an increase of self-employed families which we welcome, large vans now also add to the traffic and parking chaos.
- 11.47 Based on census data, the population of the village increased by around 50 over the ten years to 2011. If the new developments are taken into account, including the 60 houses proposed, the population would increase by some 548 people over just three years, all of whom would use an unchanged infrastructure (figures based on only two persons per new dwelling). The figure does not take account of the new infill homes and smaller developments currently taking place. An increase in housing could bring benefits to the village, including better services/life styles, improved/more regular transport, improved water/sewage, education, health care provision, leisure facilities. Instead, as the figures indicate, it will bring an uncontrolled and uncoordinated sprawl to Farnsfield.
- 11.48 Residents feel frustrated that their views on previous developments do not appear to have been taken into consideration. Promises of retail and industrial units on the Cockett Lane development have not come to fruition. Only a request to build an additional 18 houses instead has resulted. The Council's own policies on protecting and enhancing the natural environment, and managing and safeguarding the countryside for future generations, do not seem to be relevant to Farnsfield. The new Neighbourhood Plan, which is there to shape the future of the village, is being ignored.
- 11.49 Planners and developers have to be held to account. Is CIL being collected and in sufficient amounts to benefit the community? Farnsfield has to be compensated for the loss of its village status – in population terms we are now a town – and the gradual destruction of our rural setting.
- 11.50 Villagers are disheartened by all of this and the policies do not seem to be protecting them. They feel that developers are making profits whilst they are left to suffer, with no apparent planned improvements in the infrastructure.

***Marcus Coulam***

- 11.51 When looking at the village on coming to view the property he now lives in, it was the view of the village on the approach from the west that sold it to him and his wife. He is now thinking of moving because it is very uncomfortable where they live on Main Street in the heart of the village. The traffic congestion is awful, especially at peak times. They can't use their garden at times because of traffic noise and fumes. Cars hurtle along the pavement at

times to get past blocked traffic – on-street parking for the local shops means that in places, the road is virtually single carriageway for lengths which causes immense problems. The cars present a danger to pedestrians. It has become so unsafe that they are looking to move. Any increase in traffic will only exacerbate that existing traffic situation.

11.52 The village is being destroyed on all sides by new development. This was a very attractive village but now there is only one view of the historic core left and that is across the appeal sites on the approach along Mansfield Road. The developments proposed would destroy those remaining views.

11.53 He feels as though all the careful work and improvements he has undertaken to the property, which lies within the Conservation Area, have been wasted because the character and appearance of the conservation area is being destroyed by all the new development. Three storey town houses have been approved which are totally out of character. It is like looking at a town now, not a village. Views of the church will be destroyed. If any housing is needed, it is cheaper housing and starter homes for youngsters. The village is gradually being destroyed - enough is enough. This was a mining District and there are plenty of brownfield sites that should be developed instead of here, albeit that there may be less profit for the developers.

**Peter Sarre** (Doc 7)

11.54 Walking east from the proposed development along Mansfield Road, just after the Chapel Lane junction, the footway is on one side of the road only and it is extremely narrow. The assertion in the Transport Statement (page 5 paragraph 2.4.5) that 'the existing highway network within Farnsfield benefits from wide well-lit footways generally on both sides of the carriageway' does not hold true for this critical route from the sites to the supermarket, hairdressers, newsagent, bakers, charity shop, florist, church etc.

11.55 The hazardous footway actually lies between the gable wall of Elford Cottage and Mansfield Road and at its narrowest point is only 0.71 metres wide. So, for example, someone pushing a buggy with a second child could not walk side by side with the child. Similar problems occur for wheelchair users and for people with reduced mobility. For reference, the 6Cs Design Guide says that a footway should have a minimum width of 2 metres.

11.56 Approval of the appeals would lead to a major increase in the number of people needing to use this footway. Neither Blidworth Road out of the back of the sites, nor Chapel Lane, which might be considered as possible alternatives, have footways. In contrast, other recently approved housing developments off Cockett Lane, and at the opposite end of the village, do not have this problem. The appeals should not be allowed as it is a wholly inappropriate site for people who need to walk into the village.

**John Auld** (Doc 18)

11.57 Incremental development: We fear approval of development on the basis of limited impact on village character which would lead to subsequent developments claiming another limited impact (from a new baseline) and so on. Eventually there is a clear negative impact. Twenty years ago there would probably not have been approval for the totality of subsequent development: Wimpeys, Spinney, Bellway, St Michaels View etc but, in due

course, all have been built. That is partly why we are wary of the argument that up to 20 houses spoils things only a little (whether true or not).

11.58 The fields: the importance of the fields off Mansfield Road is stressed, not just as a viewpoint, but also in terms of the rural setting provided for Farnsfield.

11.59 Aesthetics: we do not feel comfortable with attempts to quantify the attractiveness or otherwise of developments. As ordinary residents, we feel it is displeasing to have major new builds alongside historic buildings or in the surrounding countryside.

11.60 Staying as a village: if new developments are not halted at some point then Farnsfield will eventually cease to be a village: it will be a spread of new houses with an old part in the middle somewhere, a town perhaps. It is time to stop.

## **12. WRITTEN REPRESENTATIONS**

12.1 As set out in the officer's reports,<sup>94</sup> the applications attracted a number of individual letters of objection. Letters of objection were also submitted by the Parish Council. All those representations are summarised in the officer's reports.

12.2 In relation to the appeals, further letters were received from local residents and the Parish Council, many of whom spoke to the Inquiry on an individual basis as set out above. The matters raised in that correspondence included:

- Housing – required housing in the Core Strategy for Farnsfield has already been exceeded. Already allowed three new developments – Barratt development on Cockett Lane of 100 dwellings plus two further schemes with a total of 150. Sites are already identified to meet the requirement in the Neighbourhood Plan. Barratt Homes got planning permission for an additional 18 dwellings on Cockett Lane which, together with development at Ridgeway provided some 176 dwellings, well in excess of the 142 allocated for the village in the Core Strategy. Also had planning permission on appeal for 42 dwellings on land at Southwell Road, plus individual properties erected in recent years. The Neighbourhood Plan does not support development beyond village boundary. This would be an isolated pocket of development and will set a precedent for infill between the site and village centre. The development does not equate to a notional rounding off or infill. Identified local housing needs for Farnsfield are already well met. There has been rapid expansion for a small village. Villagers want to keep close knit village. The development does not accord with the housing distribution strategy for Newark as set out in the development plan. Work on the Newark Growth Point is now underway and so will provide a five year housing land supply.
- Infrastructure – pressure on services including local schools, doctor's surgery, shops and services. The village is on the edge of the Minster School catchment. The nearest school in Rainsworth is oversubscribed. The village experiences problems with raw sewage discharges into the centre of the village after heavy rain. Foul sewers are unable to cope

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<sup>94</sup> CD1.33 and 1.36

with existing loading. Anticipated improvements by Severn Trent planned for February 2017 were subject to budgetary constraints and the work has not been done yet. The development plan requires support for employment to provide local jobs – where is that? The employment allocation on the Cockett Lane scheme was given over for more housing.

- Character and appearance - loss of views of open fields on approach to the village. The developments will result in the loss of views of St Michael's church on the approach from the east. The sites occupy a prominent position on a hillside. The developments would be out of character with the conservation area on the south side of Mansfield Road and out of character with the village generally. Although the site has been farmed each year and the hedges kept tidy, it has recently been let to go into disrepair to suggest that it is unfarmed.
- Highways – parking in the village is already difficult. On-street parking makes access difficult and dangerous, especially at peak times. There was an accident on the main road opposite The Lion public house recently. The Co-op car park is generally full at peak times. The recently completed Barratt development (100 homes) has exacerbated parking and traffic flow problems in the village. Although the speed limit on the road was reduced to 30mph a couple of years ago, vehicles still travel at speeds in excess of 50mph. More cars mean more opportunities for collision. There are also significant concerns related to traffic pollution, noise and congestion.
- Accessibility – there is no pathway into the village on the development side of the road. No speed calming measures are proposed. Buses parked at bus stops by the site would be an additional hazard. Suggested alternative access via Vicarage Lane is an unpaved unlit rural footpath. It leads onto Blidworth Lane, a narrow metalled road with no footways that is a direct access to the A614 from the village and is very busy. The poor pedestrian access to the village access means that there will be a reliance on travel by private car. Buses do not connect to rail stations or other bus routes for onward commuting. Not all employment is in town or city centres.
- Flooding – an underground stream runs through the site which floods in period of heavy rain. Main road at appeal site regularly floods.

### 13. CONDITIONS

- 13.1 Should the appeals succeed, recommended conditions and the reasons for them are attached as Appendix B. They are based on the suggested conditions agreed between the appellant and the Council and all were discussed at the Inquiry. During the discussion, minor alterations were made to the wording of some of the suggested conditions in the interests of precision. Additional conditions relating to the mix of dwellings, provision of pedestrian crossing points on Mansfield Road and, in relation to the Appeal A scheme, the provision of a permissive footpath, were also mooted during the related discussion. Suggested wording for these was agreed by the parties.<sup>95</sup>

<sup>95</sup> The list of conditions originally suggested is at Doc 14. Following the related discussion at the Inquiry, a revised list was agreed, found at Doc 27, with further revisions at Docs 28 and 31

- 13.2 Suggested condition 14 on the original list was deleted during the Inquiry. Whilst it proposed upgrades to nearby bus stops, it was agreed that there was no need for any upgrades at the present time, the bus stops having been improved only recently.

#### **14. PLANNING OBLIGATIONS**

- 14.1 Each appeal is accompanied by a planning obligation in the form of a deed of agreement,<sup>96</sup> the provisions of which were discussed at the Inquiry.
- 14.2 Consideration of the obligations provided for is to be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.
- 14.3 In order to assist the related discussion at the Inquiry, a CIL compliance statement was provided by the Council at my request.<sup>97</sup> It sets out the need for the various obligations secured and the basis for the financial contributions sought and where/on what they would be spent. Support for the contributions sought by the District and County Councils is provided through Core Strategy policy SP6 and policy DM3 of the DPD, with further detail, including the basis for various of the calculations, provided in the Council's Developer Contributions and Planning Obligations SPD (CD3.6).
- 14.4 In relation to both appeals, the planning obligations secure the following:
- on-site affordable housing provision;
  - on-site provision and management of public open space;
  - a primary education contribution; and,
  - a community facilities contribution.
- 14.5 Affordable Housing: on sites such as this, policy CP1 of the Core Strategy seeks to secure 30% of new housing development as affordable housing. That equates to up to six affordable homes in relation to Appeal A and up to 18 affordable homes in relation to Appeal B. The 30% on-site provision secured by each of the agreements would help address an identified need and meets the relevant tests.
- 14.6 Public Open Space: Two types of public open space are secured by the agreements – amenity open space, which comprises an area of natural and semi-natural green space of not less than 14.4 square metres multiplied by the number of dwellings, and children and young people space which means an area of space for the use of those persons equating to not less than 18

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<sup>96</sup> The original versions in draft form are at Doc 11. Final signed version, including amendments discussed can be found at Docs 29a and 29b.

<sup>97</sup> Doc 19

square metres multiplied by the number of dwellings. In addition, the developer is obliged to submit a specification for both types of open space, including a schedule of planting, together with a management plan for the future management and maintenance of the space, which space would be transferred to a management company. The formula for calculating the quantum of the open space provision is set out in the Developer Contributions and Planning Obligations SPD. These provisions and arrangements are directly related to the developments proposed and are necessary to meet the needs of future occupiers. As such, they meet the relevant tests.

- 14.7 Education: The provision of education infrastructure is an integral part of new residential development and is an important element in achieving sustainable communities. Whilst secondary education needs are provided for via the Council's CIL Charging Schedule, primary education needs are not. I am advised, in this regard, that the village local primary school is currently at capacity.
- 14.8 The agreements secure a sum equal to the number of dwellings multiplied by £2,406, which contribution would be used for the provision of additional primary school places at St Michael's Church of England Primary School in Farnsfield. As only three other contributions have already been secured in relation to this particular school, there would be no conflict with the pooling restrictions.
- 14.9 Mr Norton from Nottinghamshire County Council, who assisted the related discussion at the Inquiry, confirmed that the latest information on education contributions is set out in the County Council's Planning Obligations Strategy (April 2014) a copy of which was not before me. The basis for the calculations is set out in that guidance and is similar to that in the Council's SPD. The provisions secured are directly related to the developments proposed and are necessary to meet the needs of future occupiers. As such, they meet the relevant tests.
- 14.10 Community facilities: the Council's Developer Contributions and Planning Obligations SPD sets out that where residential development of ten or more dwellings generates a need for new or improved community facilities, or makes existing demands on community facilities, a contribution will be sought based on a specified figure also set out in the SPD.
- 14.11 As set out in the CIL Compliance Statement, existing community facilities within the village are currently lacking either in terms of provision or quality. This is reflected in the Parish Council's Strategic Plan 2017/18 which is appended to the Statement. The stated priorities in the Strategic Plan include renovation and improvements to the village hall. Clearly, future residents of the developments proposed would increase demand on community facilities in the village, including the village hall. The agreements each secure a sum equal to the number of dwellings multiplied by £1,384.07 (the figure prescribed in the SPD) to be used on improving Farnsfield Village Hall or, in the event of its closure, relocation or demolition, towards a replacement. Only three other contributions have been secured for this purpose and thus there would be no conflict with the pooling restrictions. The provisions secured are directly related to the developments proposed and are necessary to meet the needs of future occupiers. As such, they meet the relevant tests.

14.12 Local residents expressed concerns about increased pressure on local health service provision, particularly the local doctor's surgery. However, those concerns were not supported by objective evidence and no request for any related contribution was sought by the local healthcare provider.

## **15. INSPECTOR'S CONCLUSIONS**

- 15.1 The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry set out above, and on my inspection of the sites and their surroundings. The numbers in square brackets thus <sup>[1]</sup> refer to paragraphs in the preceding sections of this report from which these conclusions are drawn.
- 15.2 Having regard to the Council's reasons for refusal, the relevant policy context, statutory obligations in terms of heritage assets and the evidence to the Inquiry given by interested parties on other matters, the main considerations that need to be addressed are:
- the relationship of the developments proposed to the policies of the development plan;
  - whether there are factors that warrant giving reduced weight to any conflict with the development plan;
  - the effect of the developments proposed on the character and appearance of the area;
  - the effect on the heritage assets;
  - the effect on the safe and efficient operation of the local highway network through Farnsfield;
  - accessibility of facilities and services for future residents; and,
  - any benefits of the developments proposed.

### ***Relationship to the development plan***<sup>98</sup> [6.1-6.27, 9.12-9.18, 9.111-9.113, 10.2-10.14, 10.73]

- 15.3 At the time of the Inquiry the development plan included the saved policies of the Newark and Sherwood Core Strategy Development Plan Document (March 2011) the Newark and Sherwood Allocations and Development Management Development Plan Document (July 2013) and the Farnsfield Neighbourhood Plan (October 2017).
- 15.4 Policy SP1 of the Core Strategy provides a settlement strategy which identifies the locations for new development. Seven Principal Villages, including Farnsfield, are identified at the third tier in a hierarchy of settlements, below Service Centres and Sub-Regional Centres. The justificatory text to the policy explains that these Principal Villages are communities which have a range of local services that meet day to day local needs and complement the role of Service Centres.
- 15.5 Policy SP2 sets out a delivery strategy in line with policy SP1. Principal Villages are expected to accommodate 10% of the identified housing requirement, with Farnsfield expected to take 10% of that, namely some 142

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<sup>98</sup> Proofs of Mr Machin and Miss Kurihara

dwellings over the Plan period of 2006-2016.<sup>99</sup> Sites to meet this need are allocated in the ADMDPD.

- 15.6 Policy SP3 sets out the policy for the rural areas. Beyond the Principal Villages, housing is to be focused within the main built-up areas of villages. Development away from the main built-up areas of villages, in the open countryside, will be strictly controlled and restricted to uses that require a rural setting. The ADMDPD sets out policies to deal with such applications.
- 15.7 The extent of the main built up areas of the Principal Villages is defined by village envelopes. That for Farnsfield is identified in the ADMDPD (Map 7 in that document) and is given effect by policy DM1 which sets out support for new development, including housing within the village envelopes of the Principal Villages. Policy Fa/Ho/1 allocates land at the eastern end of the village, off Ridgeway and Greenvale, for around 35 dwellings. Permission was subsequently granted for 60 homes there, which were under construction at the time of my visit. In addition, policy Fa/MU/1 allocates land at the western end of the village off Cockett Lane for mixed use development, including around 70 dwellings. Subsequent planning permissions, including one that replaced the original commercial element with additional housing,<sup>100</sup> resulted in a total of 106 dwellings on that site, which have been completed. Policy DM8 of the ADMDPD sets out that, in the open countryside, development away from the main built-up areas of villages will be strictly controlled, limited to specific types of development.
- 15.8 In accordance with the CS and the ADMDPD, policies FNP1 and FNP2 of the Neighbourhood Plan direct new development to land within the Farnsfield village envelope. Section 7.1 of the Neighbourhood Plan also sets out that whilst it does not identify further significant areas for housing development (given the current levels of growth that have already been permitted in the village on allocated and non-allocated sites) development will generally be supported within the village envelope. It was accepted for the appellant that housing outside the village envelope would conflict with the Neighbourhood Plan.<sup>[10.12]</sup>
- 15.9 The appeal sites are not allocated for housing development in any part of the development plan and there was no dispute that they lie outside the defined village envelope. Thus, they are in the open countryside for the purposes of planning policy. In providing market housing schemes, the appeal proposals do not comprise development that requires a rural setting and do not meet any of the exceptions for built development set out in the relevant policies. The developments proposed would clearly be contrary to the policies referred to above. Given the fundamental nature of that policy conflict, I find that the proposals are not in accordance with the development plan as a whole in terms of the location of new residential development.

***Any factors that might warrant giving reduced weight to conflict with the development plan***

- 15.10 The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development. Paragraph 14 indicates

<sup>99</sup> This figure is confirmed in the ADMDPD paragraph 3.18

<sup>100</sup> Doc 12

that, for decision-taking, this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate that development should be restricted.

- 15.11 The development plan is clearly not absent in this case. Moreover, given the conclusion that I have reached above, with regard to the proposals being contrary to the development plan, I am satisfied that the development plan in this case is sufficient to enable such an assessment and thus is not silent. However, the appellant argued that the development plan should be considered as out-of-date, for reasons relating to consistency with the Framework, and housing land supply.<sup>[9.14, 9.52, 9.106, 9.11]</sup>

*Consistency with the Framework*

- 15.12 The Core Strategy was adopted prior to publication of the Framework. Recognising that there may be issues of full compliance, the Council has had the policies in the Core Strategy assessed by an independent body, the Planning Advisory Service (PAS).<sup>101</sup> Whilst it concludes that policies SP1 and SP2 are in conformity with the Framework, it considers that policy SP3 is not fully compliant. That is on the basis that Framework paragraph 28 gives broader support to rural business development compared to policy SP3, which seeks to restrict development in the open countryside to those which specifically require a rural setting; that the policy does not reflect the positive support for rural services and facilities embraced by Framework paragraph 28; and given that paragraph 55 of the Framework is less restrictive than the policy in terms of location - in seeking to promote sustainable development in rural areas, paragraph 55 states that housing should be located where it will enhance or maintain the vitality of rural communities and allows development where it would fulfil one of a number of bullet point alternatives, whereas policy SP3 restricts housing to new villages, the only exception being agricultural or forestry use.
- 15.13 I recognise that policy SP3 may be more restrictive in its approach to housing in rural areas than the Framework. That said, in seeking to focus housing in sustainable and accessible villages in order to help protect the countryside, I am satisfied that its overall approach accords with the thrust of the Framework which, among other things, recognises the intrinsic character and beauty of the countryside and supports thriving rural communities within it.
- 15.14 Whilst the PAS review finds that policy CP13 is compliant with the Framework, there is no mention of policy CP14 which appears to have been overlooked. With regard to the ADMDPD, this was adopted in 2013, after publication of the Framework and was found sound. Nevertheless, the appellant argued that policies CP13 and DM5 in relation to landscape, and policies CP14 and DM9 in relation to heritage, are inconsistent with the Framework because they do not specifically allow for acceptable levels of residual harm and do not contain provision for any balance between harm and wider benefits to be struck.

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<sup>101</sup> Doc 9

15.15 In essence, these policies require an assessment to be made against various criteria aimed at ensuring for instance, that development addresses positively the implications of the landscape zone within which it lies, that it reflects local distinctiveness, and that it protects and enhances the historic environment. As such, whilst they may not contain specific reference to balancing any residual harm against any benefit, I consider that they reflect the aims of the Framework inasmuch they seek to create a high quality environment and ensure that development contributes to protecting and enhancing our natural, built and historic environment.

15.16 All in all, I am satisfied that those policies on which these decisions turn are in broad conformity with the Framework.

### *Housing Land Supply*

15.17 Framework paragraph 47 sets out an aim to boost significantly the supply of housing. It requires that local planning authorities 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 the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% or 20% to ensure choice and competition in the market for land. According to paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

### Objectively Assessed Need (OAN)<sup>102</sup> [9.23-9.49, 10.15-10.29, 10.40]

15.18 There is no agreement between the parties as to which of the various OAN figures promoted provides the most appropriate basis against which to assess housing supply. Newark and Sherwood is one of three separate authorities that make up the Nottingham Outer Housing Market Area (HMA), the other two being Ashfield and Mansfield. The Council's position at the Inquiry relied on the Nottingham Outer 2015 Strategic Housing Market Assessment (SHMA)<sup>103</sup> which is based on an OAN of 454 dwellings per annum (dpa). The appellant did not contest the SHMA assessment of the OAN for the HMA. Rather, relying on an appeal decision relating to land at Southwell Road, Farnsfield (Farnsfield 1)<sup>104</sup> its position at the Inquiry was that the OAN should not be assessed by reference to the HMA. In the Farnsfield 1 case, the Inspector found that the minimum housing need figure for Newark and Sherwood was 499 dpa which, in order to achieve a meaningful uplift to reflect future economic growth, address issues of affordability and make some contribution towards affordable housing, she considered should be increased to 550 dpa.<sup>105</sup> On that basis, she went on to conclude that the Council could not demonstrate a five year supply of housing land at that time.

<sup>102</sup> See the proof and rebuttal statement of Mr Calvert and the proof and supplementary statement of Mr Gardner

<sup>103</sup> CD5.6

<sup>104</sup> APP/B3030/W/15/3006252 at CD4.3. This site is located outside but adjacent to the eastern edge of the village envelope. Permission was granted on appeal for up to 40 dwellings on that site.

<sup>105</sup> See paragraph 32 of the Appeal Decision (CD4.3)

- 15.19 It is well established that in the context of a Section 78 appeal, it is not for me or the Secretary of State to carry out some sort of Local Plan process to arrive at an alternative housing requirement figure. That is a matter for the emerging Local Plan Review. However, in order to assess whether the Council can demonstrate a five year supply of housing land, it is necessary to make an evidence-based assessment of OAN to inform the basis for a five year requirement figure.
- 15.20 The appellant maintained that there had been no material change of circumstances since the Farnsfield 1 Decision which might warrant a different conclusion now. As such, it was argued that the higher OAN identified by the Farnsfield 1 Inspector was the most appropriate figure.
- 15.21 At the time of the Farnsfield 1 Inquiry (November 2015) the SHMA was less than a month old. At that stage, neither of the other Nottingham Outer Authorities had committed to adopt the SHMA, or cooperate to deliver it. In addition, the OAN was not incorporated into any adopted or emerging plan and was otherwise untested. On that basis, the Inspector assessed the OAN for Newark and Sherwood in isolation.
- 15.22 She considered that the job forecasts for the HMA as a whole may have underestimated the level of likely job growth in Newark and Sherwood, and that the participation rates used for older workers were too optimistic. As a consequence, she concluded that an adjustment was required to reflect ten year migration trends, producing a demographic starting point of some 499 dpa, with a further upward adjustment to reflect projected economic growth, market signals and increased affordability which, in her view, increased the OAN to some 550dpa. As noted by the appellant, it is the Inspector's bespoke increase for economic growth that produced this figure and only this element is inconsistent with the OAN derived from the SHMA.<sup>[10.19ii]</sup>
- 15.23 We are now some two years on from the Farnsfield 1 decision relied on by the appellant. In coming to a view on the evidence in the current appeals, I am mindful that both the Framework and the Government's Planning Practice Guidance indicate that the OAN should be assessed across the HMA,<sup>106</sup> although I recognise that a decision maker is not bound to do so. In essence, the approach to be adopted in each case is a matter of planning judgement.
- 15.24 The St Modwen Court of Appeal judgement (October 2017) illustrates that an important consideration is likely to be the extent of the cooperation between the Councils that make up the HMA. Since Farnsfield 1, the three Nottingham Outer HMA Authorities, who are clearly working collaboratively to identify and meet their housing needs,<sup>107</sup> have adopted the 454 dpa OAN specified in the SHMA for Newark and Sherwood – that OAN has been incorporated into the submission drafts of both the Ashfield and the Newark and Sherwood Local Plans and in the consultation version of the draft Mansfield Local Plan. The SHMA has been considered at the Ashfield Local Plan Examination (Hearings

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<sup>106</sup> Paragraphs 47 and 159 of the Framework together with Paragraph: 003 Reference ID: 2a-003-20140306 and Paragraph: 010 Reference ID: 2a-010-20140306 of the Planning Practice Guidance

<sup>107</sup> As demonstrated, for example, by the recently signed Memorandum of Understanding which ensures that need across the HMA will be met (Doc 32) paragraph 3.12 of the emerging Ashfield Local Plan (Gardner Appendix 6) Newark and Sherwood Statement of Compliance with the Duty to Cooperate (Mr Gardner Appendix 8) the Ashfield Local Plan Statement of Common Ground between all the Nottingham Outer HMA authorities (Gardner Appendix 9).

held in October 2017) with initial indications at the time of this Inquiry being that the Local Plan Inspector was broadly content with the figures identified for the OAN.<sup>108</sup>

- 15.25 The Councils which make up the Nottingham Core<sup>109</sup> and the Nottingham Outer HMAs had concerns about apparently contradictory conclusions in the Farnsfield 1 Decision, in particular, the Inspector's acceptance that on the one hand, significant growth would occur on a given area based on an econometric forecasting model, whilst on the other hand challenging some of the assumptions in the model that, if reduced, would result in lower levels of economic activity being forecast overall.
- 15.26 In light of the Inspector's concerns about the Employment Land Forecasting Study (ELFS) which informed the SHMA, the Nottingham Core and Nottingham Outer HMA Authorities together sought further information about the evidence that informed those forecasts. That led to the publication of a joint Position Statement in July 2016<sup>110</sup> which concluded that, if the assumed increase in activity rates were not to occur, then the growth in the labour force would be significantly curtailed, with lower economic activity and job demand as a result locally, regionally and nationally. In that context, the Position Statement considers that the Farnsfield 1 Decision includes conclusions that are difficult to reconcile, namely that the Experian forecasts, which are more optimistic than other national forecasts, underestimate economic growth when compared to past trends, and that the participation rates used in the same Experian forecasts are too optimistic. In essence, it is not reasonable to adjust the assumptions underlying job growth figures without modifying those figures in consequence.
- 15.27 Clearly, there are inherent uncertainties in forecasting future levels of economic output and jobs. However, based on the evidence available, the Position Statement sets out that the various HMA authorities are satisfied that the ELFS 'policy-on' forecasts reflect the policy aspirations of the various key stakeholders and provide a robust basis for the future planning of both HMAs.
- 15.28 Since Farnsfield 1, the Government has also published a consultation document *Planning for the right homes in the right places*,<sup>111</sup> which not only reinforces the need for local authorities to work together across a HMA but also introduces the concept of a standardised approach for assessing housing need. It calculates annual housing needs for all local authorities based on that methodology. At 1,320 dpa, the combined total of the OAN for the Nottingham Outer Authorities is very similar to the total OAN of 1,310 dpa set out in the SHMA, although the distribution is slightly different - the OAN for Mansfield is slightly lower than in the SHMA, whilst that for Ashfield and Newark and Sherwood is correspondingly greater.<sup>[9.33]</sup>
- 15.29 The appellant suggested that the similarity in the overall figure is coincidence, rather than representing an indication that the SHMA figure is necessarily robust. My attention was drawn, in this regard, to the fact that whilst the

<sup>108</sup> Mr Gardner supplementary proof paragraph 4

<sup>109</sup> The Nottingham Core HMA includes Broxtowe, Erewash, Gedling and Redcliffe Borough Councils together with Nottingham City Council.

<sup>110</sup> CD5.5

<sup>111</sup> Doc 15

standardised methodology starts from the same position as that which informed the SHMA, the key building block being the household projections, the figure derived from the methodology does not include anticipated economic growth.

15.30 However, as noted earlier, the economic growth concerns of the Farnsfield 1 Inspector were dealt with in the joint Position Statement, which was informed by further work, as well as information provided by Experian about the forecasts that fed into the ELFS. That additional work indicated that there was no need to consider even a brief review of the figures, given that there had been no material change in economic considerations. To that end, the Council's April 2017 Statement of Five Year Housing Land Supply as of 1 April 2017<sup>112</sup> assumes that the economic growth allowed for in the SHMA is still relevant. Although the Council accepted that, had it commissioned a new full SHMA, it would have looked at the whole range of matters, including economic growth, it was not deemed necessary at this juncture given the joint Position Statement and the comments of Experian who found that the SHMA was not wrong in its conclusions on economic growth. Moreover, 2016 projections are only currently available at a national level. Although it is too early for local figures, the indication is that, on average, population projections are likely to reduce.

15.31 Generally, figures for the HMA should be the sum of the constituent authorities. Based on the standardised methodology, the OAN for Newark and Sherwood is 510 dpa, some 56 dpa more than that in the SHMA for Newark and Sherwood. I recognise, in this regard, that housing need should generally be provided where that need arises. The appellant maintains that unless there are constraints (and my attention was not drawn to any significant constraints here) the need should therefore be met within the District rather than the HMA as a whole. However, the standardised methodology is set out in a consultation paper on which comments are sought. It is not, at the present time, adopted practice.

15.32 The appellant drew attention to the apparent lack of progress on preparation of the emerging Mansfield Local Plan, compared to the progress that has been made in relation to the Plans for Ashfield and Newark and Sherwood. Indeed, during the Inquiry, a Written Ministerial Statement (WMS) relating to Local Plans was issued,<sup>113</sup> identifying Mansfield as an authority that has recently either failed in the duty to cooperate, or failed to meet the deadlines set out in its Local Development Scheme. As a consequence, Mansfield is in receipt of a letter starting the formal process of intervention as set out in the housing White Paper. The letter gives the Council the opportunity to put forward any exceptional circumstances which, in its view, might justify its failure to produce a Plan under the 2004 Act regime. I note, however, that any decision on intervention will also be informed by the wider planning context for the area, specifically the extent to which the authority might be working cooperatively with other authorities to put strategic plans in place, and the potential impact that not having a plan has on neighbourhood planning activity.

<sup>112</sup> CD5.4. Document published July 2017

<sup>113</sup> Local Plans: Written Statement – HCWS254 made on 16 November 2017

- 15.33 A final decision on whether intervention is an appropriate way forward in relation to Mansfield may well be made before this appeal is determined. Any implications of that would be a matter for the Secretary of State in due course. Suffice it to say at this stage that, at the time of the Inquiry, Mansfield had a draft version of its emerging Plan out for consultation. Moreover, together with Ashfield and Newark and Sherwood, it is a signatory to the Memorandum of Understanding<sup>114</sup> which confirms that all three authorities will work collaboratively to deliver the development requirements of the Nottingham Outer Area and formalises their agreement to deliver the OAN identified for each authority area by the SHMA, within their own District boundary. Whilst the progress that has been made on the Plans for Ashfield and Newark and Sherwood means that, even were the standardised methodology to be implemented, the transitional arrangements at Table 1 of the consultation paper provide that they would not necessarily be required to alter their respective OANs, the delayed progress with the Mansfield Plan may mean that it would need to change its figures to reflect the DCLG figure. Nevertheless, the three Outer Nottingham HMA authorities have adopted a commendably collaborative approach which underpins the respective currently emerging Local Plans. I am not persuaded, in this regard, that it is appropriate at this time, as part of these S78 appeals, to seek to unpick that.
- 15.34 The findings of the Farnsfield 1 Inspector on the OAN were examined during a Hearing in relation to an application for residential development in Blidworth (Red Lion appeal).<sup>115</sup> The Inspector in that case found that there had been a change in circumstances since the earlier decision, including the Council's review of that decision and subsequent Position Statement of July 2016. Moreover, as does the appellant in relation to the instant appeals, the appellant in that case provided no independent evidence to challenge the figures in the Council's 2017 Statement of Housing Land Supply. He went on to conclude that the Council could demonstrate a five year supply of housing land. Whilst that decision is a material consideration, I am mindful that the appeal was dealt with by means of a Hearing, where the housing evidence was not tested by cross-examination. I confirm, in this regard, that I have considered the evidence before me on its own merits.
- 15.35 All in all, I consider that the OAN of 550 dwellings per annum preferred by the Farnsfield 1 Inspector and the appellant is not supported by any robust or substantiated evidence. What evidence there is, suggests a lower figure, be it the 454 figure in the SHMA, the 499/500 figure referred to by the Farnsfield 1 Inspector, or the 510 figure suggested by the standardised methodology. For my part, I find nothing amiss with the SHMA to indicate that the higher figures are to be preferred. I therefore consider that, at the present time, planning for more than a requirement based on an OAN of 454 dpa would be inconsistent with both current and emerging advice on housing need at a local and national level.
- 15.36 Moving on then to the matter of the supply itself. The Council's latest Statement of Five Year Housing Land Supply as of 1 April 2017<sup>116</sup> suggests

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<sup>114</sup> Doc 32

<sup>115</sup> APP/B3030/W/17/3168018 Red Lion Lodge, Field Lane, Blidworth. Appeal dismissed 22 August 2107 – at Appendix 14 to the proof of Mr Gardner

<sup>116</sup> published in July 2017(CD5.4)

that the Council can demonstrate a 6.2 year housing land supply, based on a requirement of 576 dpa, which derives from an OAN of 454 dpa, plus a 20% buffer and meeting the identified shortfall over the next five years.<sup>117</sup> Having re-assessed elements of supply in preparing evidence for this Inquiry, the Council considers that it actually has a supply of 6.36 years based on the same requirement.<sup>118</sup> However, the appellant took issue with the Council's supply figure, suggesting that a blanket lapse/non-implementation rate should be applied, that C2 units should not be included, and that the Council was overly optimistic in its estimations of the time taken to determine planning applications, for delivery lead-in times post-decision, and delivery in relation to particular sites.

Lapse rates<sup>119</sup> [9.46, 10.31]

15.37 For the appellant, Mr Calvert initially maintained that the Council's housing land supply is not robust as it does take account of any lapse rate. It was suggested that a blanket 10% reduction should be applied to all the sites in the supply. However, during cross examination, he accepted that what his evidence looked at was not an assessment of the rate of non-commencement and lapse of particular sites. Rather it was, in essence, simply an assessment of accuracy of the Council's housing trajectory, comparing predicted to actual completions. They are two separate concepts. During cross-examination he accepted, in this regard, that in the absence of any evidence to support a lapse rate properly construed, it would not be appropriate to apply discount on that basis to the sites in the Council's supply.

15.38 There is nothing in either national policy or guidance, or in case law, that endorses the principle of applying general discounts to housing supply over and above the detailed site analysis which informs the Council's supply figures. In the absence of any substantiated evidence in relation to lapse rates, I am not persuaded that the suggested 10% lapse rate should be applied to the Council's supply. In the event that the Secretary of State does not agree, Table 1.3 appended to the Housing Statement of Common Ground, as amended,<sup>120</sup> includes figures with a 10% so called lapse rate applied to the various OAN scenarios for comparison.

Determination of planning applications and lead-in times<sup>121</sup> [9.47, 10.32]

15.39 It was suggested by the appellant that past performance in relation to lead-in times and build-out rates may provide some indication as to likely future performance. In this regard, the appellant found that the average (mean) determination period for different types of application by the authority is 8.8 months for outline applications; 6.86 months for full planning applications; and 5.18 months for reserved matters applications.<sup>122</sup> It was also suggested, based on historical records, that a period of 12-18 months is

<sup>117</sup> In relation to the buffer, it was agreed between the parties that this is an Authority where a 20% buffer is appropriate. I have no reason to take a different view.

<sup>118</sup> Doc 16

<sup>119</sup> See the proof of Mr Calvert and his rebuttal (Doc 5), the proof and rebuttal of Miss Kurihara and Doc 16  
<sup>120</sup> Doc 16 as amended by Doc 23

<sup>121</sup> See the proof of Mr Calvert and his rebuttal (Doc 5), the proof of Miss Kurihara and rebuttal and Doc 16

<sup>122</sup> Figures taken from Mr Calvert's Appendix 1. Paragraph 1.3 of Miss Kurihara's rebuttal proof indicates that the period for determination of outline application 16/01478/OUT was 3 months not 15 months. When this corrected figure is used, the mean (average figure) reduces slightly.

a typical lead-in time between the grant of full planning permission or reserved matters and delivery of the first homes on a site.

15.40 However, there can be any number of reasons for delays in determining applications or delivery of the first dwellings on a site, which can often be case or site specific, rather than being representative of some generic delay likely to be repeated in other cases. There may also exceptionally be 'outlier' cases that take much longer to determine or implement for some reason, which are the exception rather than a common occurrence but can skew the statistics.

15.41 If reliance is to be put on past rates, the Council suggests that a median average may be more appropriate, which would remove the potential skewing caused by 'outliers' and would be more indicative of what might be considered as 'typical'. Of the cases cited by the appellant, once the outlier is removed, such an approach suggests an average of 6.4 months for determination of all types of application.<sup>123</sup>

15.42 The Council also takes issue with the average 12-18 month figure relied on by the appellant in terms of lead-in times to first delivery. I share its concerns, given that the range is derived from just two emails from developers. The Council provides evidence of eight sites where the number of months between approval and first completions is between 7-13 months, based on discussions with developers or their agents.

15.43 In my view, it can be misleading to apply generalised assumptions based on some kind of average figure derived from past performance to each and every site. However it is measured, I am not persuaded that looking at an average figure for determination based on past performance is necessarily helpful, not least because some of the reasons for delay may be beyond the control of the local planning authority. Moreover, given the increased focus on the speed of decision making and delivery in light of the need to boost significantly housing land supply, past performance rates will not necessarily reflect future delivery. Similarly, the examples in the evidence before me show a considerable range in the time between approval and first completions, as opposed to some obvious common pattern. There is nothing in the evidence that leads me to suppose that some kind of average figure for either determination, or time to first delivery would assist, necessarily, in assessing the robustness of the housing land supply in this instance.

C2 units<sup>124</sup> [9.46, 10.33-10.36]

15.44 The Government's Planning Practice Guidance (the Guidance) advises that local authorities should count housing provided for older people, including residential institutions in use Class C2, against their housing requirement.<sup>125</sup> It does not, however, set out how local planning authorities should do that. Rather, it states that the approach to be taken should be clearly set out in the Local Plan. As confirmed during the round table discussion on housing land supply at the Inquiry, the appellant's main concern on this matter was

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<sup>123</sup> Paragraph 1.5 of Miss Kurihara's rebuttal proof

<sup>124</sup> Proof of Mr Calvert, his statement on Five Year Housing Land Supply and Contested Sites (P17-2155.005) and his rebuttal proof (Doc5) plus the proof of Miss Kurihara and her rebuttal.

<sup>125</sup> Paragraph 3-037 20 March 2015

that there is no policy setting out the approach in either the current development plan or the emerging Local Plan. My attention was drawn in this regard, to an appeal decision where, having regard to the advice in the Guidance, an Inspector concluded that absent any indication in the development plan or the emerging plan of the approach setting out how the authority would count care home and extra care accommodation against its requirement, there was no substantial evidence before her to support the level of provision to be included in any calculation of housing land supply.<sup>126</sup>

15.45 In that case however, the Inspector did not discount all C2 accommodation from the supply. Rather, she applied a discounted rate. In addition, part of the difficulty in that case arose because it cannot be assumed that a C2 accommodation bed space releases housing on to the housing market on a 1:1 basis, as residents may well retain their homes. That is readily recognised by Newark and Sherwood who do not proceed on that assumption.

15.46 There is a clear distinction in the evidence before me in relation to the current appeals, between bedspaces and units of accommodation, with the need for bedspaces in residential care homes being assessed separately in the SHMA. As such, they are not included in the supply.<sup>127</sup> More importantly however, in the current cases the SHMA, which informs the emerging Plan includes clear references to an evidenced housing need for supported accommodation and the approach to be taken. In addition, the emerging Plan includes reference to the need for additional levels of care and support along with the provision of specialist accommodation. It confirms that the demand for supported housing is reflected in both the market and the affordable sector,<sup>128</sup> with Table 2 of the emerging Plan setting out the supported housing requirement.

15.47 The appellant contests two sites in relation to C2 units. CO/MU1 – Collingham: the outline planning permission for this site includes 60 extra care units, forming a continuing care retirement community.<sup>129</sup> I was advised that the units are to be sold on long term leases by a management company, with a range of care 'packages' available to meet current and future needs of occupiers. NUA/HO/8 – Bowbridge Road: the full permission for development of this site is for 60 extra care units comprising a mix of one and two bed flats, providing independent living with varying degrees of care depending on individual needs.<sup>130</sup>

15.48 Whilst there would be facilities such as a communal lounge, hobbies room, gym etc, each of the C2 units has its own lounge, bathroom and kitchen behind individual front doors. I was advised that they are also regarded as being individually liable for Council tax and generate an award under the New Homes Bonus. In addition, unlike bed spaces in a communal facility, they are more likely to result in the movement of an entire household, releasing housing onto the market.

15.49 The appellant advised that nine units in first scheme and 12 units in the second scheme are the subject of occupancy conditions, to the effect that at

<sup>126</sup> APP/R0660/A/13/2203282 (at Appendix 6 to the proof of Mr Calvert)

<sup>127</sup> Paragraphs 10.49 and 10.50 of the SHMA (CD5.6)

<sup>128</sup> CD3.7 paragraphs 5.5 and 5.6

<sup>129</sup> Application No 12/00895/OUTM

<sup>130</sup> Application No 15/02299/FULM

least one occupier in each unit has to be over the age of 60. It was argued, in this regard that, as a consequence, those units are not open market in the same sense as C3 dwellinghouses. However, I see no good reason why a minimum age restriction on some units should exclude them necessarily from the housing supply, particularly given the ageing population in the District as set out in the SHMA.

15.50 All in all, it seems to me that the C2 accommodation in each scheme accords generally with the definition of extra care in the SHMA to the extent that they can be regarded as meeting part of the identified OAN. Notwithstanding the absence of any specific policy in relation to such accommodation identified in the adopted or emerging Local Plan, I consider the evidence in this case to be sufficient to warrant the two schemes referred to being retained in the Council's housing land supply.

Individual sites<sup>131</sup>[10.37-10.39]

15.51 The appellant takes issue with the delivery of a number of the larger sites identified in the Council's housing land supply.<sup>132</sup> Where the existence or otherwise of a shortage of land for housing is relevant to an appeal, it is necessary to have regard to paragraph 47 of the Framework. Paragraph 47 requires that authorities identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. Footnote 11 to the Framework sets out that to be deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.

15.52 The matter of deliverability and delivery was considered in the *St Modwen Developments Limited* judgements,<sup>133</sup> which confirmed that paragraph 47 is concerned with an assessment of the likelihood that housing will be delivered in the five year period and that there is no need for an assessment of what would probably be delivered. Thus, for a site to be regarded as deliverable, it need not be necessarily certain or probable that housing will be delivered upon it, or that it would be delivered to the fullest extent possible within the five years. Rather, it should simply be capable of being delivered. As a consequence, there needs to be clear evidence to show not that there is simply doubt or improbability, but rather that there is no realistic prospect that a site could come forward within the five year period for it to be discounted from the supply.

15.53 Looking firstly at **sites with planning permission**:

15.54 NAP2A Bowbridge Lane (land south of Newark) – this site forms part of a larger site allocated in the Core Strategy as an SUE, which allocation is retained in the emerging Local Plan. It benefits from an extant planning permission for 3150 homes. The Council estimates delivery of 187 dwellings

<sup>131</sup> See the proof Mr Calvert and his statement on Five Year Housing Land Supply and Contested Sites (P17-2155.005) the proof and rebuttal of Miss Kurihara, and the Housing Statement of Common Ground (Doc 16)

<sup>132</sup> Newark and Sherwood Statement of Five Year Housing Land Supply (1 April 2017) (CD5.4)

<sup>133</sup> *St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and Save our Ferriby Action Group* [2016] EWHC 968 (Admin) and subsequently *St Modwen Developments Ltd v SSCLG, East Riding of Yorkshire Council and Save our Ferriby Action Group* [2017] EWCA Civ 1643

on part of the site over the five year period to 31 March 2022, with the first units expected in year three. The dwellings are expected from two reserved matters applications.

- 15.55 A reserved matters application for 64 units was pending consideration at the time of the Inquiry. It was no part of the appellant's case that these units should be considered as not deliverable. Rather it was contended that there is no evidence to suggest that any further units above the 64 should contribute to the supply. However, as set out above, that is not the test.
- 15.56 The Guidance indicates that "*deliverable sites for housing could include those that are allocated for housing in the development plan ... unless there is clear evidence that schemes will not be implemented within five years*".<sup>134</sup> In addition, the Wainhomes judgement<sup>135</sup> confirms that an allocation in an emerging Local Plan may be evidence in support of a conclusion that such sites are deliverable. Here, given that the allocation is in an adopted Local Plan, the Wainhomes conclusion may be held to apply with greater force.
- 15.57 Site NAP2A forms part of phase 1 of a larger development site. A housebuilder is already on a different part of phase 1 and it was confirmed that there is no infrastructure barrier to delivery of the remaining 123 dwellings anticipated as being delivered within the five year period on this site. Moreover, even the appellant's average figures in relation to the time taken to determine applications and then time to first completions do not suggest to me that the site is not capable of being delivered, or that there is no realistic prospect that it could come forward.
- 15.58 Co/MU/1 Station Road (Braemer Farm) and NUA/HO/8 Land at Bowbridge Road – the first of these is expected to contribute 140 homes over the period, including 60 C2 units. The second is anticipated as providing 60 units, all of which would be C2. The appellant takes issue with the inclusion of C2 units in the supply. However, for the reasons set out earlier, I am satisfied that it is appropriate to include them in the supply and the C2 units on these sites should not be discounted.
- 15.59 The next category of sites comprises **Core Strategy allocations**. As noted above, the Wainhomes judgement and the Guidance suggest that such sites could be considered as deliverable. The Council anticipates delivery of some 500 dwellings from three such sites. One is considered above (NAP2A). Looking at the other two:
- 15.60 NAP2B Land east of Newark – Originally estimated as delivering 165 dwellings with first completions 2019/20. However, due to accepted difficulties with access routes to the site, the Council reduced the number of dwellings to be delivered over the five year period to 85 units, with first completions anticipated in year four.<sup>136</sup>
- 15.61 I was advised that pre-application discussions with a housebuilder, based on initial plans for the site, are ongoing and that an Environmental Statement is in preparation, with a formal application anticipated in early 2018.

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<sup>134</sup> Reference ID: 3-031-20140306

<sup>135</sup> *Wainhomes(South West) Holdings and (1) The Secretary of State for Communities and Local Government (1) Wiltshire Council (2) Christopher Ralph Cornell and Sarah Cecilia Cornell* [2013] EWHC 597 (Admin).

<sup>136</sup> Miss Kurihara rebuttal paragraph 5.4

- 15.62 Notwithstanding the absence of a planning application at the present time for the anticipated units, the appellant suggests that there are access issues that would affect delivery. The Council confirmed that the required access was not approved, but suggested that it could be secured by means of a CPO. Such proceedings can take a considerable time and, if that was the only means of securing the required access, I might be inclined to the view that the site was not deliverable. However, I was also advised that development could be delivered via a Council owned access point, as supported by the Highway Authority. Being mindful of the definition of deliverability endorsed by the courts, whilst there can be no certainty of delivery, that option suggests to me that the site is at least capable of being delivered. On that basis, I am satisfied that it should remain as part of the identified supply.
- 15.63 NAP2C Land around Fernwood – anticipated as delivering 335 homes over the five year period, via three separate developers, with first completions expected in year two. At the time of the Inquiry, two outline planning applications had been approved subject to a S106 agreement, negotiations on which were ongoing.
- 15.64 The developers of one of those schemes (Application No 14/00465/OUTM) are obliged to submit a reserved matters application by 24 November 2017 as part of a land deal arrangement. The appellant considers that the tight timescale for the submission of reserved matters is not achievable, such that the site can be considered as deliverable. However, the Council confirmed that the District and County Councils and the developers are all signed up to meeting the timetable, with approval of the expected reserved matters application anticipated in April 2018. Commencement on site is expected in late 2018, with the potential for initial completed units in 2018/2019. Whilst the timetable is tight, I am satisfied that the 220 homes anticipated from this scheme are capable of being delivered.
- 15.65 The remaining 115 homes that form part of this element of the supply would derive from two other developers. A reserved matters application on behalf of Persimmon is anticipated in early/mid 2018, with approval expected by mid/late 2018. A start on site is anticipated in early 2019 with first completions 2019/2020. An outline application on behalf of Larkfleet Homes is currently under consideration, which was due to go to committee in December 2017. The developers have advised that submission of a reserved matters application would follow swiftly after outline approval. On that basis, the trajectory anticipates reserved matters approval in mid-2018, with a start on site in Q3 2018.
- 15.66 All in all, whilst the timescales are tight, there was no evidence to demonstrate that there was no realistic prospect that those sites could not come forward within the five year period.
- 15.67 Next are **sites included in the SAMDPD**, which the Council considers will deliver some 707 dwellings. Particular sites with which the appellant takes issue are:
- 15.68 NUA/HO/10 Land north of Lowfield Lane – Some 80 homes are anticipated on this site, with first completions expected in year three (2019/20). Currently, no application has been submitted for development of this site, with the

appellant estimating that it would take at least three years before first completions (ie October 2020).

- 15.69 The Council has set up a Development Management Company which is currently in its land assembly phase. It already owns land to the west of this site which would provide the open space for the scheme, with a price agreed for the allocated site. Again, absent any definitive information specific to this site to demonstrate that it is not capable of being delivered, I see no reason to discount it from the supply.
- 15.70 SO/HO/4 Land east of Kirklington Road – Estimated as providing 45 units, with first completions in 2019/20. An application for 18 units is currently under consideration, with approval anticipated early 2018 notwithstanding an objection from the Parish Council.
- 15.71 I was advised that the layout for the current application provides a means of access to the remainder of the site. There is no indication that the current scheme, once approved would not proceed and neither is there any robust evidence to demonstrate that an application(s) for the remainder of this site will not come forward in sufficient time to secure delivery of the remainder of the site. On that basis, I am satisfied that this element of the supply remains capable of delivery.
- 15.72 SO/HO/7 Southwell Depot – estimated as providing 15 units with first completions in 2020/21. Whilst an application for nine dwellings on this site was recently refused and subsequently dismissed at appeal, the reasons that the appeal did not succeed related to matters of detail not principle. In particular, I note that in dismissing the appeal, the Inspector found, among other things, that the scheme did not make effective use of the land. The absence of a planning permission for 15 units on the site does not preclude it from being a deliverable site in terms of the five year supply. Indeed, the appellant accepted that there is sufficient time to deliver 15 units on the site in accordance with the Council's trajectory. I therefore see no reason at the present time to only allow for nine units on this site as suggested by the appellant.
- 15.73 BI/HO/2 Noble Foods – Anticipated as providing 55 homes with first completions expected in year four. The appellant considers the trajectory to be optimistic, suggesting that first completions, comprising 25 dwellings, would not be likely until year five.
- 15.74 This site lies adjacent to another allocated site Ho PP (which had an extant permission for 77 dwellings when the ADMDPD was adopted, but has since lapsed) both of which sites are in the same ownership. The owners have advised that they intend to deal comprehensively with the combined sites.
- 15.75 The factory on this site ceased operating in 2015 and the buildings have been demolished. There are no issues therefore with pending re-location of the business nor, as suggested by the appellant, with any ecological interest in the buildings. The agent for this site has also advised that an outline application for the site as a whole is in preparation, with the Council confirming that a scheme has been developed with a pre-application meeting planned for 23 November 2017. I see no reason in this regard, as to why an outline application might not reasonably be expected to be forthcoming in early 2018. On that basis, allowing for subsequent submission and approval

of reserved matters, discharge of conditions, site mobilisation and time for first completions, I am not persuaded that delivery of the anticipated total of 55 dwellings is wholly unrealistic.

15.76 BL/HO/3 Land south of New Lane – Anticipated as providing 75 units with first completions in year three. I note, in this regard, that the agent for the site has confirmed that it is expected that an outline application would be submitted in late 2017.

15.77 Again, the appellant's concerns in relation to this site relate to their average timings for submission and determination of applications, discharge of conditions, time to commencement of development etc, leading to the suggestion that delivery of just 40 homes by 2022 is more realistic.

15.78 As with other sites, the use of average (mean) timings can be misleading. Whilst, at the time of the Inquiry, no application had been submitted, the use of mean average figures does not, in my view, lead to a robust conclusion that this site is not capable of delivering 75 homes by 2022.

15.79 The emerging Local Plan contains a **new strategic site** for 800 dwellings at Thoresby Colliery. The parties agreed that in light of recent developments, the allocation from this site within the five year supply should be increased, giving a total of 235 dwellings, as opposed to the 60 referred to in the Statement of Five Year Housing Land Supply.<sup>137</sup>

15.80 In light of all the forgoing, I am satisfied that the Council has a supply of 3,662 dwellings.<sup>138</sup> On that basis, as demonstrated by updated Table 1.3 of the Statement of Common Ground on Housing,<sup>139</sup> with an OAN of 510dpa or lower, the Council can demonstrate a housing land supply of between 5.25-6.36 years. Only if the OAN was 550 dpa would supply fall to slightly less than five years (4.67 years).

15.81 The appellant suggests that the supply is less. If the Secretary of State was to disagree with me and prefer the appellant's use of average (mean) figures for matters such as the submission and determination of applications, discharge of conditions, time to commencement of development etc, and having regard to other concerns as set out above, the supply would be in the region of some 3,143 dwellings. On that basis the Council could only demonstrate a five year supply with an OAN of 454 dpa. Additionally, if the Secretary of State should come to the view that the OAN is higher then, based on the appellant's figures, the Council could not demonstrate a five year supply. The respective figures in these various regards are also set out in updated Table 1.3, as shown on Doc 23.

**Character and Appearance**<sup>140</sup> [9.7, 9.55-9.81, 9.109, 9.111, 10.42-10.56, 10.76, 11.4, 11.12, 11.8, 11.34, 11.51, 11.58, 11.59, 12.2]

15.82 The land the subject of both appeals lies within a shallow roughly east/west oriented valley, located near to the western periphery of, but beyond the

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<sup>137</sup> CD5.4

<sup>138</sup> See Doc 23. Whilst the Council's original figure in its evidence suggested a total of 3,567 dwellings, revisions during the Inquiry led to the figure of 3,662.

<sup>139</sup> CD23

<sup>140</sup> Proofs and associated appendices of Mr Denney and Mr Jonson

currently defined settlement boundary for the village of Farnsfield. The sites comprise two hedged rectilinear strip-fields that extend back from the southern side of Mansfield Road, rising up to meet with the Robin Hood Way long distance public footpath (FP18) which runs east/west along the top of a low ridge. The land the subject of Appeal B extends to some 4.15 hectares, comprising both fields in their entirety. The land the subject of the smaller Appeal A scheme extends to some 1.37 hectares and consists of the front portion of both the fields, adjacent to Mansfield Road.

- 15.83 One of the core principles of the Framework requires that planning should take account of the varying roles and character of different areas and recognises the intrinsic character and beauty of the countryside. Development plan policies CP13 and FNP8 require that development proposals consider and address the implications of the Landscape Policy Zone within which they are located, having regard to the landscape setting and character of the site. In addition and among other things, policies DM5, FNP7 and FNP8 seek to resist uncharacteristic forms of development and require that proposals be considered against the assessments in the Landscape Character Assessment Supplementary Planning Document, demonstrating how they have considered the landscape character and setting of the site.

#### Landscape effects

- 15.84 The appeal sites and their surroundings are not subject to any landscape designations and the main parties agree that they do not lie within a 'valued landscape' in terms of Framework paragraph 109. That does not mean, however, that the sites do not have value.
- 15.85 At a local level, the appeal sites lie within Landscape Policy Zone MN36 *Halam Village Farmlands* as defined in the Council's Landscape Character Assessment (LCA).<sup>141</sup> Reflecting the broader characteristics of the relevant national and regional character areas,<sup>142</sup> the Halam Village Farmlands comprise a very gently undulating and rounded topography affording medium distance views towards frequently wooded skylines. The area is described as comprising a predominantly arable agricultural landscape with medium to large fields of irregular geometric pattern and smaller scale pastoral fields generally closer to settlements. The landscape condition is confirmed as being very good, with a coherent pattern of elements and few detracting features which create a visually unified area with strong functional integrity. The landscape sensitivity as described as moderate.
- 15.86 I appreciate that almost all landscapes are a function of the past and man's changes and modifications over time, including field patterns. However, the LCA sets out that the field pattern in the regional Mid-Nottinghamshire Farmlands landscape character area remains the most visually important feature in the landscape. Identified threats in terms of the Halam Village Farmlands, as a sub-set of the regional area, include the loss of historic field pattern, with the LCA setting out a strategy of conservation for the area. In particular, in terms of actions in relation to landscape features, it seeks to

<sup>141</sup> CD3.8

<sup>142</sup> The sites lie within National Character Area 49 *Sherwood*, close to Area 48 *Trent and Belvoir Vales*. At a regional level, the sites lie within the *Mid-Nottinghamshire Farmlands character area*, as identified in the Council's Landscape Character Assessment.

conserve historic field pattern as a definitive part of the landscape character of the area.

- 15.87 The landscape professionals representing the main parties provided landscape and visual impact assessments of the proposed developments based on the methodology based on GLVIA3.<sup>143</sup> There was no dispute that both the developments proposed would have a substantial impact on the character of the appeal sites themselves, replacing agricultural fields close to the settlement edge, with residential development.
- 15.88 In relation to the **Appeal A** scheme of up to 20 dwellings, the Council commissioned its own LVIA from Influence Environmental Limited to assist in its determination of the planning application.<sup>144</sup> In terms of landscape effects, it concluded that there would be a medium magnitude of effect of a permanent and adverse nature upon the character of the local landscape associated with the site and the landscape of the settlement edge. Whilst officers recommended the application for approval,<sup>[9.10]</sup> Members did not agree and the application was refused. At the Inquiry, the Council's position was that the significance of the impact of the development would be moderate adverse.
- 15.89 The appellant maintained that the effect would be limited in nature beyond the site itself. Some reliance was placed, in this regard on the comments of Influence in correspondence to the Council at the time of the first application, to the effect that whilst issue was taken with elements of the scheme, those concerns could be addressed at detailed stage, concluding that a scheme of up to 20 dwellings could, in principle, be accommodated on the site.<sup>145</sup>
- 15.90 In relation to the larger **Appeal B** scheme, the Council maintained that the significance of the impact of the development would again be moderate adverse. The appellant's LVIA prepared by ASH<sup>146</sup> for up to 60 dwellings concluded that during construction and up to 10 years following completion, the development would have a localised moderate effect, reducing to a minor-moderate effect after 10 years, as planting matured. At the Inquiry, the appellant's position was that any effect on landscape character beyond the site itself would be limited in nature, being no greater than medium/moderate overall.
- 15.91 Whilst I have been guided by the main parties' assessments, I have formed my own assessment of the effect on landscape character, based on my observations during the site visit in the light of the LCA.
- 15.92 The appeal sites lie within a transitional landscape immediately to the west of the village, which is characterised by an enclosed linear field pattern that extends out from the historic village core. Six rectilinear post-enclosure fields sit side by side, each running back from the southern side of Mansfield Road, rising up to a low ridge.<sup>147</sup> The two fields the subject of these appeals are a clearly perceived integral part of that historic post-enclosure field pattern.

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<sup>143</sup> Guidelines on Landscape and Visual Imp[act Assessment Third Edition (April 2013)

<sup>144</sup> CD1.25

<sup>145</sup> CD1.26

<sup>146</sup> CD1.8

<sup>147</sup> See Doc 36

Further to the west, and to the south beyond the low ridge, are larger arable fields which contrast with the smaller historic fields.

- 15.93 In terms of physical landscape effects, both schemes would result in a marked, permanent and irreversible change to the landscape character of the respective sites and the landscape character of the immediate locality. The distinctive post-enclosure field pattern, which is seen in marked contrast to the larger, more open arable fields beyond, would no longer be readily perceived. Even the smaller Appeal A scheme would disrupt this defining landscape characteristic to the extent that there would be significant material harm. In LVIA terms, even acknowledging that the impact on landscape character would be localised as a consequence of the gently undulating topography here, having regard to the conflict with the stated aim of the LCA to conserve historic field pattern I consider the impact in respect of both schemes to be moderate adverse at best. That brings the development proposals into conflict with policies CP13 and FNP8.

#### Visual Effects

- 15.94 Both schemes would introduce built development along the frontage of the appeal sites, with the larger scheme extending to the full depth of both fields. The Council considers the visual effects of both schemes to be significant. The appellant considers that the effects of the larger scheme can be categorised as moderate to major, with the smaller scheme having less of an impact.
- 15.95 The receptors that would be affected by the developments proposed include the occupiers of nearby dwellings on rising land on the opposite side of Mansfield Road, users of two footpaths (the Robin Hood Way long distance footpath which runs along the southern boundary of the larger appeal site and footpath FP2 which runs north/south across Bells Fields to the east of the sites) and users of Mansfield Road, local residents and footpath users being the most sensitive visual receptors.
- 15.96 Whilst the village extends some distance to the west along the northern side of Mansfield Road, there is no development on the southern side on this approach other than a small isolated group of rural buildings at Merrins Farm between the appeal sites and the settlement boundary. In essence, Mansfield Road provides a clear demarcation between the established settlement edge and the countryside to the south.

#### ***Appeal A***

- 15.97 The rear boundary of this site is completely arbitrary, comprising a straight line across open fields following no marked feature on the ground. Whilst the development would not, as a consequence of the local topography, be visually prominent in the wider rural landscape it would, nevertheless, be clearly perceived on the approach to the village along the main road from the west, from the elevated properties on the north side of the road, in views from footpath FP2 which runs through Bells Fields to the east, particularly from the elevated section towards the southern end of the footpath, and in views from the Robin Hood Way footpath which is elevated in relation to the land the subject of Appeal A. Notwithstanding the presence of dwellings on the opposite side of the road, the development proposed would appear as a self-contained residential estate in the open countryside, comprising an outlying

pocket of development that would be poorly related in visual terms to the village. However well designed and landscaped, the inappropriate location of the site means that the development would be seen as an incongruous and intrusive feature that would significantly detract from the rural character of this part of the countryside and the rural setting of the village.

### ***Appeal B***

15.98 The site the subject of Appeal B comprises the entirety of the two fields. The impacts identified above in relation to Appeal A would be exacerbated by this proposal. Not only is it a materially larger scheme, but it includes development on rising land within the southern part of the site, increasing its prominence in local views. It would bring built development right up to the boundary with the Robin Hood Way footpath. It would also effectively isolate the Bells Fields paddocks and the adjacent field to the east, severing them and the historic village core from their wider rural setting, interrupting the landscape continuity which extends out from the western edge of the village.

15.99 Whilst not visually prominent in the wider rural landscape, this development would, nevertheless, be clearly perceived on the approach to the village along the main road from the west, from the elevated properties on the north side of the road, from footpath FP18 and in views out from footpath FP2. In those views, and notwithstanding the presence of dwellings on the opposite side of the road, the development would be poorly related in visual terms to the village. However well designed and landscaped, the inappropriate location of the site means that the development would be seen as an incongruous and intrusive feature that would significantly detract from the rural character of this part of the countryside and the rural setting of the village.

15.100 I have given careful consideration to the appellant's landscape evidence, and fully appreciate that the landscape to which the appeal sites belong is not rare, or of exceptional quality, and that the site itself has no particular landscape designation. However, they form part of a readily identifiable historic field pattern, which the LCA and related development plan policies seek to protect and which would be lost. Moreover, both developments would not be sensitive in their context and would have a significant adverse visual impact. In both cases, there would be substantial material harm to the established character and appearance of the area, bringing them into conflict with policies CP13, DM5, FNP7 and FNP8, together with those parts of the Framework which seek to ensure that new development adds to and improves the overall character and quality of the area, taking account of the different roles and character of different areas, the intrinsic character and beauty of the countryside, and the need to contribute to conserving and enhancing the natural environment.

***Heritage Assets***<sup>148</sup> [9.7, 9.20, 9.22, 9.82-9.102, 9.107, 9.109 -9.111, 10.57-10.72, 10.76, 11.4, 11.12, 11.13, 11.8, 11.24, 11.36, 11.52, 11.53, 12.2]

15.101 Pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, special regard is to be had to the desirability of preserving,

<sup>148</sup> See in particular the proofs and appendices of Mr Bradwell for the appellant and Ms Conway for the Council, the Farnsfield Conservation Area Appraisal (CD5.1) and the Neighbourhood Plan Character Appraisal and Design Guidance (CD5.3) CD1.12 comprises the appellant's heritage statement which accompanied the applications.

among other things, the setting of listed buildings. No statutory protection is afforded to the setting of Conservation Areas. However, paragraph 132 of the Framework sets out that the significance of a heritage asset can be harmed or lost through development within its setting.

15.102 The appeal sites lie outside but close to the western edge of Farnsfield Conservation Area.<sup>149</sup> Numerous listed buildings are located within the Conservation Area. Of particular relevance in relation to these appeals is the grade II listed St Michael's church.<sup>150</sup>

15.103 There is no suggestion that there would be a direct impact on any designated heritage asset. There is concern however, that there would be harm to heritage significance as a consequence of the developments proposed being within the setting of the church and the Conservation Area. I am mindful, in this regard, that the Framework defines the setting of heritage assets as the surroundings in which they are experienced: in essence, if the developments proposed could be seen from, or in conjunction with the listed church and/or the Conservation Area, then there would be an effect on their setting.

*Farnsfield Conservation Area*

15.104 The Conservation Area is seen from the appeal sites, and the sites are seen in views out from the Conservation Area, in particular from FP2 which crosses Bells Fields in a north south direction between Mansfield Road and Blidworth Lane/Vicarage Lane to the east of the appeal sites. The appeal sites are also in the foreground of views of the Conservation Area on approaches from the west along Mansfield Road and along FP18 (Robin Hood Way). Given that intervisibility, the appeal sites clearly lie within the setting of the Conservation Area.

15.105 What then do the appeal sites contribute to the heritage significance of the Conservation Area? Throughout the medieval period and beyond, Farnsfield functioned as an agricultural village at the centre of its parish, set within a related fieldscape supported by an open field system. The Conservation Area encompasses the medieval core of this agricultural village which is still clearly identifiable, where tightly packed buildings line the east-west aligned main road through the settlement. These, together with small country houses set in landscaped grounds, and the central and prominent church, create an interesting and attractive historic rural settlement.

15.106 The appellant considers that the historic settlement core underpins the heritage significance of the Conservation Area, which is primarily derived from its archaeological and architectural interest, including the historic street layout and high quality collection of vernacular buildings which in many cases are a legacy of the village's historic agricultural economy.<sup>151</sup> Whilst I agree with that analysis as far as it goes, it does not, in my view, provide a complete picture.

15.107 Extensive areas of common land around the village were enclosed by Act of Parliament in 1777, the landscape so created being typified by rectilinear

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<sup>149</sup> See Doc 36 for Conservation Area boundary in relation to the site.

<sup>150</sup> List description at Appendix 1 to the proof of Mr Bradwell. See also photograph 2 in the proof of Ms Conway.

<sup>151</sup> Paragraph 6.19 of the proof of Mr Bradwell.

fields defined by hedges along straight boundaries. Today, much of the pattern of enclosure fields remains appreciable in the fieldscape to the west/southwest of the village. In particular, the Conservation Area Appraisal<sup>152</sup> identifies that Bells Fields, located at the western end of the village (outwith the defined village boundary but within the Conservation Area) form a significant open area that is part of a pattern of six post-enclosure rectangular fields that extends out west from the historic village core, bounded by Mansfield Road to the north and Vicarage Lane to the south.

- 15.108 New housing development from the 20<sup>th</sup> Century onwards has taken place on the northern, eastern and southern sides of the historic core. Consequently, the extent over which the historic agricultural setting of the Conservation Area can be appreciated is now constrained to its western/ southwestern edges, which experience encompasses views across the post-enclosure fields of the appeal sites. In those views, the Conservation Area, including the church as a focal landmark, is seen in the context of a largely coherent enclosure period rural landscape which has not been modified from the layout established following the enclosures of 1777. The way in which the Conservation Area can be seen to relate to the rural landscape that surrounds it in those remaining views, which landscape supported the growth of the village, means that its setting here plays an integral part in understanding its heritage significance. That quality is not appreciable on other approaches to the village due to the modern development referred to above.
- 15.109 Both the developments proposed would be clearly seen on the approaches to the Conservation Area from the west, and in views out of the Conservation Area from Bells Fields and would intrude to a material degree in those views. Notwithstanding the inclusion of a protected 'viewing corridor' within the layout of both proposed schemes, intended to frame a view of the church through the development within the front (northern) part of the site from the southern end of Cockett Lane at its junction with Mansfield Road,<sup>153</sup> the currently available progressive views of the edge of the Conservation Area that are currently available on the approach along Mansfield Road across the appeal sites, would be curtailed. That is significant because the church spire, and in closer views, its roof and the roofs of the buildings around it, herald the presence of the village. In any event, that would not address the intrusion into views on the approach along the Robin Hood Way, particularly in relation to the Appeal B scheme.
- 15.110 I recognise that plan 1a in the Conservation Area Appraisal only identifies one view from outside the Conservation Area looking in.<sup>154</sup> Although that view is from Mansfield Road, it is to the east of the appeal sites and so they are not encompassed in that view. However, just because a view is not specifically identified on the Appraisal plan does not mean that other views are not important. For instance, whilst paragraph 20 of the document records the church spire as being prominent from both Mansfield Road and Blidworth Road, with paragraph 29 recording that Bells Fields allow fine views out of the Conservation Area, neither are identified as specific views on the Appraisal

<sup>152</sup> Adopted as supplementary planning guidance in March 2000 (CD5.1)

<sup>153</sup> Appendix 2 to the proof of Mr Denney. See in particular Fig 24.

<sup>154</sup> Viewpoint 1

Plan. I am also mindful that the Appraisal is of some age now, with guidance on such exercises having moved on considerably since 2000, as has guidance on assessing the setting of heritage assets.

15.111 The developments would also have an adverse impact on the noted views out of the Conservation Area from Bells Fields which would become divorced, effectively, from the agricultural landscape beyond, with the consequent loss of the existing experience of the transition from the historic core, across the post-enclosure fields to the wider landscape beyond.

15.112 In as much as there would not be any direct impact on the character or appearance of the Conservation Area, and given that the setting of the Conservation Area as seen from the west is but one component of its overall significance, I agree with the parties that the harm to its heritage significance can, in the language of paragraph 134 of the Framework be considered as less than substantial. However, given that the developments would impact upon the only remaining views into and out of the Conservation Area that encompass its historic fieldscape, I consider that the harm that would be a consequence of both schemes lies more towards the higher end of what is acknowledged to be a range, with the impact of the larger scheme being greater than that of the smaller scheme, by virtue of its extent.

*St Michael's church*

15.113 As noted above, the church is located towards the western end of the village and is surrounded by existing properties within the village core. Although it has medieval origins, it was substantially rebuilt in the mid-1800s in the Gothic Revival style, to plans by Messrs Hines and Evans of Nottingham. It was rebuilt with a greater eminence in terms of its architectural form and overall scale than its more modest predecessor. Whilst only the lower part of the tower remains of the early 15<sup>th</sup> Century buildings, it is now topped with a spire, installed as part of the later rebuilding works, with clock faces on all four of its elevations.

15.114 Its special interest derives not only from its age, history, form, architecture and appearance, but also its communal value as a place of worship and as a focal point for the local community over the years. It sits within a largely enclosed churchyard within the village core. However, the elements of setting that contribute to its heritage significance include not just its relationship with the churchyard and the surrounding buildings, but also its wider setting. Whilst the ability to appreciate the church from many parts of the village, including from within the Conservation Area, is limited by a combination of intervening development and the gently undulating nature of the local topography, there are key views on approaches to the village from the west, where the presence of the church is heralded through the visibility of the spire, clock faces and roof.

15.115 The Conservation Area Appraisal specifically recognises the church as the principal landmark in the village. As noted by Ms Conway for the Council,<sup>155</sup> whilst the church is visible intermittently in the approach along Blidworth

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<sup>155</sup> Paragraph 3.25 of her proof

Road from the southwest, it is visible more frequently, and for longer periods, from several stretches on the approaches from the west. In particular, there are progressive views across the appeal sites from Mansfield Road and from the Robin Hood Way long distance footpath, where the church is perceived in the context of a rural landscape, including the fields that comprise the appeal sites, fields that have not been modified from the layout established following their enclosure in 1777. I consider that the ability to perceive the church as a landmark and focal point of the historic village is an aspect of its setting which contributes to its heritage significance, allowing an appreciation of these aspects which are part of the building's historical and aesthetic values.

15.116 I referred earlier to the proposed 'viewing corridor' within the northern part of both schemes, as shown on the revised illustrative layouts submitted with the appeals, intended to frame a view of the church from the southern end of Cockett Lane. However, as previously noted, both developments would, to varying degrees, curtail the progressive views that are currently available along the Mansfield Road approach to the village. In any event, that arrangement would not address the intrusion into views on the approach along the Robin Hood Way. The harm would be much greater in relation to the Appeal B scheme, which extends all the way up to the boundary with the footpath. Whilst the Appeal A scheme, located at the northern end of the site, away from the footpath, would be seen, eroding those views to some extent, at least some of the rural setting would be retained from this particular aspect.

15.117 It was a matter of agreement between the parties that both appeal schemes would have an impact on the setting of the church which impact would, in the language of paragraph 134 of the Framework, be less than substantial. I have no reason to disagree. The difference between the parties related to whether that harm would be at the lower or higher end of less than substantial harm. For my part, I consider the harm to lie somewhere towards the middle, with the impact of the larger scheme being greater than that of the smaller scheme.

#### *The Old Vicarage*

15.118 Although no issue was taken in relation to any effect on the setting of this property, I mention it here for completeness, given its proximity to the appeal sites, and given that whilst not discussed at the Inquiry, it is mentioned in the respective heritage proofs. The Old Vicarage, also a Grade II listed building, occupies a relatively isolated site, located on the western side of the village on the southern side of Vicarage Lane, approximately 60 metres to the east of the south-eastern corner of the larger appeal site.

15.119 This former vicarage, which dates from the mid-19<sup>th</sup> Century, is set within a mature garden. Its heritage significance derives mainly from its architectural and historic interest and from its relationship with its immediate plot and Vicarage Lane. Intervening vegetation and the enclosed nature of its grounds significantly restrict intervisibility to the extent that the building is not perceptible from even the closest part of the appeal sites. There is no suggestion that either site makes any contribution to the special interest of the listed building. Accordingly, the developments proposed would not result in any harm to the heritage significance of the Old Vicarage.

*Conclusion on heritage assets*

- 15.120 The harm that I have identified to the setting, and thus the significance of the heritage assets brings both developments into conflict with policies CP14, DM9 and FNP7 of the development plan, which together seek to protect such interests. There would also be conflict with the conserve and enhance thrust of Section 12 of the Framework.
- 15.121 I have found that there would be less than substantial harm in terms of the setting of St Michael's church and Farnsfield Conservation Area. However, the courts have confirmed that less than substantial harm does not equate to a less than substantial planning objection and that the harm is to be given considerable weight. Paragraph 134 of the Framework requires that less than substantial harm be weighed against the public benefits of the respective proposals.
- 15.122 Looking firstly at the **Appeal A** scheme - in the context of my finding that the Council can demonstrate a five year housing land supply, I conclude that the benefits set out later in this report, and the weight they attract do not, even in their totality, outweigh the less than substantial harm to the heritage significance of the listed church and the Conservation Area that I have identified. However, were the Secretary of State to disagree with my findings and conclude that the Council cannot identify a five year supply of housing, I consider that the public benefits of providing additional housing in such circumstances could outweigh the identified heritage harm in relation to this scheme.
- 15.123 In relation to the larger **Appeal B** scheme - in the context of my finding that the Council can demonstrate a five year housing land supply, I conclude that the totality of the benefits set out later do not outweigh the less than substantial harm that I have identified to the heritage significance of the listed church and the Conservation Area. Unlike the Appeal A scheme however, were the Secretary of State to disagree with my findings and conclude that the Council cannot identify a five year supply of housing, even to the extent suggested by the appellant, I consider that the attendant public benefits of providing housing would not outweigh the identified heritage harm.

**Accessibility**<sup>[11.19, 11.43, 11.54-11.56, 12.2]</sup>

- 15.124 Although not a matter raised by the reasons for refusal, local residents raised significant concerns about the accessibility of local services and facilities for future residents of the developments proposed. I therefore asked the appellant's advocate to explore this matter with a relevant witness (Mr Machin). In essence, Mr Machin relied on the Transport Statement and the absence of any objection from the Highway Authority. No additional evidence was adduced.
- 15.125 This is an outline application with access being a matter that is for consideration at this stage. In relation to reserved matters, that means accessibility to and within the site for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes, and how these fit into the surrounding access network.<sup>156</sup> Paragraph 61 of the

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<sup>156</sup> Town and Country Planning (Development Management Procedure)(England) Order 2015

Framework also advises that planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

- 15.126 As noted by the Farnsfield 1 Inspector, Farnsfield offers a range of local services and facilities. However, although close to the village boundary, the sites the subject of the current appeals are not only detached from it visually, but are also somewhat divorced from the village centre in terms of physical links, particularly for pedestrians.
- 15.127 Looking firstly at the route via Mansfield Road. Mansfield Road is a well trafficked main road. There is no footway on the south side of the road between the appeal site and the village and the route is not well lit. It is proposed that footways within the site, alongside the proposed access road, would be extended a short distance in both directions along the southern side of Mansfield Road, with new pedestrian crossings to be installed to facilitate connection with the footways and bus stop on the northern side of the carriageway.<sup>157</sup> Heading east however, into the village, the footway reverts to the south side of Mansfield Road, where Chapel Lane joins Mansfield Road, but where there is no pedestrian crossing. Moreover, the footway on the south side of the road at this juncture is extremely narrow, with a pinch point adjacent to the gable end of Elford Cottage at the back of the footway on a bend in the road, where the footway reduces to a width of barely 71 centimetres. Mr Sarre, a local resident, referred me in this regard, to the 6Cs Design Guide which suggests a minimum width of 2 metres for footways.<sup>[11.55]</sup>
- 15.128 An alternative route is suggested by the appellant, secured in both schemes, involving the provision of a new link onto the Robin Hood Way long distance footpath. The link would be for pedestrians only and access to the footpath would necessitate a shallow climb, given the rising ground levels to the north. The footpath links to Vicarage Lane which leads towards the village, joining with Blidworth Road. There are no footways along Vicarage Lane, which is single track for most of its length and, so far as I could see, is not lit. Neither are there any footways on Blidworth Road, with only occasional street lighting.
- 15.129 The need to cross Mansfield Road a couple of times in order to stay on the footway, the fact that the route is not well lit and the very restricted width of the footway in places means that it would not be suitable, for example, for those pushing buggies, those reliant on wheelchairs, or those walking with young children. Similarly, the alternative route, via the proposed link to Robin Hood Way, would not be attractive or appropriate for school children and other vulnerable persons, including those with restricted mobility, particularly during winter months, in inclement weather, or during the evening/night time.
- 15.130 Although the village centre is only some 0.8 kilometres from the appeal sites, within the up to 2 kilometre distance referred to in Manual for Streets as offering the greatest potential for replacing short car trips, and within the preferred maximum 2 kilometre walking distance referred to in the CIHT

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<sup>157</sup> Shown on Drawing No 16209-001 (CD1.7)

Guidelines,<sup>158</sup> it is beyond the desirable maximum distance of 500 metres set out in those Guidelines. I recognise too that the appeal sites are located close to bus stops, with relatively frequent services to larger settlements nearby. When considered in the round however, I share the concerns of local residents, as articulated in their written submissions and oral evidence given at the Inquiry, that the nature of the walking routes is likely to result in more people than might otherwise be the case using the private car to access the village services and facilities.

**Operation of the Highway Network**<sup>[11.2, 11.19, 11.22, 11.44-11.46, 11.51, 12.2]</sup>

- 15.131 No objection was raised to either scheme by the local Highway Authority, subject to conditions, and this was not a matter that was pursued by the Council. Indeed, both applications were accompanied by a Transport Statement (CD1.6) which concludes that the developments would be acceptable in highway terms. That position is confirmed in the Statement of Common Ground.<sup>[7.1 iv)]</sup>
- 15.132 Access for both schemes would be via a simple priority junction from Mansfield Road. A speed survey indicated that the 85<sup>th</sup> percentile wet weather speed adjacent to the proposed access was 31.5 mph for eastbound vehicles entering the village, and 35.5 mph for westbound vehicles, ie those leaving the village.<sup>159</sup> In accordance with Manual for Streets, those speeds suggest the need for visibility splays of 2.4m x 46m and 2.4m x 54m respectively. The proposed site access arrangements make provision for the required splays. In the absence of any substantiated evidence to the contrary, I am satisfied that there would be no material implications for highway safety in this particular regard.
- 15.133 However, local residents, elected members and the Parish Council, supported by their MP, expressed significant reservations as to the impact of the development proposed in terms of the flow of traffic through the village itself on the safe operation of the highway network, particularly Main Street. My attention was drawn, in this regard to existing problems which, it was felt, would be exacerbated to an unacceptable degree by the developments proposed, particularly in combination with other residential development that has recently been approved in the village. I am mindful, in this regard, that the Farnsfield Neighbourhood Plan Character Appraisal and Design document<sup>160</sup> specifically notes that parked cars on Main Street are a significant and permanent feature and that it is narrow in places, causing traffic congestion. I therefore asked the appellant's advocate to explore this matter with a relevant witness (Mr Machin). In essence, Mr Machin relied on the Transport Statement and the absence of any objection from the Highway Authority. No additional evidence was adduced.
- 15.134 Based on the TRICS data base, the Transport Statement<sup>161</sup> indicates that up to 60 dwellings on the site would be likely to generate some 29 two way traffic movements into and out of the site during the morning peak (08.00-

<sup>158</sup> Chartered Institute of Highways and Transportation

<sup>159</sup> Paragraph 3.2.2 of the Transport Statement (CD1.6)

<sup>160</sup> CD5.3

<sup>161</sup> The Transport Statement was prepared by BSP Consulting in August 2016 in relation to a development of up to 60 dwellings on the site (CD1.6).

09.00) and some 27 two-way movements in the evening peak (17.00-18.00). The smaller scheme would create fewer traffic movements although no corresponding figures were provided.

- 15.135 The traffic generated by the developments would distribute only onto Mansfield Road, a proportion of which would travel east towards the village centre. The Transport Statement does not indicate the likely split and does not include any assessment of the implications of that additional traffic on traffic conditions in the village itself. Neither is there anything in the Transport Statement to suggest that any assessment was undertaken of the cumulative impact of the developments proposed together with other residential developments (including the dwellings currently under construction on the allocated housing site on the eastern side of the village (site Fa/Ho/1) and those currently under construction pursuant to the allowed Farnsfield 1 appeal. The comments of the local Highway Authority do not suggest that any consideration has been given to this aspect either.
- 15.136 I was able to observe traffic movements through the village in the daytime, during the accompanied part of the site visit. In addition, at the request of local residents and with the agreement of the main parties, I stayed in the village after conclusion of the site visit, to observe traffic movements during the evening peak.
- 15.137 Lawfully parked vehicles along both sides of the main street at all times of the day and evening mean that in places, the road is effectively reduced to single carriageway width. As a consequence, the flow of traffic can, at times, be significantly inhibited. During the evening, I also saw instances of larger vehicles mounting the footway, trying to squeeze past oncoming vehicles. The road accommodates a bus route, and I saw that regular bus services, as well as school buses passing through add to the difficulties for oncoming traffic in both directions.
- 15.138 I recognise that parked vehicles can act to inhibit vehicle speeds to some extent. That said, I heard anecdotal evidence of cars speeding up to get through gaps, including, on occasion, vehicles travelling at speed along the footway. Notwithstanding the absence of any objection from the Highway Authority I am concerned, given the extent of the existing problems, that no assessment has been carried out of the cumulative implications of the anticipated traffic from the developments proposed in conjunction with the housing developments that are currently under construction. Indeed there is nothing in the evidence before me to indicate that any consideration has been given in the Transport Assessment to the potential impact of the increase in traffic through the village and the implications of that in terms of highway safety and the free flow of traffic.
- 15.139 I recognise that, on the face of it, traffic movements through the village might only be expected to increase by a proportion of the figures referred to above. However, there are clearly significant existing problems, particularly at peak times, which do not appear to have been considered. There is a tension, it seems to me, between the conclusion of the Transport Statement that the developments would be acceptable in highway terms and the problems that I saw in the village centre, which would be exacerbated by the developments proposed.

15.140 The issues raised above leave me with significant concerns as to whether the full impact of the developments proposed, particularly in combination with the other approved schemes (even taking into account that the Fa/Ho/1 site is an allocated housing site) and having regard to the actuality of conditions at peak times, have been fully assessed. Given the apparent stress that this part of the local highway network already appears to be under, and with the precautionary principle in mind, I cannot conclude with any degree of certainty that there would be no material harm to highway safety, or the free flow of traffic through the village, as a consequence of the developments proposed. I recognise that the traffic movements related to a development of up to 20 dwellings, only a proportion of which would travel west through the village, would be relatively small as a proportion of traffic already on the highway. Nevertheless, it seems to me, given the extent of current problems, that any increase in traffic would have the potential to exacerbate those problems, particularly at peak times.

***Benefits of the developments proposed***<sup>162</sup> [9.104, 9.105, 10.74, 10.75]

15.141 The appellant suggested a number of benefits that would be associated with the appeal schemes.

15.142 Provision of new housing: the Council's assessment of the position as to the housing requirement and the housing land supply has been shown to be reasonably robust when tested at this Inquiry and I have found that a five year supply of sites exists. Since the identified supply already satisfies the Framework paragraph 47 test of boosting significantly the supply of deliverable sites, the proposals would not deliver any additional benefit in this respect. However, the contribution of the proposals to affordable housing provision is a different matter. Each scheme would include a policy compliant provision for 30% affordable homes, up to seven dwellings in relation to Appeal A and up to 18 in Appeal B. As identified in the SHMA, this is an area where a pressing need for affordable housing persists. I therefore attach considerable weight to the benefit of the schemes in this particular regard.

15.143 Reference is made to a high quality layout and high quality design. However, that would be expected of any new development and to my mind is not a 'benefit' of the schemes as such. Rather, it is simply an absence of harm.

15.144 Both schemes include areas of public open space aimed principally at providing facilities for future occupiers. In cross-examination, Mr Machin suggested that the space proposed was more than policy compliant, but was unable to clarify the quantum of space that would be provided in relation to policy requirements. In any event, whilst I recognise that existing residents in the village would have access to that space, there was nothing to suggest that there is a material shortage of public open space in the village. Indeed, I saw that open space and a play area have been provided on the Cockett Lane development which would be readily accessible for existing residents at this end of the village. I therefore consider this to be a benefit of only limited weight.

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<sup>162</sup> Proofs of Mr Machin and Miss Kurihara

- 15.145 However, both schemes make provision for a public link from Mansfield Road through to the Robin Hood Way footpath to the north of the appeal sites. I am mindful in this regard of policy FNP9 of the Neighbourhood Plan which, among other things, requires that development should maximise site specific opportunities to enable or improve access to the countryside for recreational purposes and to ensure, where possible, that connections into the existing footpath network are provided. Of itself, provision of the proposed link would be a benefit. However, any weight to that benefit is tempered by the fact that delivery would be predicated on the introduction of housing in the open countryside. I therefore afford the proposed link moderate weight as a benefit.
- 15.146 There was a suggestion that the proposed viewing cone towards the church from the bench at the southern end of Cockett Lane might be considered as a benefit. I recognise that it might draw attention to the church but that would be at the expense of the loss of the progressive views that are currently available on the approach along Mansfield Road and would not, in any event address the harm in views from Robin Hood Way. I am not persuaded, in this regard, that the arrangement can be considered as a benefit of the schemes.
- 15.147 It was argued that the introduction of a sustainable drainage scheme on the site should be considered as a benefit to which weight should be attached. However, developments of ten dwellings or more are required to ensure that sustainable drainage systems for the management of surface water run-off are put in place in any event, unless demonstrated to be inappropriate.<sup>163</sup>
- 15.148 This is a greenfield site and surface water would currently run off at green field rates. Whilst residents refer to localised flooding incidents, these appear to be largely confined to the main road. Since the appeal sites fall away from the main road, I am not persuaded that they necessarily contribute to any flooding there. In answer to my questions on this, additional information was provided to the Inquiry,<sup>164</sup> suggesting that there would be betterment as there would be no run-off from the site in the peak 1 in 100 year plus climate change rainfall event, whereas that cannot presently be proven to be the case. That said, it seems to me that there is not any problem as such to be resolved in relation to the appeal sites. All in all, if the incorporation of the required sustainable drainage system is to be considered a benefit, it is one to which I attach only limited weight in the absence of any identified problem.
- 15.149 Reference is made to the New Homes Bonus as a benefit. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. However, New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. I am mindful, in this regard, that the Guidance<sup>165</sup> makes it clear that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority. Accordingly, whilst the Bonus is a material planning consideration, it is not one to which positive weight can be attached.

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<sup>163</sup> House of Commons Written Ministerial Statement (HCWS161) and Planning Practice Guidance Paragraph: 079  
Reference ID: 7-079-20150415

<sup>164</sup> Doc 24

<sup>165</sup> ID: 21b-011-20140612

- 15.150 The proposals would support construction jobs. The proposed dwellings would also be close to local facilities and this could assist the vitality of the rural community through the spending power of the future occupiers. However, the benefits to the construction industry would be time limited and, other than reference to a SPAR shop closing in the last couple of years, there was no substantiated evidence to suggest that local facilities, which include three pubs, a post-office, a supermarket and a range of smaller shops,<sup>166</sup> are struggling and would thus benefit significantly from increased patronage. Thus, these benefits are of moderate weight.
- 15.151 It was also suggested that the financial contributions secured towards the improvement of local facilities should be considered as a benefit. Whilst they are secured as mitigation, I recognise that others in the village would also benefit from those improvements. Any benefit in this regard would only be limited however, given that there would be an associated increase in use of those facilities.
- 15.152 There would be an overall benefit to biodiversity, given the current limited ecological interest in the sites, which would accord with the requirement of paragraph 109 of the Framework. That is a benefit that attracts moderate weight.
- 15.153 Reference was made too, to the developments providing the opportunity for an 'attractive gateway feature' on the approach into Farnsfield. However, nothing I heard or saw leads me to the view that the approach along Mansfield Road is not attractive as it is, or that it is in need of built development to create a gateway feature of any sort. As such, this would not be a benefit of the proposals.

### ***Other Matters***

- 15.154 Local residents raised concerns in relation to the cumulative impact of the developments proposed in combination with other recent approvals not only in terms of traffic, but also in terms of the nature of Farnsfield as a village.<sup>[11.3, 11.5, 11.8-11.11, 11.15-11.17, 11.21, 11.25-11.27, 11.35, 11.40, 11.57, 11.60, 12.2]</sup>
- 15.155 The Core Strategy indicates that Farnsfield was expected to accommodate some 142 dwellings over the Plan period ie, up to 2026: windfall sites within the village had, I understand, provided around 37 additional dwellings, with the ADMDPD allocating two sites for housing, one at each end of the village which together were expected to provide a total of around 105 dwellings. In the event, the subsequent planning permissions on those two sites allowed some 172 dwellings. In addition, the Farnsfield 1 appeal scheme, which was under construction at the time of the Inquiry, allowed for up to an additional 48 dwellings. As a consequence, the village has already accommodated more than 100 additional dwellings over and above the figure originally envisaged by the plan-led system. It was on that basis that the Neighbourhood Plan made no additional provision for new housing – to do otherwise would, potentially, have put the Plan into conflict with the development plan.
- 15.156 I recognise of course that the housing numbers in the Core Strategy were based on historic figures. However, those figures are reduced in the

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<sup>166</sup> Paragraph 5.17 in the proof of Mr Machin

emerging Core Strategy Review. Even taking account of the revised proportions for Farnsfield in the emerging Local Plan, it seems to me that as a village, Farnsfield is likely to have already accommodated the quantum of housing envisaged by the plan-led system for the time being. I recognise that each application must be considered on its own merits and that, whilst the development plan is the starting point for such decisions, other considerations can, on occasion result in a decision that is contrary to that plan. The additional dwellings now proposed through these appeals, would further increase the quantum of housing in the village and, given my findings above, would undermine the confidence that a plan-led system is intended to provide, with the potential to materially change the essentially village nature of the settlement.

- 15.157 Mention is made of the precedent that would be set should the sites be developed as proposed, in particular, the likely increase in pressure to develop what would be the remaining pocket of open land between the appeal development and the edge of the defined settlement boundary.<sup>[10.44, 11.5, 11.29, 11.37, 11.57, 12.2]</sup> My attention was drawn in this regard, to the previous application for the erection of 33 affordable dwellings on part of the appeal sites. Whilst all matters were reserved for future consideration, the application was accompanied by plans showing an illustrative layout and potential future development on the remainder of the land the subject of the current appeals, extending further across the open fields that separate the site from the village.<sup>[5.1]</sup> However, were the appeals to succeed, any future application for development of that land would fall to be considered on its own merits in the light of the site specific and relevant policy considerations that prevailed at that time.

## **16. OVERALL PLANNING BALANCE AND CONCLUSION**

- 16.1 I have found that the development plan is neither absent nor silent and that those policies on which these decisions turn are in broad conformity with the Framework. I have also concluded that the Council is able to demonstrate a five year supply of housing land, on which basis relevant policies for the supply of housing are not to be considered as out-of-date in the context of paragraph 49 of the Framework. Accordingly, the so called 'tilted' planning balance is not engaged.

### ***Appeal A (up to 20 dwellings)***

- 16.2 I have found material harm in relation to the character and appearance of the area. In the context of a five year housing supply I have also concluded that the public benefits, including the provision of housing, both market and affordable, are not sufficient to outweigh the harm to the heritage significance of the listed church and Farnsfield Conservation Area. In addition, the nature of the routes into the village for pedestrians is such that it is likely to result in more people than might otherwise be the case using the private car to access the village services and facilities. I also have concerns as to whether the full impact of the traffic movements that would be a consequence of the development proposed have been fully considered. These harms bring the proposal into material conflict with the development plan as a whole. On a straightforward balance, I therefore conclude that the benefits are not outweighed by the totality of the harms that I have identified. On that basis, I shall recommend that the appeal should not succeed.

- 16.3 Were the Secretary of State to disagree with me about the existence of a five year housing land supply, the so called 'tilted' balance would be engaged. I concluded earlier that, in the absence of a five year supply, the benefit of providing housing would outweigh the harm to the significance of the heritage assets in relation to this scheme. As such, there are no specific policies which indicate that development should be restricted.<sup>167</sup> I must, therefore, go on to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Even putting to one side my concerns in relation to accessibility and the impact on traffic movements through the village, I still conclude that the harm to the character and appearance of the area, and the less than substantial harm to the heritage significance of the listed church and the Conservation Area would be sufficient to significantly and demonstrably outweigh all the identified benefits when assessed against the policies in the Framework taken as a whole. It follows, in these circumstances, that the development does not benefit from the presumption in favour of sustainable development and thus I would still recommend dismissal of the appeal.

***Appeal B (up to 60 dwellings)***

- 16.4 I have found material harm in relation to the character and appearance of the area. In light of my finding that the Council can demonstrate a five year supply of housing land, I have also found that the public benefits of the scheme, including the provision of market and affordable housing, do not outweigh the less than substantial harm that I have identified to the heritage significance of the listed church and Farnsfield Conservation Area. In addition, the nature of the routes into the village for pedestrians is such that it is likely to result in more people than might otherwise be the case using the private car to access the village services and facilities. I also have concerns as to whether the full impact of the traffic movements that would be a consequence of the development proposed have been fully considered. These harms bring the proposal into material conflict with the development plan as a whole.
- 16.5 As set out above, there would be some benefits generated by the scheme. In circumstances where there is a five year housing land supply, on a straightforward balance the totality of the benefits that I have identified do not outweigh the combined harms. The combined benefits do not justify making a decision in this instance that is contrary to requirements of the development plan and, in the absence of sufficient material considerations to indicate otherwise, I shall therefore recommend that the appeal should not succeed.
- 16.6 I recorded earlier that even should the Secretary of State come to the view that the Council could not demonstrate a five year supply of housing to the extent suggested by the appellant that would not, in relation to this larger scheme, outweigh the harm to the significance of the relevant heritage assets. On that basis, having regard to paragraph 14 of the Framework and the related footnote 9, this would be a case where specific policies in the Framework indicate that development should be restricted. That has the effect of disengaging the tilted balance that would otherwise have applied.

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<sup>167</sup> Footnote 9 of the Framework and the balance to be carried out under Framework paragraph 14

## **17. RECOMMENDATIONS**

### **Appeal A: APP/B3030/W/17/3169436**

17.1 For the reasons set out above, I recommend that the appeal be dismissed.

### **Appeal B: APP/B3030/W/17/3179732**

17.2 For the reasons set out above, I recommend that the appeal be dismissed.

17.3 In the event that the Secretary of State disagrees, and allows one or both appeals, Appendix B sets out the conditions that I consider should be attached to any grant of planning permission.

*Jennifer A Vyse*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|                            |                                                               |
|----------------------------|---------------------------------------------------------------|
| Timothy Leader, of Counsel | Instructed by the Council's Senior Legal Officer              |
| He called                  |                                                               |
| Tom Jonson                 | Director of LUC Environmental Planning, Design and Management |
| MA, BSc, MA, CMLI          |                                                               |
| Miss Melissa Kurihara      | Associate Planning Consultant at Urban Vision Partnership Ltd |
| MLPM, MRTPI                |                                                               |
| Ms Melissa Conway          | Principal Historic Environment Consultant at LUC              |
| BA(Hons), MA, MCIA         |                                                               |
| Justin Gardner             | Justin Gardner Consulting                                     |
| BSc, MSc                   |                                                               |

Mr M Lamb MA, MRTPI (Business Manager Growth and Regeneration with the Council) and Mrs Dickinson PgDURP, MRTPI (Lead Practitioner Planning Policy with the Council) both assisted Miss Kurihara on Day 2 of the Inquiry in relation to the round table discussion on housing land supply. Mr Lamb also assisted in the later discussion on Day 4 in relation to the planning obligations and conditions. Mr Andrew Norton (Developer Contributions Practitioner with Nottinghamshire County Council) also assisted in the discussion on planning obligations.

### FOR THE APPELLANT:

|                                    |                                                                      |
|------------------------------------|----------------------------------------------------------------------|
| David Hardy                        | Partner, Squire Patton Boggs LLP                                     |
| He called                          |                                                                      |
| Chris Calvert                      | Executive Director, Pegasus Group (Leeds)                            |
| BSc(Hons), MA, MRTPI               |                                                                      |
| Stephen Bradwell                   | Director, Trigpoint Conservation and Planning                        |
| MA, MRTPI, IHBC                    |                                                                      |
| Brian Denny                        | Landscape and Environmental Planning Director, Pegasus Group (Leeds) |
| BA(Hons), DipLA, CMLI, CEnv, MIEMA |                                                                      |
| George Machin                      | Partner, Grace Machin Planning and Property                          |
| MTCP, MRTPI                        |                                                                      |

Mr Mortonsen BA(Hons) MRTPI (Senior Planner with Pegasus) assisted Mr Calvert on Day 2 of the Inquiry during the round table discussion on housing land supply.

### INTERESTED PERSONS APPEARING AT THE INQUIRY:

|                              |                                                                     |
|------------------------------|---------------------------------------------------------------------|
| Mark Spencer MP              | Member of Parliament for Sherwood                                   |
| Councillor Roger Blaney      | Leader of the District Council and Member of the Planning Committee |
| Councillor Paul Woods        | Chair of Farnsfield Parish Council                                  |
| Councillor Mrs Lesley Healey | Member of the Neighbourhood Steering Group and Parish Councillor    |
| Neil Mayo                    | Local resident                                                      |
| Mrs Kathryn Thompson         | Local resident                                                      |
| Marcus Coulam                | Local resident                                                      |
| Peter Sarre                  | Local resident                                                      |
| John Auld                    | Local resident                                                      |
| David Bell                   | Local resident                                                      |

## **DOCUMENTS HANDED UP DURING THE INQUIRY**

- 1      Appearances for the appellant
- 2      Opening submissions on behalf of the appellant
- 3      List of signatures objecting to the development proposed
- 4      Opening statement on behalf of the Council
- 5      Mr Calvert Rebuttal Proof – five year housing land supply and OAN
- 6      Speaking Notes – Mrs Kathryn Thompson
- 7      Speaking Notes – Mr Sarre
- 8      Bundle of correspondence confirming authorisation for Mr Mayo to speak on behalf of various local residents
- 9      PAS Plan Review – Newark and Sherwood District Council Adopted Core Strategy (February 2015) - Also listed as CD5.13
- 10     Speaking Notes – Mrs Lesley Healey
- 11     Draft planning obligations and related office copy entries re ownership
- 12     Officer's report for 18 additional dwellings at Cockett Lane (16/00769/FULM)
- 13     Plans, delegated report and decision notice for 33 affordable dwellings scheme on the appeal sites (Application No 10/00708/OUTM)
- 14     Suggested planning conditions – superseded by Doc 27 below
- 15     Planning for the right homes in the right places: consultation proposals (September 2017)
- 16     Statement of Common Ground : Housing Land Supply and OAN (as amended by Doc 23 below) – also listed as CD2.7
- 17     Mrs Dickinson qualifications
- 18     Speaking Notes – Mr John Auld
- 19     Planning Obligations and CIL Compliance Statement
- 20     Extract from Committee Report in relation to development in Rainworth (17/00865/FULM)
- 21     Suggested condition in relation to provision of permissive footpath (Appeal B) See also Doc 27 below
- 22     Full Committee Report in relation to development in Rainworth (17/00865/FULM)
- 23     Amended Table 1.2 and Table 1.3 of Housing Statement of Common Ground (Doc 16 above)
- 24     Email dated 17 November 2017 from BSP Consulting to appellant re soakaway tests on the appeal site
- 25     Site visit itinerary
- 26     Copy of site notice location, letters of notification of the appeals and press notice.
- 27     Amended conditions pursuant to the related discussion at the Inquiry
- 28     Correspondence re wording of suggested condition 8
- 29a    Completed planning obligation for the up to 20 dwellings scheme
- 29b    Completed planning obligation for the up to 60 dwellings scheme
- 30     Plan showing route of proposed permissive footpath in relation to suggested condition 15 (Appeal A only)
- 31     Correspondence re wording of suggested condition in relation to sustainable drainage
- 32     Memorandum of Understanding – Ashfield/Mansfield/Newark and Sherwood Councils
- 33     Closing submissions on behalf of the Council
- 34     Closing submissions on behalf of the appellant
- 35     Letters closing the Inquiry in writing
- 36     Plan showing the settlement and conservation area boundaries, listed buildings, footpaths, allocated sites and residential approvals including Farnsfield 1 Appeal.

## APPENDIX A:

### CORE DOCUMENTS

| CD 1.0  | Application Documents                                                                                  |
|---------|--------------------------------------------------------------------------------------------------------|
| CD 1.1  | Brindle and Green - Preliminary Ecological Appraisal (Report No BG16.178) dated May 2016               |
| CD 1.2  | Topographical Survey – Drawing No 13266_OGL Rev 0 dated 29.04.09                                       |
| CD 1.3  | AWA Tree Consultants Arboricultural Report (Report No AWA1579) May 2016                                |
| CD 1.4  | Flood Risk Assessment (Report No 16209/FRA) July 2016                                                  |
| CD 1.5  | Soakaway Testing and Drainage Strategy (Report No 16209/TG) June 2016                                  |
| CD 1.6  | Highways and Transport Statement (up to 60 dwellings) (16209/TB) August 2016                           |
| CD 1.7  | Proposed Site Access Arrangements - Drawing No 16209-001                                               |
| CD 1.8  | ASH Landscape and Visual Assessment (up to 60 dwellings) (Report No 115047/12) August 2016             |
| CD 1.9  | ASH Rebuttal (December 2016)                                                                           |
| CD 1.10 | Environmental Noise Assessment June 2016 (up to 60 dwellings)                                          |
| CD 1.11 | Geophysical Survey Report (June 2016)                                                                  |
| CD 1.12 | Heritage Statement October 2016 (up to 60 dwellings)                                                   |
| CD 1.13 | Planning Design and Access Statement September 2016 (up to 60 dwellings)                               |
| CD 1.14 | Site Location Plan (up to 60 dwellings) - Drawing No 1440M/001                                         |
| CD 1.15 | Indicative Site Layout Plan (up to 60 dwellings) - Drawing No 1440M/002                                |
| CD 1.16 | Indicative Dwelling Elevations - Drawing No 1440M/003                                                  |
| CD 1.17 | Indicative Site Layout Plan (up to 20 dwellings) - Drawing No 1440M/004                                |
| CD 1.18 | Photographic Survey - Drawing No 1440M/PH1                                                             |
| CD 1.19 | Constraints and Opportunities Plan - Drawing No 1440M/SA1                                              |
| CD 1.20 | Site Analysis Plan - Drawing No 1440M/SA2                                                              |
| CD 1.21 | Key Links and Nodal Points - Drawing No 1440M/SA3                                                      |
| CD 1.22 | Build Form and Character Areas (up to 60 dwellings) - Drawing No 1440M/SA4                             |
| CD 1.23 | Differing Character Areas (up to 60 dwellings) – Drawing No 1440M/SA5                                  |
| CD 1.24 | Concept Layout (up to 60 dwellings) - Drawing No 1440M/SA6                                             |
| CD 1.25 | Influence Landscape and Visual Impact Assessment January 2017(up to 20 dwellings)                      |
| CD 1.26 | Influence letter (17 January 2017)                                                                     |
| CD 1.27 | Revised indicative site layout plan (up to 20 dwellings) 1440M/004                                     |
| CD 1.28 | Conservation officer comments on 16/01575/OUTM                                                         |
| CD 1.29 | Trigpoint Conservation and Planning response dated to Conservation Officer comments (12 December 2016) |
| CD 1.30 | Conservation officer comments on Trigpoint correspondence (14 December 2016)                           |
| CD 1.31 | Conservation officer comments (20 January 2017)                                                        |
| CD 1.32 | Trigpoint Conservation and Planning response dated to Conservation Officer comments (26 January 2017)  |
| CD 1.33 | Committee Report 16/01575/OUTM (7 February 2017)                                                       |

|         |                                                                  |
|---------|------------------------------------------------------------------|
| CD 1.34 | Committee minutes 16/01575/OUTM (7 February 2017)                |
| CD 1.35 | Decision Notice 16/01575/OUTM dated 9 February 2017              |
| CD 1.36 | Officer's Report 17/00299/OUTM                                   |
| CD 1.37 | Decision Notice 17/00299/OUTM dated 22 June 2017                 |
| CD 1.38 | Conservation Officer comments (27 April 2017)                    |
| CD 1.39 | Influence Landscape Statement November 2016 (up to 60 dwellings) |

|               |                                                                                       |
|---------------|---------------------------------------------------------------------------------------|
| <b>CD 2.0</b> | <b>Appeal Documents<sup>168</sup></b>                                                 |
| CD 2.1        | Appellant Appeal Statement: Full Statement of Case (15 February 2017)                 |
| CD 2.2        | Appellant Appeal Statement: Full Statement of Case (10 July 2017)                     |
| CD 2.3        | Council Appeal Statement: Full Statement of Case (August 2017)                        |
| CD 2.4        | Council Appeal Statement: Full Statement of Case (September 2017)                     |
| CD 2.5        | General Statement of Common Ground                                                    |
| CD 2.6        | Legal submissions on behalf of the appellant in relation to cultural heritage         |
| CD 2.7        | Statement of Common Ground - Housing Land Supply and OAN (see Inquiry Docs 16 and 23) |

|               |                                                                     |
|---------------|---------------------------------------------------------------------|
| <b>CD 3.0</b> | <b>Planning Policy</b>                                              |
| CD 3.1        | National Planning Policy Framework                                  |
| CD 3.2        | National Planning Practice Guidance (copy not provided)             |
| CD 3.3        | Newark and Sherwood Core Strategy DPD (adopted March 2011)          |
| CD 3.4        | Allocations and Development Management DPD                          |
| CD 3.5        | Farnsfield Neighbourhood Plan - Referendum Version September 2017   |
| CD 3.6        | Developer Contributions and Planning Obligations SPD (adopted 2013) |
| CD 3.7        | Publication Amended Core Strategy DPD (Submission Version)          |
| CD 3.8        | Newark and Sherwood Landscape Character Assessment SPD (2013)       |

|               |                                                                                                                                              |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CD 4.0</b> | <b>Relevant Appeal and High Court Decisions</b>                                                                                              |
| CD 4.1        | Stroud District Council v (1) SSCLG (2) Gladman Developments Ltd CO/4082/2014                                                                |
| CD 4.2        | Cheshire East Borough Council v (1) SSCLG (2) Harlequin (Wistaston) Ltd CO/5573/2015                                                         |
| CD 4.3        | Appeal Decision APP/B3030/W/15/3006252 (Hollins Strategic Land – Farnsfield)                                                                 |
| CD 4.4        | Appeal Decision APP/B3030/W/17/3168018 (Millcroft Homes – Blidworth)                                                                         |
| CD 4.5        | Barnwell Manor v East Northants DC, English Heritage, National trust and SSCLG [2014] EWCA Civ 137                                           |
| CD 4.6        | Appeal Decision APP/B1605/W/14/3001717 (Bovis and Miller Homes – Leckhampton)                                                                |
| CD 4.7        | Appeal Decision APP/Z1510/W/17/3173352 (Gladman Developments Ltd – Steeple Bumpstead)                                                        |
| CD 4.8        | Suffolk Coastal DC v Hopkins Homes Ltd UKSC 2016/0076 and Richborough Estates Partnership LLP v Cheshire East Borough Council UKSC 2016/0078 |

<sup>168</sup> In addition to the documents submitted during the Inquiry and the various proofs of evidence.

|         |                                                                                              |
|---------|----------------------------------------------------------------------------------------------|
| CD 4.9  | Barwood Strategic Land II LLP v (1) East Staffordshire BC (2) SSCLG [2017] EWCA Civ 893      |
| CD 4.10 | Palmer v Herefordshire Council and ANR [2016] EWCA Civ 1061                                  |
| CD 4.11 | Appeal Decision APP/X1355/W/16/3150609 (Land south of Eden Drive, Sedgfield, Co Durham)      |
| CD 4.12 | Steer v SSCLG [2017] EWHC 1456 (Admin)                                                       |
| CD 4.13 | (Williams) v Powys CC v Bagley [2017] EWCA Civ 427                                           |
| CD 4.14 | Appeal Decision APP/W4515/A/12/2186878 (Northumberland Estates - Scaffold Hill Farm, Benton) |

|               |                                                                                                                                               |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CD 5.0</b> | <b>Other Relevant Documents</b>                                                                                                               |
| CD 5.1        | Farnsfield Conservation Area Appraisal                                                                                                        |
| CD 5.2        | Letter from Brandon Lewis MP, Minister of State for Housing and Planning, to the Chief Executive of the Planning Inspectorate (27 March 2015) |
| CD 5.3        | Farnsfield Neighbourhood Plan Character Appraisal and Design Guidance (2017)                                                                  |
| CD 5.4        | Newark and Sherwood Statement of Five Year Land Supply as at 1 April 2017                                                                     |
| CD 5.5        | Nottingham Core HMA and the Nottingham Outer Core HMA Council's position statement on the Farnsfield Inspector's Decision                     |
| CD 5.6        | Nottingham Outer 2015 Strategic Housing Market Assessment (G L Hearne)                                                                        |
| CD 5.7        | Not used                                                                                                                                      |
| CD 5.8        | Historic England: Historic Environment Good Practice Advice Planning Note 3: The Setting of Heritage Assets (2015)                            |
| CD 5.9        | Housing White Paper – Fixing Our Broken Housing Market (February 2017)                                                                        |
| CD 5.10       | Budget and Growth Review (March 2011)                                                                                                         |
| CD 5.11       | Written Ministerial Statement (March 2011)                                                                                                    |
| CD 5.12       | Housing and Growth (September 2012)                                                                                                           |
| CD 5.13       | PAS Plan Review – Newark and Sherwood District Council Adopted Core Strategy (February 2015) - Also listed as Inquiry Doc 9                   |

## **APPENDIX B:**

**Schedule of recommended conditions in the event that either/both the appeals succeed. Other than where specified below, the recommended conditions are common to both schemes.**

### **Reserved Matters**

- 1) Details of appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning authority before development begins. Development shall be carried out in accordance with the approved details.
- 2) Applications for the approval of the reserved matters shall be submitted to the Local Planning authority no later than twelve months from the date of this permission.
- 3) The development hereby permitted shall begin no later than twelve months from the date of approval of the last of the reserved matters to be approved.

### **Plans**

- 4) Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with Drawing No 16209-001.

### **Development Principles and Parameters**

- 5) The development hereby permitted shall be carried out in accordance with the design principles articulated in the October 2017 Development Brief (Appendix 2 to the evidence of Mr Denny).
- 6) No more than 20 dwellings shall be constructed on the site.  
**(Appeal A only: APP/B3030/W/17/3169436)**  
No more than 60 dwellings shall be constructed on the site.  
**(Appeal B only: APP/B3030/W/17/3179732)**

### **Development Mix**

- 7) Any relevant reserved matters application covering the site in whole or in part, shall contain a mix of size and type of housing that reflects the housing needs of the area at the time of submission in accordance with details that shall have previously been approved in writing by the Local Planning authority. Development shall be carried out in accordance with the approved details.

### **Construction**

- 8) No development, including works of site clearance, shall commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning authority. The approved Construction Method Statement shall thereafter be adhered to throughout the construction period. The Construction Method Statement shall include, but is not limited to, the following matters:
  - the parking of vehicles of site operatives and visitors;
  - the loading and unloading of plant and materials;
  - the storage of plant and materials used in constructing the development;
  - the erection and maintenance of a security hoarding, including decorative displays and facilities for public viewing where appropriate;

- wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the site does not carry mud or deposit other materials onto the public highway;
- measures to control the emission of noise, dust and dirt during construction;
- a scheme for the recycling/disposal of waste resulting from construction works;
- hours of operation; and,
- a scheme to treat and remove suspended solids from surface water run-off during construction.

### **Drainage**

- 9) No development shall take place until details of a sustainable surface water drainage scheme based on the Flood Risk Assessment (report No 16209/FRA by GraceMachin Planning and Property dated July 2016) has been submitted to and approved in writing by the Local Planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The scheme to be submitted shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for implementation of the scheme in relation to each phase of the development; and,
  - iii) provide a management and maintenance plan for the scheme, for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) No development shall take place unless and until a scheme for the disposal of sewage 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 first occupation of any dwelling on the site.

### **Ecology/Trees/Landscaping**

- 11) Landscaping details submitted pursuant to condition 1 above shall include a schedule (including planting plans and written specifications, cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species and shall include a timetable for implementation together with a plan for the ongoing management and maintenance of all landscaped areas other than private domestic gardens and the open space covered by the planning obligation. Development shall be carried out in accordance with the approved scheme.

- 12) No development shall take place, including works of site clearance, until a scheme for ecological mitigation (the 'Ecological Mitigation Scheme') has been submitted to and approved in writing by the Local Planning authority. The Ecological Mitigation Scheme shall include, but is not confined to, the recommended measures relating to bats, birds and badgers as set out in the Preliminary Ecological Appraisal (Brindle and Green May 2016 ref BG16.178) and a timetable for implementation. Development shall be carried out in accordance with the approved Scheme.
- 13) Any works involving the clearance of any vegetation on the site should be conducted between October to February inclusive. If clearance works are to be conducted between March to September inclusive, a detailed survey shall be carried out by a suitably qualified ecologist to check for nesting birds and the results submitted to the Local Planning authority. Where nests are found, work shall not proceed unless and until it has been demonstrated through the submission of a method statement that shall previously have been submitted to and approved in writing by the Local Planning authority, that nesting birds can be adequately protected. Development shall be carried out only in accordance with the approved details which may include, but are not confined to, the timing of work, pre-work checks, avoidance of nesting areas, and protection zones around nesting areas.
- 14) No development shall commence, including works of site clearance, nor shall any equipment machinery or materials be brought onto the site for the purpose of the development hereby permitted until all existing trees and hedges to be retained have been protected by fencing in accordance with BS 5837: 2012 *Trees in relation to design, demolition and construction – Recommendations*, pursuant to a scheme that shall previously have been submitted to and approved in writing by the local planning authority based on the AWA Arboricultural Method Statement July 2016 . Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the Local Planning authority. The approved protection measures shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

#### **Site Levels**

- 15) No development shall take place, including works of site clearance until details of the existing and proposed ground levels, and proposed finished floor levels, have been submitted to and approved in writing by the Local Planning authority. Development shall be carried out in accordance with the approved details.

#### **Highways**

- 16) No development shall take place unless and until a scheme for the provision of the access to the site, new roads, footways and footpaths (the New Road Scheme) has been submitted to and approved in writing by the local planning authority. The New Road Scheme shall include: longitudinal and cross sectional gradients; surfacing; visibility splays; street lighting; drainage and outfall arrangements; construction specification; provision/diversion of utilities services; any proposed structural works and a timetable for implementation. Development shall be carried out in accordance with the approved details.

- 17) No dwelling shall be occupied unless and until the pedestrian crossing points on Mansfield Road, as shown on drawing No 16209-001, have been provided in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning authority.
- 18) No dwelling shall be occupied unless and until a pedestrian footway has been provided along the south side of Mansfield Road to link the western side of the footway adjacent to the site access with bus stop NS0031 to the west of the site and associated pedestrian crossing points, and to the east of the site access to link with the pedestrian crossing points as shown on drawing No 16209-001, in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning authority.

**Additional condition Appeal A only (APP/B3030/W/17/3169436)<sup>169</sup>**

- 19) No development shall take place unless and until a scheme for the construction (including signage) of a permissive footpath along the route shown on the attached plan (Plan 1 labelled Permissive Footpath, Mansfield Road, Farnsfield) between the points marked indicatively as A and B on that plan, has been submitted to and approved in writing by the Local Planning authority. The scheme to be submitted shall include details of construction, including signage, a timetable for implementation, arrangements for ongoing maintenance and retention of the path for the lifetime of the development. Development shall be carried out in accordance with the approved details.

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**Reasons for the recommended conditions:**

**Conditions 1, 2 and 3** above relate to the submission of reserved matters and commencement of development. The shortened period suggested for submission of the reserved matters and commencement of development was agreed in the event that the reason for the grant of permission was a response to an identified need to boost the supply of housing in the absence of a five year supply.

To provide certainty, it is necessary to identify the plans to which the decision relates, but only insofar as they relate to the matter of access, which is not reserved for subsequent approval (**condition 4**).

In order to ensure that the development is of sufficiently high quality, and in the interest of visual amenity, it is necessary to ensure that development relates to the principles set out in the Design Brief (**condition 5**).

Whilst all matters other than access are reserved for further approval, it is necessary for the outline permission to define the maximum capacity of development (**condition 6**).

To ensure that a full mix of housing is provided in the interest of creating a balanced sustainable community, and in order to ensure that the development meets the needs of the village as defined in the Neighbourhood Plan, **condition 7** requires the

<sup>169</sup> If Appeal A was to succeed and this condition imposed, this plan would need to be attached to the decision.



submission of details of the mix of type and size of market dwellings. The provision of affordable housing is dealt with by the planning obligation.

In order to minimise disruption during the construction process for local residents and those travelling through the village, and to protect the environment, **condition 8** secures a Construction Method Statement.

In order to avoid pollution and to prevent increased risk from flooding, **condition 9** is necessary to secure details of a sustainable surface water drainage scheme, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended. It is also necessary to secure details and implementation of a scheme for the disposal of sewage, in order to prevent pollution in the interests of amenity and the environment (**condition 10**).

In the interests of visual amenity and improving biodiversity, it is necessary to specify the details to be submitted as part of the landscaping reserved matters (**condition 11**). Also in the interest of biodiversity, and in accordance with Core Strategy policy CP12, a scheme of ecological mitigation is necessary, together with measures to ensure the protection of nesting birds should any vegetation clearance take place between March and September (**conditions 12 and 13**). In addition, it is necessary to ensure that the trees, hedges and boundary vegetation to be retained are protected during construction, in order to safeguard visual amenity (**condition 14**).

Given the changing ground levels across the site, details of existing and proposed ground levels, and proposed finished floor levels are necessary in the interest of visual amenity (**condition 15**).

In the interest of vehicular and pedestrian safety, it is necessary to secure provision of the access, estate roads and associated footways (**condition 16**). In order to promote more sustainable modes of transport, and in the interest of pedestrian safety, conditions are necessary to secure provision of the pedestrian crossing points on Mansfield Road shown on the submitted plans, and to secure the provision of a footway along the southern side of Mansfield Road to link to the adjacent bus stop and the pedestrian crossing points (**conditions 17 and 18**).

In the event that Appeal A was to succeed, a condition to ensure the provision of a permissive footpath is necessary to provide a pedestrian link to the Robin Hood Way long distance footpath (**condition 19**).



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

### Challenges under Section 288 of the TCP Act

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

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

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

## SECTION 3: AWARDS OF COSTS

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

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.