Ministry of Housing, Communities & Local Government

Mrs Lizzie Marjoram
Bird Wilford and Sale Solicitors
19-20 Church Gate
LOUGHBOROUGH
Leicestershire
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Our ref: APP/K3415/V/17/3174379
Your ref: (bws) EHM/TS/ARKALL
(savills) WIPL321567

Richard Shaw
Savills
Wessex House
Priors Walk
East Borough
Wimborne BH21 1PB

7 June 2018

Dear Sir / Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY BARWOOD STRATEGIC LAND II LLP (BSL)
LAND NORTH OF ASHBY ROAD, TAMWORTH, STAFFORDSHIRE
APPLICATION REF: 14/00516/OUTMEI

1. I am directed by the Secretary of State to say that consideration has been given to the report of Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb, who held a public local inquiry between 16 and 25 January 2018 into your client's application for outline planning permission for up to 1,000 homes, primary school, local centre (up to 40 m²), public open space, landscaping and associated infrastructure in accordance with application ref: 14/00516/OUTMEI dated 16 May 2014.

2. On 20 April 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application be approved.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to grant outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Andrew Lynch, Decision Officer
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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The 2017 ES supersedes a 2014 version and an ES Addendum 2016 submitted in response to the Planning Inspectorate's (PINS) Regulation 22 request for further information. Having taken account of the Inspector's comments at IR1.5, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. During the course of the Application the description of the proposal was amended to "The phased development of up to 1,000 homes, primary school, local centre, public open space, landscaping, new vehicular and pedestrian accesses, primary sub-station and associated infrastructure" (IR1.1). The Inspector's report and this letter consider the Application on the basis of the revised description. The Secretary of State does not consider that this amended description raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

7. A list of the representations received since the inquiry is at Annex A. Copies of these may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

8. 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.

9. In this case the development plan consists of the *Lichfield Local Plan Strategy*, adopted in February 2015 (LLPS); the *Lichfield District Local Plan (saved policies)* (1998) (SLP); and, the *Wigginton and Hopwas Neighbourhood Plan*, made in December 2016 (NP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR3.2-3.3

10. 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 Tamworth Local plan adopted in February 2016.

11. 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.

12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

Highways

13. For the reasons given in IR10.3.1 to 10.3.6, the Secretary of State agrees with the Inspector that the proposed Monitor and Manage approach to highways impacts, secured by condition, would provide an appropriate level of mitigation to meet actual highway conditions at the relevant future time. He notes that all four highway expert witnesses, including that of the highway authority, agree that the site could provide 1,000 dwellings.

14. The Secretary of State notes that there is disagreement between the parties on whether a suitable scheme to mitigate the full 1,000 dwelling proposal could be brought forward without a CPO, but agrees with the Inspector in IR10.3.3 and 10.3.6 that there is no legal or policy impediment to granting planning permission, and that should a CPO be required in due course, the highway authority would consider the need to enhance the existing highway network and the responsibility placed on it by NPPF paragraphs 32 and 35.

Education

15. The Secretary of State notes in IR10.4.1 and 10.4.2 that the Applicant and local education authority agree on the mitigation required, and that this has been secured. He notes that the local education authority has no education objections to the scheme and agrees with the Inspector that there is little evidence to justify a different conclusion.

Affordable Housing

16. For the reasons given in IR10.5.1 and 10.5.2, the Secretary of State agrees with the Inspector that the provision of approximately 400 affordable homes would be a very significant benefit of the proposal.

Social Infrastructure

17. For the reasons given in 10.6.4, the Secretary of State agrees that even were off-site requirements at Arkall Farm to be added to the list of items funded by CIL, this would not increase the £14/m^2 that CIL would provide. He notes in IR10.6.6 and 10.6.7 that power to transfer monies under CIL Regulation 59 enables a 'charging authority' to fund infrastructure "outside its area" where to do so "would support the development of its area", that infrastructure to be "funded in whole or in part by CIL" is that on the list and that he has no legal power to change the list or require a transfer to take place.

18. The Secretary of State agrees with the Inspector for the reasons given in IR10.6.9, that there have been 5 contributions towards sport and leisure facilities as well as other contributions towards artificial pitches, and that therefore "pooling restrictions" mean that the obligations in respect of indoor sports and leisure cannot be taken into account.

19. While recognising that he has no powers of compulsion, the Secretary of State agrees with the Inspector in IR10.6.11 that he is entitled to expect neighbouring authorities to act reasonably in respect of their dealings with each other, and that the expectation that the local planning authority will do what it has said it would do is not fanciful, not least as the present Infrastructure Development Plan still makes that promise.

Other matters

20. The Secretary of State notes in IR10.2.3 that the Grade II listed farm complex is the nearest heritage asset, and that Historic England agrees with the ES that the impact on the Farm would be less than substantial. For the reasons given in IR10.7.1 and 10.7.2, the Secretary of State agrees with the Inspector that the listed buildings and Conservation Areas, and their settings, would be preserved. He further notes that there is only a minimal impact on flood risk or drainage issues in the opinion of the Staffordshire Flood Authority, a view shared by the Environment Agency.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR10.9.1-10.9.2, the recommended conditions set out at the end 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 and that the conditions set out at Annex B should form part of his decision.

Planning obligations

22. Having had regard to the Inspector's analysis at IR10.9.3-10.9.9, the planning obligation dated 30 January 2018, 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 for the reasons given in IR10.9.3 that the following elements comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework: Primary and Secondary education contributions; affordable housing; provision and future maintenance of public open space; on-site retail facilities; on-site community facilities; residential travel plan (but not the management fee); and the provision of a bus service linking the site, town centre, and railway station Monday to Saturday 0700 to 1900, and Sundays and Public Holidays 0930 to 1600.

23. For the reasons given in IR10.9.4, the Secretary of State agrees with the Inspector that the section 106 Monitoring fee of £14,684, and the Travel Plan Monitoring fee of £6,430 are not justified and fail the Regulation 122/NPPF paragraph 204 tests. He further agrees with the inspector for the reasons given in IR10.9.5 to 10.9.7 that Schedule 7 of the Deed fails the NPPF paragraph 204 test, and consequently should not be taken into account in the decision making process.

24. For the reasons given in IR10.9.8, the Secretary of State agrees with the Inspector that Network Rail's request for £12,000 to provide additional cycle parking at the station has not been justified, that the sum sought cannot be considered to be reasonably related in scale and kind to the development and therefore fails the Regulation 122 test and has not been considered.

25. In summary therefore, and in accordance with Clause 4.9 of the planning obligation, the Secretary of State considers that the following elements of the signed obligation dated

30 January 2018 should be deemed severed from the Deed without affecting the enforceability of the remaining obligations of the Deed:

a. Clauses 1.13, 1.28, 1.54, 1.55, 1.56 and 7.2

b. Schedule 5, sections 1.4 and 2.1 only

c. Schedule 7

d. Schedule 8

Planning balance and overall conclusion

26. For the reasons given above, the Secretary of State considers that the application is in accordance with LLPS paragraphs 15.1-15.2. and with NP Policies WHC1, W1, WHC2 and WHC3/4, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

27. The Inspector sets out his view of the benefits and dis-benefits of the proposal at IR10.8.1 to 10.8.4. The Secretary of State attaches significant weight to the benefits of the provision of homes, in particular the provision of approximately 400 affordable homes. He attaches moderate weight to the economic benefits in terms of jobs and economic contributions from new residents, and the substantial CIL payment. He also attaches moderate weight to the environmental benefits in terms of provision of community orchards and allotments, encouraging modal shift, and increased biodiversity. He attaches little weight to the harm arising from the loss of lower value agricultural land.

28. The Secretary of State has considered Paragraph 134 of the Framework, which states that the harm to heritage assets should be weighed against the public benefits of the proposal. He considers that the public benefits of the proposal would outweigh the harm and that therefore paragraph 134 is favourable to the proposal.

29. Overall, the Secretary of State concludes that there are no material considerations which indicate that this development should not be determined in accordance with the development plan.

30. The Secretary of State therefore concludes that the application should be approved and outline planning permission granted.

Formal decision

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to the conditions set out in Annex B of this decision letter for the phased development of up to 1,000 homes, primary school, local centre, public open space, landscaping, new vehicular and pedestrian accesses, primary sub-station and associated infrastructure.

32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

33. 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.

34. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

35. A copy of this letter has been sent to Lichfield District Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

Annex A - Schedule of representations received since the inquiry

General representations received

Party	**Date**
Two petitions entitled "Stop Barwood building 1000 houses on Tamworth's borders"	various
John Mitchell	23 February 2018
Mr Christopher Pincher MP (enclosing one from Cllr Daniel Cook, Leader of Tamworth BC)	12 March 2018

ANNEX B - SCHEDULE OF CONDITIONS

1) The development authorised by this permission shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.

2) The first reserved matters application for Phase 1 of the development as indicated on the phasing plan WIPL321567/UD15 rev C shall be made within 3 years from the date of this planning permission.

3) The first reserved matters application for Phase 2 of the development as indicated on the phasing plan WIPL321567/UD16 rev D shall be made within 5 years from the date of this planning permission.

4) The first reserved matters application for Phase 3 of the development as indicated on the phasing plan WIPL321567/UD17 rev D shall be made within 7 years from the date of this planning permission.

5) The first reserved matters application for Phase 4 of the development as indicated on the phasing plan WIPL321567/UD18 rev D shall be made within 12 years from the date of this planning permission.

6) All applications for the approval of reserved matters shall be in accordance with the following approved drawings:

WIPL/UD03 rev. D Site Extent

WIPL/UD04 rev. D Development Concept Plan

WIPL/UD07 rev. G Building Heights Plan

WIPL/UD08 rev. I Housing Density Plan

7) This is an outline planning permission and no development shall be commenced within any respective phase until details of the following have been submitted to, and approved in writing by, the Local Planning Authority by way of a reserved matters application/s: layout of the site including the disposition of roads and buildings; scale, the external appearance of all buildings and structures; the means of pedestrian and vehicular access and parking layout; and the landscape and planting of the site. The development shall be carried out in accordance with the approved details.

CONDITIONS to be complied with PRIOR to the submission of any reserved matters:

8) Before the submission of any Reserved Matters, pursuant to Condition 7, a detailed Surface Water Drainage Strategy shall be submitted to, and approved in writing by, the Local Planning Authority for that phase of the development. Subsequent Reserved Matters applications shall accord with the approved details. The Surface Water Drainage Strategy shall be in accordance with the Flood Risk Assessment ref. 28648/007 dated May 2014 and shall include:

i) Provision of sufficient storage and routing of surface water for up to and including the 1 in 100 year plus climate change storm event;

ii) Demonstration that any surface water outflow rates are not greater than equivalent greenfield rates of run off for the undeveloped site;

iii) Details of how and by who the surface water drainage design will be managed and maintained;

iv) Finished floor levels to be set at least 1 metre above bank levels of the water courses present within the site; and,

v) Provision of a suitable easement for access and maintenance of watercourses within the site.

The development shall thereafter be carried out in accordance with the provisions of the approved Surface Water Drainage Strategy.

CONDITIONS to be complied with PRIOR to the commencement of development hereby approved

9) Notwithstanding the details shown on the approved plans (including the illustrative concept Masterplan UD05M), on or before the submission of any Reserved Matters pursuant to Condition 7, a Site-Wide Design Framework for the entire site, shall be submitted to, and approved in writing by, the Local Planning Authority. This Framework shall be broadly in accordance with the approved Parameter Plans as listed in condition 6 and in accordance with the principles set out on the Indicative Masterplan (WIPL/UD05), the 2017, Planning, Design and Access Statement and the November 2017 Environmental Statement and shall include the following:

i) Access Strategy;

ii) Movement framework, including connections to the surrounding area and through the site for all modes;

iii) Street types and road hierarchy, including any required speed restriction measures;

iv) Building forms, heights, having regard to finished floor levels;

v) Housing mix;

vi) Street layout and character areas;

vii) Corner treatment;

viii) Building and surface materials palette;

ix) Boundary treatments principles;

x) Mitigation of impact on the Arkall Farmhouse complex, including a plan showing a no build zone that will be kept free from built development around the complex;

xi) Landscape design principles and strategy;

xii) The locations, layout and specifications for the on-site public open space, play areas and SuDS; and,

xiii) Parking strategy including the provision of secure cycle parking facilities for each dwelling unit.

Proposals contained within applications for the approval of Reserved Matters pursuant to Condition 7 shall thereafter conform to the principles contained in the approved Design Framework.

10) Each application for the approval of Reserved Matters, pursuant to Condition 7, shall be accompanied by a statement that demonstrates that such details of reserved matters accord with the design principles of the approved Design Framework, pursuant to Condition 9. The statement shall include matters of the following:

i) Building Mass;

ii) Public realm and amenity space;

iii) Accessibility for all;

iv) Footpaths and cycle ways;

v) Car and cycle parking, including visitor car parking and secure cycle parking;

vi) Vehicular accesses and circulation;

vii) Service arrangements;

viii) Principles of hard and soft landscaping;

ix) Ecological design principles;

x) Existing and proposed finished floor levels;

xi) Security and safety;

xii) Principles of energy efficiency;

xiii) Housing mix;

xiv) Materials;

xv) Layout; and,

xvi) The findings of up to date ecological surveys, together with details of any mitigation measures required.

The development of each Reserved Matters phase shall not be commenced until the statement has been approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the details approved.

11) On or before the submission of first Reserved Matters, pursuant to Condition 7, a detailed scheme for the phasing of the development of the entire site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include

details of the phasing of surface water drainage, green infrastructure, playing fields and community facilities. The development shall thereafter be undertaken in accordance with the approved phasing plan.

12) Before the development in a particular phase is commenced, a Traffic Management Plan/Construction Method Statement comprising; arrangements for the parking of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; construction hours; pedestrian and cyclist protection; proposed temporary traffic restrictions; arrangements for turning vehicles; noise control devices (silencers, smart reversing alarms etc.); delivery routeing and hours; the erection and maintenance of security hoarding; wheel washing facilities and methods of prevention of mud being carried onto the highway; safeguarding air and water quality; measures to control the emission of dust and dirt during construction; and, a scheme for the recycling/disposing of waste resulting from demolition and construction works shall be submitted to and approved in writing by the Local Planning Authority. The approved Traffic Management Plan/Construction Method Statement shall be implemented prior to the commencement of any works on the site and shall be maintained throughout the entire construction period of the development.

13) Before the development in a particular phase is commenced, as approved pursuant to condition 7, a written scheme of archaeological investigation for that particular phase shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall provide details of a programme of archaeological works, to be carried out within the specific phase of the development, including details of a programme of archaeological earthwork surveys to be carried out across surviving areas of ridge and furrow within the site. The scheme shall include post-excavation reporting and appropriate publication. The scheme shall thereafter be implemented in full in accordance with the approved details and timescales.

14) Before the development in a particular phase is commenced, approved pursuant to condition 7, full details of the proposed foul water drainage system for that specific phase of development shall be submitted to and approved in writing by, the Local Planning Authority. No building shall be occupied until connected to the approved drainage system.

15) Before the development in a particular phase, approved pursuant to condition 7 is commenced a remediation strategy for that particular phase that includes the following components to deal with the risks associated with contamination of the site shall be submitted to, and approved in writing by, the Local Planning Authority:

i) A site investigation scheme based on the recommendations proposed in Section 7.2 of the Phase I Ground Conditions Desk Study carried out by Peter Brett Associates (report 28468/006 dated February 2014) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;

ii) The results of the site investigation and detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;

iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy (ii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

A validation report shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed (if needed), to ensure that all contaminated land issues on the specific phase of development have been adequately addressed prior to the first occupation of any part of that phase of the development. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

16) Before the development in a particular phase is commenced, approved pursuant to condition 7, the trees and hedgerows that are to be retained as part of the approved landscape and planting scheme for that phase of the development and adjacent to that phase shall be protected in accordance with BS 5837:2012, in accordance with details to be first submitted to, and approved in writing by, the Local Planning Authority. The agreed tree/hedge protection measures shall be put in place prior to the commencement of any construction works within a particular phase and adjacent to that phase and, shall be retained for the duration of construction works within that phase (including any demolition and / or site clearance works). No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed for that phase of development.

17) Before the development in a particular phase is commenced, approved pursuant to condition 7, a scheme of any proposed external lighting shall be submitted to, and approved in writing by, the Local Planning Authority. The approved lighting scheme shall be implemented in accordance with the approved details.

18) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of all proposed boundary treatments within the respective phase, including full details of any treatment within Public Open Spaces, and a trespass proof fence to be erected adjacent to the railway boundary, shall be submitted to, and approved in writing by, the Local Planning Authority. The approved trespass proof fence shall be implemented prior to the first occupation of any dwelling and thereafter be retained for the life of the development. The Public Open Space boundary treatment shall be provided before first use of that Public Open Space. The residential boundary treatments shall be implemented in accordance with the approved details prior to the occupation of the dwellings the respective boundary treatment is to serve.

19) Before the development in a particular phase is commenced, approved pursuant to condition 7, a detailed noise and vibration assessment for that phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. This shall include an assessment of all sources of noise and vibration, including that associated with any classes within Use Class A, B and D (as defined under the Town & Country Planning (Use Classes) Order 1987, as amended and the Town and Country Planning (General Permitted Development) Order 2015, as amended) forming part of the development, and details of any mitigation required. The approved mitigation and conclusions shall be carried out in full prior to first occupation of any approved A, B and D Use Class within the development.

20) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of any vibro-impact works proposed within the respective phase of development shall be submitted to, and approved in writing by, the Local Planning Authority through a detailed method statement and risk assessment. Any vibro-impact works shall thereafter be undertaken fully in accordance with the approved method statement.

21) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of existing and finished ground levels, earthworks, excavations and hedgerow / tree removal to be undertaken as part of the development process for that specific phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

22) Prior to the commencement of development in any particular phase hereby approved, a Construction Environment Management Plan (CEMP) and a Habitat Management Plan (HMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The CEMP/HMP should include:

i) Details of future habitat creation works proposed, including location and amount;

ii) Details of current soil conditions of any areas designated for habitat creation, together with what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil PH);

iii) Descriptions and a plan showing any exclusion zones, (including vehicular and for storage of materials) required to avoid any unnecessary soil compaction on areas to be utilised for habitat creation;

iv) Details of species composition and abundance where planting is to occur;

v) The method and a timetable for the establishment of the habitat creation works and ecological monitoring to ensure the habitats' good condition for at least 25 years post establishment.

The approved details shall thereafter be implemented in accordance with the timetable approved herein.

23) Before the development in a particular phase is commenced, approved pursuant to condition 7, full details of the number (in excess of 8), designs and locations of bat and bird boxes of mixed designs to be provided within that phase shall be submitted to, and approved in writing by, the Local Planning Authority. The approved bird and bat boxes shall thereafter be implemented in accordance with the approved designs.

24) No development, hereby approved, shall be commenced on site until full details of a 'Monitor and Manage' Mitigation Strategy to monitor and, if necessary mitigate the impact of the respective proposed phases of development on the local highways network has been submitted to, and approved in writing by, the Local Planning Authority. The Monitor and Manage Strategy shall include full details of a strategy to identify trip generations from the specific phases of development and impacts on the Gungate Corridor and the nearby highways network; the carrying out of traffic surveys, their frequency and locations; modelling criteria; definition of acceptable network conditions; and identification of junction capacities; queue lengths and delays on the local highway network. The Monitor and Manage Mitigation Strategy shall be based upon the principles outlined in the Peter Brett

LLP report 'Monitor and Manage' dated December 2014 ref. 28648/5503. The development and any required mitigation identified shall be carried out in accordance with the approved details and timescales.

25) The monitoring strategy pursuant to condition 24 to be approved shall include details of data collection to fulfil the following;

i) Traffic entering and leaving the development at Land north of Ashby Road, to 'identify trip generation from specific phases of development';

ii) Origin-Destination data to understand journey times (identify delay) and impact from the development; and,

iii) Traffic data for the local highway network, to identify impacts (junction capacity, queue lengths and delay) on the Gungate Corridor and nearby highway network, including;

- traffic count data on highway links

- turning movements at junctions

- queue data at junctions, and

- pedestrian movements at junctions with signals (as this affects the signal timings and pedestrian phases).

Details of locations of data collection shall be submitted for approval to include an automatic traffic counter (ATC) will be placed at each of the three site accesses (or whichever one is built at the time of the surveys) to record the volume of vehicles coming in and out of the proposed development. ATC will also be installed at the Anker Valley site access and on Manston View (access to new development north of Browns Lane), from which gathered data could be used to understand the volume of development traffic from these sites during the morning and evening peak hours.

ATCs will also be located on the local highway network on:

- Ashby Road between the development and Browns Lane

- Upper Gungate between the Fountains junction and Offadrive, and

- Offadrive east of Upper Gungate.

Automatic number plate recognition (ANPR) cameras will be installed to at the following locations to record the volume of development traffic using that route:

- site accesses (eastern, central and western site access; whichever are built at the time)

- key links on the highway network most likely to be impacted by the trips generated by the proposed development:

- Gillway Lane east of Comberford Road

- Comberford Road northwest of Fountains junction

- Upper Gungate south of Fountains junction

- Upper Gungate between Offadrive junction and Hospital Street

- Offadrive west of junction with rail station access, and

- Aldergate north of Lichfield Street.

Manual turning counts and queue length surveys will be undertaken at the following junctions:

- Site accesses (eastern, central and western site access; whichever are built at the time)

- Comberford Road / Coton Lane / Gillway Lane staggered junction

- Ashby Road / Brown's Lane / Perrycrofts Crescent staggered junction

- Fountains junction (including the Comberford Road / Wigginton Road junction)

- Upper Gungate / Croft Street junction

- Upper Gungate / Salters Lane / Offadrive junction

- Upper Gungate / Aldergate / Hospital Street / Albert Road / Lower Gungate junction

- Lichfield Street / Aldergate / Church Street / Silver Street junction,

- A513 / Albert Road / Stationfields roundabout; and

- Gillway Lane / Wiggington Road / Browns Lane

Pedestrian movements (including direction of movement) will be recorded as the number of times the pedestrian phase is called at a junction (in an hour) for the following junctions:

- Fountains junction

- Upper Gungate / Salters Lane / Offadrive junction

- Upper Gungate / Aldergate / Hospital Street / Albert Road / Lower Gungate junction,

- Lichfield Street / Aldergate / Church Street / Silver Street junction; and

- A513 / Albert Road / Stationfields Roundabout

26) Upon commencement of development monitoring shall be undertaken and thereafter repeated in line with the details and frequency approved pursuant to conditions 24 and 25 above.

27) No more than 200 dwellings hereby approved shall be occupied until the improvements to Fountains Junction as set out in drawing number 28648-5502-012A have been completed in accordance with the approved details, and an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation Strategy, approved pursuant to Condition 24 of this permission, have been submitted to, and agreed in writing

by, the Local Planning Authority. The assessment of network conditions shall be used to inform further mitigation that may be required pursuant to conditions 28 and 29.

28) No more than 300 dwellings shall be completed ready for occupation on site, until an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation Strategy, approved pursuant to condition 24 of this permission, has been submitted to, and agreed in writing by, the Local Planning Authority. Should the network conditions not be found to be acceptable, a scheme of mitigation to create acceptable network conditions for the erection of up to 500 dwellings (including timeframes for completing any mitigation thereby required), shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the commencement of the 302nd dwelling.

Such a scheme shall include consideration of one or more of the mitigation options as set out in the following drawings and in this order of preference subject to the necessary approval of those mitigation options (and provided that this list of options is not exhaustive):

28648-5502-010B,

28648-5502-004A,

28648-5502-005A,

28648-5502- 006A,

28648-5502-011A,

J32-3125-PS-106 B, and

J32-3125-PS-113A.

In addition to the potential physical changes to kerbs, stop lines and junction forms that could be made as noted in the above drawings, an evaluation of the signal staging and operating regime shall be made to assess potential increase in capacity. Mitigation schemes shall be tested sequentially in the order of priority set out in this condition in order to determine the extent of mitigation actually required. Development shall be carried out in full accordance with the agreed details and not more than 302 units shall be constructed unless and until the agreed works have been completed.

29) No more than 500 dwellings shall be completed ready for occupation on site, until an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation strategy approved pursuant to condition 24 of this permission, has been submitted to, and agreed in writing by, the Local Planning Authority. Should the network conditions not be found to be acceptable, a scheme of mitigation (including timeframes for completing any mitigation) to create acceptable network conditions for the erection of up to 1000 dwellings (including timeframes for completing any mitigation), shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the commencement of the 502nd dwelling

Such a scheme shall include consideration of one or more of the mitigation options as set out in the following drawings and in this order of preference subject to the necessary approval of those mitigation options (and provided that this list of options is not exhaustive);

28648-5502-010B,

28648-5502-004A,

28648-5502-005A,

28648-5502-006A,

28648-5502-011A,

J32-3125-PS-106 B, and

J32-3125-PS-113A.

In addition to the potential physical changes to kerbs, stop lines and junction forms that could be made as noted in the above drawings, an evaluation of the signal staging and operating regime shall be made to assess potential increase in capacity. Mitigation schemes shall be tested sequentially in the order of priority set out in this condition in order to determine the extent of mitigation actually required. Development shall be carried out in full accordance with the agreed details and not more than 501 units shall be constructed unless and until the agreed works have been completed.

30) Before the development hereby approved commences, details of the following offsite highway works, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved drawings and details before any part of the development hereby approved is first occupied.

i) Proposed principle access as broadly indicated on drawing 28648/5510/003,

ii) Proposed secondary access as broadly indicated on drawing 28648/002/010B and 28648/002/011B

iii) Proposed traffic management scheme on Ashby Road as broadly indicated on drawing 28648/002/008C,

iv) Proposed cycle route to Landau Forte Academy as broadly indicated on drawing 28648/002/007, and

v) Toucan crossing on Ashby Road as broadly indicated on drawing 28648/5510/003

31) Before the development of any particular phase is commenced, pursuant to condition 7, details of the sustainability measures/technologies to be used on that particular phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved sustainability measures/technologies shall thereafter be implemented, in accordance with the approved details.

32) Before the development in any particular phase is commenced, approved pursuant to condition 7, a Site Waste Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved Site Waste Management Plan.

All other CONDITIONS to be complied with:

33) All site clearance works associated with the development hereby approved, shall take place and be completed outside of the bird nesting season (March to September).

34) The development shall be carried out in full accordance with the Ecological Mitigation Measures and Enhancement outlined within the Environmental Statement dated November 2017, such details to be submitted to, and approved in writing by, the Local Planning Authority for each phase of the development.

35) Before development in any particular phase is commenced, a Badger Mitigation licence under the Protection of Badgers Act 1992 shall be secured if required and shall be submitted to the Local Planning Authority before any works commence.

36) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.

37) No trees, shrubs or hedgerows planted or retained as part of the approved landscaping and planting scheme carried out in compliance with reserved matters approved pursuant to Condition 7 of this permission shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.

38) The Reserved Matters submitted in respect of the relevant phase of development containing the local centre, approved pursuant to condition 7 of this permission shall include details of a scheme for the control of odour and other emissions from any A3, A4 or A5 uses within the local centre. The development shall thereafter be carried out in accordance with the approved details.

39) No lowering of ground levels shall be carried out on land adjoining the boundary with railway land, nor shall any fencing or construction works encroach onto railway land.

40) Should the local centre provide more than 100 m² of A1 floor space, the relevant reserved matters to be submitted pursuant to condition 7of this permission, shall be accompanied by a retail impact assessment in order to justify the level of retail proposed. The development shall thereafter be carried out in accordance with the approved details.

41) The Reserved Matters within each phase of development to be submitted pursuant to Condition 7 of this permission shall include details of noise attenuation measures designed to protect future occupants of that particular phase from noise nuisance arising from external noise sources including road and rail traffic and existing and future residents from potential noise sources from uses and activities within the site, including the community hub and sports pitches. Any required approved noise mitigation measures shall thereafter be implemented in accordance with the approved details, prior to the occupation of any dwelling.

42) The development shall be carried out in full accordance with the Noise and Vibration Mitigation measures and enhancement measures outlined within the Environmental Statement updated November 2017, unless otherwise approved pursuant to the approval of details in respect of other conditions attached to this permission.

43) Before the erection of any scaffold within 10 metres of a boundary of the railway line, a method statement, including details of measures to be taken to prevent construction materials from the development reaching the railway (including protective fencing) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved measures shall be retained in place throughout the construction phase on the specified dwellings.

44) Before the development in each phase is commenced, approved pursuant to condition 7 of this permission, details of the housing mix for that phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The development of that phase shall thereafter be carried out in accordance with the approved details.

The Planning Inspectorate

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

by Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb

an Inspector appointed by the Secretary of State

Date: 5 March 2018

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY BARWOOD STRATEGIC LAND II LLP

TO

LICHFIELD DISTRICT COUNCIL

Inquiry opened on 16 January 2018

Arkall Farm Land north of Ashby Road, Tamworth, Staffordshire

File Ref: APP/K3415/V/17/3174379

CONTENTS

Section		Title	Page
1.0		**Preliminary Matters**	1
2.0		**The Site and its Surroundings**	2
3.0		**Planning Policy Context**	3
4.0		**The Case For Barwood Strategic Land II LLP**	4
	4.1	Introduction	4
	4.2	Planning Policy	5
	4.3	Highways	6
	4.4	Education	7
	4.5	Affordable Housing	7
	4.6	Social Infrastructure	7
	4.7	Other Matters	14
	4.8	Planning Balance	14
5.0		**The Case for Lichfield District Council**	16
	5.1	Introduction	16
	5.2	Highways	16
	5.3	Essential Social Infrastructure	16
	5.4	Affordable Housing	19
	5.5	Conclusion	20
6.0		**The Case for Tamworth Borough Council**	20
	6.1	Introduction	20
	6.2	Planning Policy	20
	6.3	Highways	21
	6.4	Social Infrastructure	22
	6.5	Affordable Housing	25
	6.6	Conclusion	25
7.0		**The Case for Staffordshire County Council**	25
	7.1	Introduction	25
	7.2	Highways	25
	7.3	Education	27
8.0		**Interested Persons and Written Representations**	27
9.0		**Conditions and Section 106 Deed**	28
10.0		**Inspector's Conclusions**	32
	10.1	Introduction	32
	10.2	Planning Policy	32
	10.3	Highways	33
	10.4	Education	35
	10.5	Affordable Housing	35
	10.6	Social Infrastructure	35
	10.7	Other Matters	38
	10.8	Planning Balance	38
	10.9	Conditions and Section 106 Deed	39
11.0		**Overall Conclusions and Recommendation**	40
	11.1	Overall Conclusions	40
	11.2	Recommendation	41
APP A		**Appearances**	42
APP B		**Documents**	44
APP C		**Conditions**	52
APP D		**Glossary**	63

File Ref: APP/K3415/V/17/3174379
Land north of Ashby Road, Tamworth, Staffordshire

- The application was called in for decision by the Secretary of State (SoS) by a direction, made under section 77 of the *Town and Country Planning Act 1990*, dated 20 April 2017.
- The application is made by Barwood Strategic Land II LLP (BSL) to Lichfield District Council (LDC).
- The application Ref 14/00516/OUTMEI is dated 16 May 2014.
- The development proposed in the original application is outline planning permission for up to 1,000 homes, primary school, local centre (up to 40 m²), public open space, landscaping and associated infrastructure.
- The reason given for making the direction was to accord with the SoS's policy on calling in planning applications.
- On the information available at the time of making the direction, the following were the matters on which the SoS particularly wished to be informed for the purpose of his consideration of the application:
  i) Policies in the *National Planning Policy Framework* (NPPF) on delivering a wide choice of quality homes;
  ii) Policies in the *NPPF* on promoting sustainable transport; and,
  iii) Any other matters the Inspector considers relevant.

Summary of Recommendation: The Application be Approved

1.0 Preliminary Matters

1.1 During the course of the Application the description of the proposal was amended to "The phased development of up to 1,000 homes, primary school, local centre, public open space, landscaping, new vehicular and pedestrian accesses, primary sub-station and associated infrastructure". This report considers the Application on the basis of the revised description.[1]

1.2 The Application is in outline with matters of access, appearance, landscaping, layout and scale reserved for future consideration. It was reported to LDC's Planning Committee in February 2017 when the Committee resolved to grant planning permission subject to a section 106 deed and a number of conditions. The Application was subsequently called in by the SoS.[2]

1.3 At a Pre-Inquiry meeting (PIM), held on 6 November 2017, I indicated that other matters considered relevant include;

i) Whether the proposal complies with any Neighbourhood Plan; and,

ii) Mitigation achieved through the use of conditions and section 106 Deed (highways, education, open space, affordable housing) and the appropriateness of monitor and manage and what it might look like.

1.4 The proposal is Environmental Impact Assessment development. An Environmental Statement (ES), submitted in accordance with the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011*, has been taken into account, along with comments made by consultees and others. Additional information has been submitted in an ES Addendum

[1] BSL/6 Para 1
[2] BSL/6 Para 3

2016 submitted in response to the Planning Inspectorate's (PINS) Regulation 22 request for further information. This includes consideration of each Monitor/Manage trigger point to consider the position should development not proceed beyond any of those points. Mitigation measures are described within this report, particularly in discussion of a section 106 Deed and suggested conditions. A note was provided, at my request, to set out how the statutory requirements have been addressed.[3]

1.5 The 2017 ES supersedes the 2014 ES and the 2016 Addendum, such that it can be read as a single document without the need to refer back to earlier ES documents. Six comments were received in response to the 2017 ES. Three make no comment and the other three are addressed by suggested conditions. The latest positions of the main bodies, in relation to ES adequacy, is that LDC and Tamworth Borough Council (TBC) take no ES point. LDC considers the ES to be adequate and SCC does not consider that planning permission should be withheld on the basis of any ES inadequacy. I agree that the ES is adequate.[4]

1.6 The Inquiry sat for 5 days between 16 and 25 January 2018. Unaccompanied visits to the site and its surroundings were made on 16 and 17 January 2018.

1.7 This report includes a description of the site and its surroundings, a summary of the planning policy background, the gist of representations made at the Inquiry, and in writing, and my conclusions and recommendation. Lists of appearances and documents, a schedule of conditions to be attached should the Secretary of State be minded to grant planning permission, and a glossary of abbreviations are also attached as appendices.

2.0 The Site and Its Surroundings

2.1 The site, which has an area of approximately 76.5 hectares, comprises agricultural land encircling the former farmhouse and associated farm buildings at Arkall Farm. The buildings were converted to residential use following permissions granted in 2011. The site boundaries consist of hedgerows interspersed with trees and there are groups of trees within the site. The Birmingham to Derby railway line lies beyond the western boundary. A public right of way runs from Syerscote Lane to the north west of the site along the northern boundary. Fields lie beyond the site to the north east and a small stream bounds the site to the east. The buildings are accessed via a track from Ashby Road to the south. Ashby Road becomes a radial route into Tamworth town centre known as the Gungate Corridor.[5]

2.2 The site lies within the administrative area of LDC adjoining the administrative area of TBC within an area designated as a Broad Development Location (BDL). Lichfield's boundary with TBC lies to the west and south of the site. Land to the south of the site, on the opposite

[3] ID/5
[4] ID/5, ID/17, BSL/6
[5] BSL/6 Para2, ID/1 Paras 2.2-3.1

side of Ashby Road, is known as Anker Valley and is designated for housing in the current Tamworth Borough Council Local Plan 2006-2031 (TBLP). An outline permission for 535 houses was granted on 1 April 2015 and development is under way. Land to the west of the application site, beyond the railway line, also lies within the BDL and outline permission for 165 dwellings on that site was granted in February 2015 and is now underway.[6]

2.3 As part of the overall strategy for north Tamworth a pedestrian/cyclist bridge over the railway was proposed from the Arkall Farm site to the Browns Lane site to the north west. However, a new bridge has been implemented as part of the Anker Valley development. LDC accepts that this new bridge is accessible and within a convenient and sustainable distance from the Arkall Farm site precluding the need for another new bridge as part of the Arkall Farm development.[7]

3.0 Planning Policy Context

3.1 The development plan for this area of Lichfield comprises: the *Lichfield Local Plan Strategy*, adopted in February 2015 (LLPS); the *Lichfield District Local Plan (saved policies)* (1998) (SLP); and, the *Wigginton and Hopwas Neighbourhood Plan*, adopted in December 2016 (NP). It is agreed that the TBLP and the NPPF are material considerations.[8]

3.2 The LLPS identifies a BDL, including the application site, north of Tamworth. LLPS paragraphs 15.1-15.2 state "Within a Broad Development Location, centred on land to the north of Tamworth Borough, around 1,000 homes will be delivered, to assist in meeting the needs of south east Staffordshire. This supports the spatial strategy for Tamworth Borough which recognises that not all locally derived housing needs can be met within its Borough boundary."[9]

3.3 The NP followed on from, and so has been prepared in accordance with, the LLPS including the BDL. NP Policies WHC1 and W1 seek to prevent coalescence of the plan's core villages of Wigginton, Hopwas and Comberford with the urban area of Tamworth. This reflects the LLPS Policy: North of Tamworth, and does not raise any additional issues. NP Plan Policies WHC2 and WHC3/4 seek to retain existing hedgerows and the historic environment. The boundaries of the application site are a significant distance from the villages preventing coalescence. The LDC Report to Committee states that the site is not of high landscape value, existing hedgerows would be preserved and enhanced and that the development could be assimilated into its surroundings. Subject to a no build buffer around the farm complex and a programme of archaeological works the report concludes there would be no detrimental impact on the character and setting of the heritage assets. Height, scale, and massing are reserved matters.[10]

[6] ID/1 Paras 2.1, 3.1-3
[7] ID/1 Para 34
[8] ID/1 Sect 8
[9] ID/1 Para 8.5
[10] ID/1 Paras 8.9-14 & App 1 Committee Report Summary

3.4 Arkall Farmhouse and the surrounding farm buildings are listed Grade II. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* imposes a statutory duty to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. The application indicative layout indicates the retention of the approach hedgerow reducing the amount of landscaping to the front of the farmhouse and a condition could provide for a no build buffer around the cluster of listed farm buildings.[11]

3.5 Wigginton Conservation Area lies around 475 metres to the west and Amington Conservation Area some 300 metres to the south east. Both contain listed buildings. Development would be sited away from areas of ridge and furrow and most areas of medieval field boundaries would be retained. Subject to the submission of a programme of archaeological investigation across the site the separation distances from the application site would preclude any unacceptably detrimental impact on the settings or character and appearance of the heritage assets. Overall, I consider that the setting of the listed buildings would be preserved and note that neither Historic England, nor the LBC Conservation Officer, nor the County Council's Archaeology Officer raises any objection in principle.[12]

4.0 The Case For Barwood Strategic Land II LLP

4.1 Introduction

4.1.1 The four main parties confirmed, both at the PIM and the start of the Inquiry, that there is no objection to the principle of the proposed development. There was disagreement in respect of highways mitigation and the funding of sports infrastructure in TBC but agreement has now been reached between all four main parties that there is a reasonable prospect of a scheme, or schemes, being identified to enable all 1,000 dwellings to be constructed without unacceptable adverse impact on the adjacent highway network. Whilst it is not agreed that a Compulsory Purchase Order (CPO) scheme would be necessary, the agreement demonstrates that there is a realistic prospect of the full 1,000 homes being achievable. What mitigation might be necessary is not a matter for this Inquiry but for a later date.[13]

4.1.2 A consequence of the highways agreement is that SCC's claim for 'transitional' payments falls away on the basis that there is a realistic prospect of the entire development coming forward. The Position Statement on Education makes clear that "Because we would take the decision to commit to building the new school within phase 2 (201-300 dwellings), we would not seek financial contributions for 'transitional arrangements'." It follows that there is no Highways or Education justification for withholding planning permission.[14]

[11] ID/1 App 1 Sect 5
[12] ID/1 App1 Sect 5
[13] BSL/6 Paras 5-6, ID/07
[14] BSL/6 Para 7, ID/09 Para 5

4.2 Planning Policy

4.2.1 The NPPF places great weight on the importance of up-to-date local plans and proposals that comply with such plans should be approved without delay. The development plan for the District is the LLPS, which was adopted in February 2015 and is up-to-date, saved policies in the 1998 LP, and the NP adopted in December 2016. SCC and TBC objected to the BDL in the LLPS but the objections were considered and rejected by the Inspector who stated "I consider that the Broad Development Location is a suitable and sustainable location that is deliverable or developable and that it is viable".[15]

4.2.2 Specifically the proposal advances the objectives of NPPF Paragraphs 47, 50 and 73. It would provide a significant quantity (up to 400 units) of market and affordable housing with an appropriate mix of dwelling types. There would be some 33 hectares of public open space and playing pitches/facilities significantly in excess of the requirement of development plan policies HSC1 and HSC2. Open space could be used for bowling or tennis and there would be a community facility and local shop. The scheme would be included in the Tamworth circular walking and cycling route.[16]

4.2.3 The NP is relevant but its policies were developed in accordance with the identification of the BDL for large scale residential development. No NP policies would be breached by the proposal.[17]

4.2.4 The only nearby heritage asset is the Grade II listed Arkall Farm complex. Historic England concurs with the ES that the impact on the heritage asset would be less than substantial. Consequently NPPF paragraph 134 requires it to be weighed against the public benefits of the development.[18]

4.2.5 Even if it is considered that the impacts on Tamworth could not be addressed by CIL payments, and that section 106 payments to Tamworth failed the Regulation 122 tests, this would still be sustainable development. Any adverse social impact arising from the failure to contribute to indoor sports provision does not mean that permission should be refused. Adverse impacts should be weighed against the benefits. There has been no quibble about the assessment of benefits and when they are set against the TBC request for a contribution for indoor recreational provision it is easy to see how two experts consider that permission should be granted, even without the contribution.[19]

4.2.6 New facilities have been a long term aspiration of TBC. A Leisure Centre Feasibility Study is dated 2012 and refers back to work in 2009. Some section 106 sums have also already been recovered and in the future CIL is intended to provide. It should be remembered that the estimated cost of the Leisure Centre is put at £10,000,000 such that the sum claimed from Arkall Farm would leave a substantial shortfall and could not be called

[15] NPPF Para 14, BSL/6 Para 8-9
[16] BSL/6 Para 18
[17] BSL/6 Para19
[18] BSL/6 Para 20
[19] BSL/6 Para 22, BSL/3A Sect 10

make or break. A resident of Lichfield or Tamworth in substandard accommodation would doubtless prefer a decent home that could be provided rather than indoor sports facilities.[20]

4.3 Highways

4.3.1 The proposal would impact on the local highway network and the Applicant has worked with SCC, the Highways Authority. During that time SCC's position has changed. Given the large strategic size of the site, and the time it would take to build out, a monitor and manage scheme has been devised which would meet the actual highway conditions at the relevant future time. There are still differences between the Applicant and SCC in terms of effectiveness of Travel Plans and internalisation of traffic movements after provision of a new primary school. However, the advantage of monitor and manage is that those differences of opinion can be tested and mitigation tailored to the actual level of impact at that stage.[21]

4.3.2 The Applicant considers that a package of measures exist which would not require any third party land but would satisfactorily mitigate the impact of the scheme. However, there is no single solution but a range of alternatives, some of which would require third party land. Furthermore, the use of Travel Plans to secure the objective of 10% modal shift is recognised in policy and the use of such plans is widespread. If they were not effective it would be inappropriate to impose them.[22]

4.3.3 Following discussions between the Applicant and SCC a 'cascade' solution has been identified. It is accepted by all parties that a scheme based on the MODE CPO option, which would require third party land, can mitigate the full 1,000 dwelling proposal. It would be the last option in a range of alternatives and provides certainty that there is a design solution that would accommodate the full scheme. The agreement is documented in the Highways Statement of Common Ground (SCG) that is signed by all four main parties and includes suggested conditions 27, 28, and 29. The former secures the implementation of improvement works at Fountains Junction, at no more than 200 houses, which in turn would allow the scheme to proceed to 300 dwellings before any further mitigation works, if any, are required with a final mitigation trigger at 500 dwellings. Importantly, it is accepted that should permission be granted then the 1,000 dwellings would be treated as a commitment and any subsequent development proposals would have to allow for the full quantum of development at Arkall Farm.[23]

4.3.4 The SoS can be satisfied that the site could yield 1,000 homes, albeit that the parties have differing views on the level of mitigation works required. The Monitor Manage approach, secured by conditions, would allow for the determination of what exact works would be required further on in the

[20] BSL/6 Para 22, TBC/4A Para 6.32 and Table of Contributions, ID/13 p8
[21] BSL/6 Paras 23-25
[22] BSL/6 Para 26, Planning Policy Guidance Para 006 Ref ID: 42-006-20140306
[23] BSL/6 Paras 27-28, ID/07 Sect 2 Para 1, ID/08 Para 7, Planning Policy Guidance Para 014 \ref \id\; 42-014-20140306

overall development. Consequently, there are no remaining issues in dispute pertaining to highways matters.[24]

4.4 Education

4.4.1 It is agreed between the Applicant and SCC as education authority that the full scheme would need to provide up to a 1.5 form entry (FE) primary school and a financial contribution toward secondary education calculated by reference to the number of market dwellings. At one time SCC sought a 'transitional' contribution to deal with primary education requirements in the early stages of development. Now, SCC's Position Statement states "Because the decision to commit to building the new school takes place in phase 2 (201-300 dwellings) we would not seek financial contributions for 'transitional arrangements'. This was the only remaining education issue between the Applicant and SCC. The education contribution would be secured by the section 106 Deed as a result of which the education requirement would be met in full by the proposed scheme.[25]

4.4.2 Certainty that the scheme can deliver 1,000 dwellings resolves the concerns of SCC as education authority as to the timing of provision of additional primary school places. This is because the education concerns are 'parasitic' on the highways concerns. The fact that there are no remaining highway or education concerns is recorded in SCC's Position Statements. Indeed, SCC states "On these terms, SCC has no education objections to the scheme.[26]

4.5 Affordable Housing

4.5.1 Affordable housing would be provided in accordance with LDC's 'dynamic model' which would provide for a maximum of 40% affordable dwellings, around 400 affordable homes. LDC and TBC have agreed that TBC will have the nomination rights to 60% and LDC the remaining 40%. That would amount to up to 240 affordable dwellings for TBC and some 160 for LDC.[27]

4.5.2 Whilst the provision of a significant number of affordable homes would ordinarily be given great weight that is even more so the case here. The Southern Staffordshire Districts Housing Needs Study and SHMA update identified an annual need of between 377 and 702 affordable homes per annum. When compared to the overall local plan housing target of 478 dwellings per annum there is a significant and growing shortfall in affordable housing provision.[28]

4.6 Social Infrastructure

4.6.1 The only remaining disagreement between the parties relates to the request of TBC for funding towards Indoor Sports provision within Tamworth Borough. It is accepted that there would be an impact on Tamworth's indoor sports facilities as a result of the development given the

[24] BSL/6 Paras 31-32
[25] BSL/6 Paras 33-34, ID/09
[26] BSL/6 Para 29 & 35-37, SCC/2 Paras 14-15, ID/08, ID/09
[27] BSL/6 Para 39
[28] BSL/6 Para 40

proximity of the site to Tamworth. Indeed, since 2014 the Applicant has impressed upon LDC the importance of infrastructure provision in Tamworth arising from this scheme.[29]

4.6.2 In January 2014 the first version of the Infrastructure Development Plan (IDP) was published relating to BDL and the resultant needs for infrastructure in Tamworth. The Arkall Farm application was submitted to LDC in June 2014. The IDP was reissued in August 2015 with an identical commitment to BDL and Tamworth's infrastructure needs.

4.6.3 A report to LDC's Committee in February 2017 addressed the Community Infrastructure Levy (CIL) and states "CIL for this development will contribute to indoor sport and recreational facilities" whilst a revision of the IDP made no change to the relevant text. In October 2017 a SCG set out that the development was a CIL liable scheme and goes on to say "It is notable that TBC are entitled to apply to LDC for CIL monies to be directed to facilities and projects within TC, inclusive of indoor sports". A version of the IDP was published in October 2017 with similar wording to earlier versions.

4.6.4 Also in October 2017 a legal opinion acknowledged there were potentially differing views but pursued only a section 106 contribution and ignored an IDP commitment to revision of the IDP. TBC's opening notes there is more than one available mechanism and also mentions a transfer of CIL monies from LDC to TBC and modification of the LDC Regulation 123 list to include matters which are presently contained in a draft section 106 Deed. Paragraph 8.61 of the SCG was amended to delete the last sentence. A Memorandum of Understanding records that "Lichfield recognise that there is a need generated for indoor sport from the development. As outlined above, it is agreed that this need should be met through the provision of a section 106 Deed.[30]

4.6.5 LDC has resiled from its repeated promise to amend the 'living' IDP. Moreover, it is now refusing to pay TBC any CIL relying on the existing terms of the IDP/Regulation 123 list despite repeatedly saying it would amend the IDP expressly to deal with TBC's infrastructure needs. TBC and LDC have now joined forces to claim section 106 payments from Arkall Farm. TBC has ignored the route of LDC's IDP/Regulation 123 amendment despite acknowledging it in opening. In addition, the Memorandum of Understanding (MoU) ignores TBC's objections to the emerging Allocations Plan that could be potential showstoppers. The criticisms include complaints about the Duty to Co-operate and allegations that the Allocations Plan is not consistent with the NPPF due to its failure to address Tamworth's infrastructure needs arising from Arkall Farm. LDC's response is wholly inadequate.[31]

4.6.6 TBC has set out claims for contributions towards swimming pool, sports hall, and 3G pitch provision. Until recently LDC recognised the potential impact but considered the appropriate funding route would be by CIL and

[29] BSL/6 Para 43
[30] ID/10
[31] BSL/6 Para 45

amendment to the IDP. The CIL rate is £14/m² and would generate a sizable contribution from which TBC could claim payment. LDC's Regulation 123 list identifies projects toward which such a sum might be spent. Both the 2016 and 2017 Regulation 123 lists make it clear that where it is considered additional sums ought to be paid by way of section 106 those requirements are identified in the 'notes' column. The Regulation 123 list draws on the IDP which is a living document intended to be updated regularly. All the iterations of it mentioned above recognise that development at the BDL will be reliant upon a range of infrastructure delivered within Tamworth.[32]

4.6.7 What is surprising is LDC's volte face on whether contributions collected under the LDC CIL should be allowed to be applied towards such infrastructure. The basis for the change is stated to be the legal opinion obtained by TBC but that simply refers to one way of making provision. The Opinion does not justify LDC's abandonment of its commitment to amend its IDP. There is no LDC Committee Report to explain the change that conflicts with the IDP commitment to update the IDP to address Tamworth's infrastructure needs. Nor has LDC explained how the Local Plan Allocations document will deal with Tamworth's Regulation 19 objections as the existing IDP promises to do.[33]

4.6.8 LDC's refusal to amend its IDP, as it has consistently promised to, ignores its duties as one LPA to another. The 2014 MOU committed LDC to collaboration, including in relation to CIL. LDC's current position is not "looking for solutions rather than problems" as required by NPPF Paragraph 187. LDC should amend its IDP/Regulation 123 list to make provision for TBA's needs arising from the development, as it has undertaken to do on three occasions. There is no good reason why it shouldn't.[34]

4.6.9 LDC claim it would take too long but it need not. Indeed, LDC undertook such an exercise in 2017 to clarify the position in relation to secondary education. Having acknowledged that the development would result in the use of infrastructure in Tamworth it would not be appropriate for LDC to pocket the CIL monies generated by the BDL in their entirety and ignore the needs of the neighbouring authority. A failure to allocate some CIL monies to the development and then expect the developer to pick up the tab in section 106 payments would effectively mean the developer paying twice.[35]

4.6.10 LDC should amend its IDP/Regulation 123 list in relation to the three indoor sports elements and allow for some part of the CIL money to be spent in the neighbouring authority. That is what was originally intended and is committed to in the current IDP.[36]

4.6.11 The proposal would be liable for CIL at the rate of £14/m² which was arrived at having full regard to the viability of the SDA/BDL developments. The BDL was before the January 2016 CIL Examination Inspector, along

[32] BSL/6 Paras 46-47, LDC/3B Vol 4 B24 p497 IDP Feb 2017 para 5.44
[33] BSL/6 Paras 48-49, CD24 Para 5.45
[34] BSL/6 Para 50, CD/09
[35] BSL/6 Para 50
[36] BSL/6 Para 50, CD/24 Para 5.45

with the other LDC SDA sites, as was LDC's then draft Regulation 123 list which required those sites to make contributions toward education, and on-site provision for playing pitches, in addition to the CIL charge as those factors were part of the viability assessment considered through the examination which arrived at the lower CIL rate for the strategic sites. Had any other infrastructure contributions been required they too would have been placed before that Inspector and would have featured as part of that viability assessment and CIL Charge setting exercise.[37]

4.6.12 Even if off-site requirements generated by Arkall Farm had been added to the infrastructure requirements considered by the Examiner, it could not have increased the £14/m² payment because that figure was set, and reduced from £55/m² by the Examiner, on the express basis that he wanted to ensure viability of development in the BDL. In any event, the funding gap remains substantial so it is not expected that the qualifying developments will pay for all necessary infrastructure.[38]

4.6.13 Some reliance has been placed by TBC, and to a lesser extent LDC, on the PBA work which accompanied the material LDC supplied to the CIL Examiner. The PBA paper makes an assumption that properties will be subject to a section 106 education charge of £10,500 per unit and £500 per unit on top of that. There is no evidence that these assumptions would be inappropriately made in respect of Arkall Farm. If that contention had been made it would have been necessary to test it but it was not. The Applicant is not making a viability case in respect of the recently made section 106 claim by TBC but relies on the fact that the Examiner set the CIL rate that he did so as to ensure viability and that development of the large sites, including the BDL, should be encouraged to come forward.[39]

4.6.14 There is no identified breach of either the development plan or LDC's CIL scheme as a result of the proposal. The Applicant is making all of the contributions that it ought properly to make. Consequently it falls to LDC to ensure that it manages its CIL scheme to ensure that the funds arising are properly directed rather than seeking to obtain a windfall at the expense of its neighbouring authority. Indeed TBC's case, when properly understood, is that it doesn't mind where it secures funding from, either CIL or section 106, it just wants to secure some funding.[40]

4.6.15 TBC's request fails the CIL Regulation 122 test, as mirrored in NPPF paragraph 204, and consequently should not be taken into account in the decision making process even if it were to be offered. A planning obligation should only be sought where it is:

i) Necessary to make the development acceptable in planning terms,

ii) directly related to the development, and,

iii) fairly and reasonably related in scale and kind to the development.[41]

[37] BSL/6 Para 52, CD/29
[38] BSL/6 Para 52
[39] BSL/6 Para 53, LDC/3B Vol 4 p443 Para 2.24
[40] BSL/6 Para 54, TBC/2 Para 18
[41] BSL/6 Paras 55-56

4.6.16 TBC has failed to demonstrate that its request for contributions meets those tests:

i) LDC agrees that planning permission should be granted, even if the section 106 package was not secured because of the overwhelming benefits. It is not therefore "necessary". LDC's support for the section 106 in TBC's benefit is therefore contradicted by the evidence it has called. Para 203 of the NPPF makes clear that:

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations."

ii) It is a long held ambition for TBC to develop a new multi-use leisure centre in Tamworth. That ambition has been the subject of studies in both 2009 and 2012. Plainly it is not a new requirement, equally it is not a requirement arising out of the proposed development at Arkall Farm;[42]

iii) It is no surprise that the leisure centre features in the TBC Local Plan Infrastructure List. Tamworth Local Plan Policy IM1 'Infrastructure and Developer Contributions' provides that the IDP *"specifies the infrastructure required, when and where it will be needed in the plan, and how it could be funded".* As can be seen from that list the funding stream identified for the purposes of the adopted development plan does not include developer contributions.[43]

iv) TBC rely upon the Sport England calculator to provide their figures. The calculator generates a figure based solely upon that identified need (in this case 2,300 people) and does not take account of existing supply. Tamworth maintains that there is already a shortfall in supply as demand is forecast to outstrip supply. The question arises therefore as to whether those forecasts already take into account at least half of Arkall Farm (given that it is to meet TBC's unmet need) and more importantly it clearly shows that the facilities are required *in any event* — they are not a requirement that arises from the proposed development;

v) The Sport England Calculator is agreed to be an appropriate tool but it represents only a start in satisfying limbs (ii) and (iii) of the Regulation 122/paragraph 204 test. What is needed to meet both those elements of the tests is to go on to devise a specific scheme with specific costings, location, and delivery timetable. What is sought is a classic tariff based pooled contribution. Such an approach is not consistent with the implicit exactness of limbs (ii) and (iii) and requires certainty as to cost and delivery in order to compare the development permitted and the costs claimed in respect of it.

[42] BSL/6 Para 57, ID/16
[43] BSL/6 Para 57, CD/02 App B

4.6.17 The Tamworth Local Plan is a material consideration, which TBC rely on in their request for a contribution. The relevant policy is IM1, which requires that *"Planning permission will only be granted if it is supported by appropriate infrastructure at a timely stage. Developer contributions will be sought where needs arise as a result of new development".* The 'need' for a new leisure centre in Tamworth arises regardless of whether the Arkall Farm scheme is developed, as is demonstrated by TBC's 2009 study and 2012 update. Furthermore, there is a large funding gap in relation to the leisure centre (£10,000,000 required) and that as contributions (if made) would be over a long period of time they would not assist in developing the leisure centre in the near future. In consequence, even if it were to be accepted that the leisure centre represents 'appropriate infrastructure' the contributions would not, in any event, be timely. In that respect, the timing of the payments established in the Obligation were at TBC's express request. It is important to note that under the Obligation's provisions that TBC could wait 7 years from first occupation of 500 dwellings before it specifies and commits to a scheme. This obviously creates tension with limbs (ii) and (iii). Furthermore Arkall Farm residents could be living without "the scheme", whatever it turns out to be, for something like 10 years before it is provided. This undermines TBC's assertion that the facilities are necessary to make the development acceptable in planning terms. The contrast with other facilities, such as the primary school, which are properly required by SCC to meet those needs in a timely way is stark. There is no policy justification for TBC's request for section 106 contributions.[44]

4.6.18 Planning obligations are additionally governed by the 'pooling restriction' which precludes a planning authority from taking into account a proposed planning obligation where five such obligations have already been entered into for the same project or type of infrastructure. There are a variety of contributions which could be classified as falling within the category of a sports hall, a swimming pool or a 3G pitch. LDC argues that the contributions are distinct as some relate to a use incorporating one of those uses (eg a leisure centre) whereas others are specifically toward one of those types of projects. It is an attempt at distinction which ignores the fact that monies have been collected which the various agreements would allow TBC to put to each of these projects. There have already been five planning obligations entered into by TBC in respect of each of the three elements of claim now made ie Sports Hall, Swimming Pool, and 3G Pitch and therefore, even if the contributions might be justified (which they are not), they could not be taken into account.[45]

4.6.19 Although recent history appears to show a breakdown in the relationship between LDC and TBC, it is clear that historically they have been able to work together as they are required to do under the 'Duty to Co-operate'. There is no reason why that should not continue and, in turn, no reason why CIL monies collected from the development by LDC should not be provided to TBC to contribute toward the funding of infrastructure which will be utilised by the residents of the site. Furthermore, the LDC Site

[44] BSL/6 Para 58, CD/02 p138
[45] BSL/6 Para 59, LDC/3A p26 Para 6.32

Allocations Plan has been subject to objection in respect of Arkall Farm by TBC because of the failure to make provision for Tamworth's needs. Those formal objections will need to be addressed during the Allocations Plan Examination unless TBC withdraws its objections. TBC will have the right to appear at that Examination. Should it not receive the funds it seeks through a section 106 obligation then it remains entirely open to it to continue to press LDC to co-operate (not least as LDC will have to demonstrate that it has satisfied the 'Duty to Co-operate' in order for the Allocations Plan to proceed successfully through Examination).[46]

4.6.20 How much of the CIL monies ought to be passed to TBC is a matter for the two authorities. What is clear is that the Applicant, in paying the CIL, will have discharged its requirement to contribute toward wider infrastructure. The CIL sum payable (£14/m²) would remain the same regardless of whether or not the TBC 'projects' or 'types of infrastructure' were to be added to the Regulation 123 list as the m² rate has been independently examined and determined to be the appropriate sum on the basis of viability (and not need). The Examining Inspector was aware of BDL in writing his Report;

"I conclude that the suggested £14psm CIL for SDAs and the BDL is appropriate and justified."[47]

4.6.21 There are agreed contributions, to be made by way of section 106 obligation, towards education and for the on-site provision of playing pitches, community facilities and open space. These contributions are expressly in line with both LDC's IDP and Regulation 123 list. The IDP specifically identified infrastructure required as part of the development of the BDL, the Regulation 123 list specifically requires that both secondary education contributions and on-site pitches and community facilities are made outside of the CIL regime. These section 106 contributions do not duplicate any item or type of infrastructure in the Regulation 123 list, they are permissible as they do not constitute 'double dipping'.[48]

4.6.22 What should now happen is that the two authorities should re-engage with one another in order to determine what proportion of the CIL monies generated by the proposal ought to be spent in TBC and that LDC should amend, just as they have done before, their Regulation 123 list to reflect such an agreement. The Applicant is required to pay the CIL sum, which it will do, the onus is upon the two authorities to co-operate together to spend that sum appropriately.[49]

4.6.23 It is outside of the Applicant's power to make LDC do what it has long promised to do about amendment of its IDP/Regulation 123 list. However the SoS is entitled to approach the present, unacceptable, position in this way;

[46] BSL/6 Para 60
[47] BSL/6 Para 61, CD29 Para 67
[48] BSL/6 Para 62
[49] BSL/6 Para 63

i) Although the SoS has no powers of compulsion, he is entitled to expect neighbouring authorities to act reasonably in respect of their dealings with each other;

ii) If no S106 payment is made to TBC, it will actively consider pursuing the existing duly made objections to the Allocations Plan;

iii) TBC and LDC have collaborated in the past with three MOUs up to 2014.

iv) The expectation that, absent section 106 monies for TBC associated with this permission, LDC will finally do what it has repeatedly said it would do (i.e. amend its IDP) is not a fanciful prospect not least because the present IDP still makes that promise.[50]

4.6.24 There are no issues raised by TBC in terms of infrastructure contributions which, when properly considered, warrant refusal of the Application. Should the situation arise whereby TBC receive no monies by section 106 toward Indoor Sports Provision the planning balance still falls overwhelmingly in favour of the proposal given the myriad benefits of the scheme and so even on that basis alone the requested section 106 contribution for TBC cannot be considered to be 'necessary' and, in consequence, it fails the Regulation 122 test.[51]

4.7 Other Matters

4.7.1 The proposal would provide around 33 hectares of open space. It would also provide two playing pitches that would also be used for cricket in the summer, changing facilities, and space for other facilities such as a bowling green and tennis. The scheme would also incorporate part of the proposed TBC 'circular route' for walking and cycling. This on-site provision exceeds LP policy requirements and is served by section 106 commitments as required by the LLP/Regulation 123 list. This provision is demonstrative of a well-designed scheme that would provide outdoor sports and health opportunities not only for future residents of the proposed scheme but also for Tamworth residents.[52]

4.7.2 The proposal is EIA development and an updated ES has been provided to address the position at each Monitor/Manage trigger point to consider the position should development not proceed past any one of those points. The position of the parties in relation to ES adequacy is that SCC does not ask that planning permission be withheld on the basis of any ES inadequacy, TBC takes no EIA point and LDC takes no point and considers the ES is adequate.[53]

4.8 Planning Balance

4.8.1 The development would bring a wealth of benefits which would accord with the three strands of sustainable development. Economically there would be around 150 FTE jobs during many years of construction and up to 300

[50] BSL/6 Para 64
[51] BSL/6 Para 65
[52] BSL/6 Paras 41-42
[53] BSL/6 Paras 66-67

indirect jobs in the supply chain. There would be a substantial CIL payment contributing to district wide infrastructure. New local residents would contribute around £16 million annually to the local economy and there would be substantial New Homes Bonus payments.

4.8.2 In social terms, up to 1,000 homes would be provided with up to 40% affordable housing contributing to meeting TBC's unmet housing need. There would be on-site provision of a community centre, local shop and a new primary school, together with on-site provision of playing pitches, changing rooms, and informal open space well in excess of that required by policy. In addition, a section 106 contribution would help improve local bus services.

4.8.3 Environmentally, the proposal would develop a sustainably located site and travel plans would encourage modal shift and less reliance on private vehicles. There would be footpath and cycle linkages into both Tamworth and the open countryside. Community orchards and allotments would be provided and there would be extensive new planting as well as the retention of significant hedgerows and mature trees. Bio-diversity would be increased through the management of existing and new green infrastructure, the creation of water bodies and wetlands through the implementation of a SUDS system. The only dis-benefit identified is the loss of lower value agricultural land.[54]

4.8.4 The proposal would meet a long standing policy aspiration to deliver housing in this location. The Applicant considers that highway mitigation could be provided without the use of third party land, but even if not, other schemes exist that would mitigate highway impacts. The Monitor and Manage approach would allow for the appropriate solution to be implemented at the appropriate time. Given the 'cascade' of highways options there is a reasonable prospect that the development would be capable of providing the full 1,000 homes. Contributions agreed between BSL and SCC as education authority would meet both the Primary and Secondary Education requirements arising from the proposals.[55]

4.8.5 The Applicant's position is that it has offered to pay all those sums required of it in accordance with LDC's CIL Charging Schedule and by way of section 106 to cater for specifically identified impacts. The Applicant can do no more and the SOS is entitled to expect LDC and TBC to work co-operatively to apply those sums towards infrastructure regardless of which district it lies in.[56]

4.8.6 The Applicant and LDC agree that the proposal is in accordance with the development plan and TBC does not argue that there is any breach of the development plan or CIL regime. In accordance with paragraph 14 of the NPPF the application should be approved without delay.[57]

[54] BSL/6 Para 68 and Tables
[55] BSL/6 Paras 69-70
[56] BSL/6 Para 71
[57] BSL/6 Para 73

5.0 The Case For Lichfield District Council

5.1 Introduction

5.1.1 The issues have narrowed substantially during the course of the Inquiry. The principle of the development is accepted and the remit upon which evidence has been tested has been of exceptionally narrow scope.

5.2 Highways

5.2.1 The highways SCG sets out the common position of all the main parties at the Inquiry and identifies that there is no legal or policy impediment to the grant of planning permission. This is important in the context of the many advantages of meeting the housing needs of the two local planning authorities at this Inquiry. It also enables the development to proceed in full.[58]

5.2.2 Suggested conditions 28 and 29 would require highway network conditions to be assessed for each phase and, if found unacceptable, a scheme of mitigation to be submitted for approval. Under a monitor and manage approach it would be appropriate that mitigation to be provided then should not be fixed now.[59]

5.2.3 The positions of the other main parties are underpinned by their own expert led evaluation of the MODE Non-CPO (J32-3125-PS-106B) and CPO schemes (J32-3125-PS-113A). The future consideration of mitigation will bring further assessment and contemplates that additional land might be necessary.[60]

5.3 Social Infrastructure

5.3.1 There is now common ground between LDC and TBC on what has been referred to as social infrastructure. In the SCG common ground has been reached in respect of both indoor sports provision and affordable housing.[61]

5.3.2 LDC and TBC agree that the development would generate a need for indoor sports facilities . This agreement extends to BSL. LDC and TBC conclude "CIL monies could not therefore be used to fund infrastructure investment within Tamworth or for infrastructure to support Tamworth but constructed outside of the administrative boundary. Therefore the Regulation 123 list is not applicable". Whatever might happen in the future the current position is that Lichfield's Regulation 123 list is not applicable.[62]

5.3.3 It is agreed between LDC and TBC that provision should be made by section 106 obligation, and that any monies be spent in Tamworth. It is also agreed between LDC and TBC that the Sports England calculator be used to determine the contribution towards sports and leisure facilities.

[58] LDC/6 Paras 2.1-2.3, ID/7
[59] LDC/6 Paras 2.4-2.5
[60] LDC/6 Paras 2.6-2.8, LDC/4E
[61] LDC/6 Paras 3.1-3.3, ID/10
[62] LDC/6 Paras 3.7-3.9

BSL has been unable to identify any other means by which such a calculation should be made to address an acknowledged impact.[63]

5.3.4 Lichfield adopted its CIL schedule in April 2006 but TBC has yet to adopt its CIL schedule. BSL maintains that as it is paying CIL, where appropriate, this will contribute to the provision of indoor sports facilities and that any further contribution would amount to 'double dipping'. This is wrong as the adopted Lichfield Regulation 123 list does not apply to the provision of facilities in Tamworth, only to infrastructure in Lichfield and its hinterland. This has not changed over the period within which the CIL schedule has progressed to adoption. Neither BSL nor TBC made any representations during the emergence of Lichfield's charging schedule or the Regulation 123 list upon which it is based to identify any different approach that should be reached on the provision of infrastructure in Tamworth to meet the needs of the BDL.[64]

5.3.5 TBC's evidence, and that of LDC, underlines the fact that the correct mechanism in this case is by section 106 obligation. LDC accepts the use of the Sports England Calculator for TBC's area (which is a different calculation to that applicable in the LDC area). The means of calculation of the contribution relates to the development as does the increase in population arising from it. Policy: North of Tamworth, specifically criterion 2 that does not specifically require the provision of indoor sports facilities, is met by the proposals.[65]

5.3.6 LDC acknowledges that meeting a range of infrastructure needs for Tamworth would be consistent with the objectives of the LLPS. These needs include the provision of indoor sports facilities. A deficit has been identified, the population using existing and future facilities would increase as a result of the proposals, and a satisfactory mechanism has been identified whereby the increase in population can make provision for facilities that would be used by that increased population.[66]

5.3.7 The position of LDC is that the CIL Regulation 122 tests are met. This is not undermined by an acceptance that should the SoS conclude that no provision for indoor sports should be made having regard to the application of a 'blue pencil' clause then the overall planning balance would nonetheless remain in favour of the grant of planning permission. This would be entirely logical. If the SoS excludes the provision of indoor sport it would be because it cannot be justified under Regulation 122.[67]

5.3.8 CIL Regulation 122(2) provides:

> (2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is;
>
> (a) Necessary to make the development acceptable in planning terms;

[63] LDC/6 Paras 3.10-3.13, ID/10
[64] LDC/6 Paras 4.1-4.4, BSL/3A Sect 9
[65] LDC/6 Paras4.5-4.7, TBC/4A Paras 6.39-6.40
[66] LDC/6 Para 4.8, CD1 Para 15.2 p115
[67] LDC/6 Paras 4.9-4.10

(b) Directly related to the development; and,

(c) Fairly and reasonably related in scale and kind to the development.[68]

5.3.9 The acceptability of a proposal without provision for indoor sports in Tamworth is a planning judgement, informed by the SoS's view in the circumstances that the Regulation 122 tests had not been met. LDC's judgement is to be preferred to that of TBC which maintained the view that in the context of non-compliance with Regulation 122 on the basis that provision should be made or permission should be refused. Those circumstances do not arise here.[69]

5.3.10 The approach to Regulation 122 and the tests have been considered in *R oao Working Title Films Ltd v Westminster CC* [2016] EWHC 1855 (Admin) and the practical approach is consistent with the approach of LDC. LDC's position is that TBC has justified the provision of indoor sports facilities under section 106 but if they have not and Regulation 122 has not been met then the benefits of the scheme are such that permission should still be granted. LDC was challenged by BSL but whilst it recognises the existence of a mechanism to add infrastructure to the IDP and Regulation 123 list the provision of indoor sports in Tamworth is a section 106 item. In any event the amendment of the Regulation 123 list and the IDP is a matter for LDC and the SoS has no powers in that respect.[70]

5.3.11 Reference has been made to Browns Lane. The report to committee was drafted with the same erroneous view of the then draft Regulation 123 list and supporting evidence as informed the committee in this application. The sum gathered is ultimately payable to TBC for Tamworth facilities. The Browns Lane MoU is significant as both LDC and TBC view the claimed contribution as being Regulation 122 compliant. BSL states "The application is different to the Browns Lane application, which was determined prior to the Lichfield CIL coming into place. It is not surprising therefore that the Browns Lane application included a section 106 agreement which required a contribution to town centre leisure. The situation is now different".[71]

5.3.12 The difference mentioned is LDC's adoption of a CIL schedule. However, if there is a CIL schedule which has no application to this infrastructure based on the IDP and Regulation 123 list the situation is not materially different. Even if the Regulation 123 list were amended at some point there is no guarantee a particular level of contributions would be transferred to TBC for indoor sports. There was a funding gap of £119.5 million at the time of the examination of the charging schedule and the bidding for CIL monies is self-evidently a competitive process.[72]

5.3.13 BSL maintains that the matter should be dealt with by transfer of CIL monies from LDC to TBC. LDC disagrees for the following reasons.

[68] LDC/6 Para 4.10
[69] LDC/6 Para 4.10
[70] LDC/6 Paras 4.11-4.12
[71] LDC/6 Paras 4.13-4.14, ID/20 Paras 13.4-13.5, CD/16 Clause 2.1, BSL/3D Para 2.26
[72] LDC/6 Paras 4.15-4.16

i) Neither the IDP nor the Regulation 123 list makes provision for indoor sport in Tamworth;

ii) Infrastructure on the IDP can be funded either by CIL or section 106 obligation;

iii) Power to transfer monies under CIL Regulation 59 enables a 'charging authority' to fund infrastructure "outside its area" where to do so "would support the development of its area";

iv) LDC's evidence is that the indoor sports facilities in issue are to mitigate this development not to support the development of its area in a wider sense;

v) The transfer of monies whether it be appropriate or fair is not a relevant legal test; and,

vi) The infrastructure to be "funded in whole or in part by CIL" is that on the list. The 'charging authority cannot transfer monies collected for infrastructure not on the list and the SoS has no legal power to change the list or require a transfer to take place.[73]

5.3.14 Prior positions of LDC not in accordance with its current position are acknowledged but do not alter the current position that is factually and legally correct. BSL accepts that the application should be determined on the basis of the current position. There is agreement between LDC and TBC on the provision of indoor sports infrastructure by section 106 obligation.[74]

5.3.15 The plan making context and the duty to co-operate are not covered by section 33A of the *Planning and Compulsory Purchase Act 2004* as amended. Reference has been made to a 2014 MoU but its limitations are made explicit at the beginning of the document. Objective 4 is "to agree" the mechanisms for collecting and administering monies including both section 106 and CIL. In this case the mechanism is agreed. TBC's representations were made before the SCG and are not showstoppers. The two local authorities agree that the correct mechanism is section 106 and agree that the blue pencil clause should not be activated.[75]

5.4 Affordable Housing

5.4.1 In terms of affordable housing the parties were a long way apart in the lead in to this Inquiry. Agreement has now been reached on the meaning of affordable housing for the purposes of the application, the proportion of affordable housing rights (60/40 in favour of TBC), the process of approval of registered provider and a mechanism for achieving consensus. In the context of agreement that affordable housing in the area is a matter of importance this component of agreement is part of a prize worth having.[76]

[73] LDC/6 Paras 4.17-4.17.6, CD29 Para 25, Mr Baldwin XX by BSL
[74] LDC/6 Paras 4.18-4.19
[75] LDC/6 Paras 4.20-4.24, ID/10
[76] LDC/6 Paras 3.4-3.5

5.5 Conclusion

5.5.1 The proposal is in accordance with the development plan taken as a whole and there are no material considerations that would justify reaching a decision other than in accordance with the development plan. The Applicant has provided a section 106 obligation and a set of conditions that enable the grant of planning permission without delay.[77]

6.0 The Case For Tamworth Borough Council

6.1 Introduction

6.1.1 TBC is a 'Rule 6' party and asked the Secretary of State to call the application in. SCC appeared in the same capacity having also asked for the application to be called in. Both parties seek to ensure that the proposed substantial development extending the urban area of Tamworth is appropriately considered.[78]

6.1.2 Topics of concern have been highways, on which SCC has taken the lead, education provision which is not a matter for TBC, affordable housing provision and mitigation of off-site impacts, particularly provision of sports facilities. This latter is addressed in detail by LDC, BSL, and TBC. If the SoS follows the position of the authorities who have appeared at the Inquiry the planning system will have met its objectives, including the needs of local people who require housing and the protection and provision of public infrastructure.[79]

6.2 Planning Policy

6.2.1 TBC emphasises Chapter 15 of the LLPS which is a material policy concerned with a BDL. The policy: North of Tamworth, is introduced by the observation "it is recognised that any provision to the north of Tamworth, within Lichfield District, will be reliant on a range of infrastructure delivered within Tamworth, particularly the linkages proposed within the *Tamworth Borough Council's Spatial Strategy*".[80]

6.2.2 The theme is continued in Policy SU7 of the TBLP adopted in February 2016. This is a relevant policy in an adjoining local planning authority. It provides for a network of sport and recreation facilities to meet Tamworth's current and future needs by "delivering through contributions and public funding new and enhanced facilities identified in the Sports Strategy Update, in particular a new multipurpose community sports centre in an accessible location, with appropriate facilities and 3G pitches, to meet identified need". Supporting text states "Delivery of enhanced and new smaller sports facilities will be funded through planning obligations".[81]

6.2.3 The Tamworth Infrastructure Delivery Plan (IDP) identifies infrastructure which is required to support the development proposed by the TBLP. The

[77] LDC/6 Paras 5.1-3
[78] TBC/5 Para 1
[79] TBC/5 Paras 2-5
[80] TBC/5 Para 6, CD/01
[81] TBC/5 Para 7 & 8, CD/02 p 139 Para 7.53

IDP expressly identifies the three pieces of sporting infrastructure for which TBC contends.[82]

6.2.4 BSL has drawn attention to TBLP Policy IM1 which states "Planning permission for new development will only be granted if it is supported by appropriate infrastructure at a timely stage. Developer contributions will be sought where needs arise as a result of new development, the infrastructure development plan specifies the infrastructure required, when and where it will be needed in the plan and how it could be funded. TBC submit that Policy IM1 would be complied with if effect is given to Schedule 7 of the section 106 obligation.[83]

6.3 Highways

6.3.1 The Applicant has promoted a Monitor and Manage approach since 2016 as it recognised that there would be a severe impact from the totality of the proposed development and it wished to leave the matter of mitigation to a future date. TBC has never considered that the modal shift and elementary highway works proposed would do anything other than mitigate the impact of modest levels of development.[84]

6.3.2 BSL takes too optimistic an approach to model shift. Pedestrian trip generation does not reflect the fact that there are no local amenities within 1 kilometre and that the majority are over 2 kilometres away. The route along Upper Gungate is unattractive for cyclists and the take up of bus services elsewhere in Tamworth does not justify a modal share of 2.5%.[85]

6.3.3 The highway improvements proposed by the Applicant comprise little more than amendments to road markings and adjustments to traffic signal timings. The Fountains Road junction improvement would be the addition of a short flare on Upper Gungate. Given its unnatural position and the need for an immediate merge, beyond the traffic signals through the bus stop, would limit its use and safety concerns remain as drivers would try to cut-in to the ahead lane blocking the free flow left lane. The modelling is much too optimistic as it assumes infinite road ahead which would not be the case. TBC considers that there is a real risk that the Offa Drive junction changes would also create additional road safety concerns.[86]

6.3.4 The highways experts for the four main parties all agree that what has been identified is a range of measures, one of which would require additional land (with CPO scheme), which would, if implemented, mitigate the traffic impact of the full 1,000 dwelling scheme. The 'with CPO' scheme is not before the SoS and nobody seeks any planning endorsement of it. Its relevance is that it illustrates one means by which the highway impact could be mitigated. It is then necessary to ask whether a condition should be imposed to prevent development beyond 300 dwellings until it

[82] TBC/5 Para 9, CD/02 pp149, 157
[83] TBC/5 Para 10, CD/02 p144, ID/23
[84] TBC/5 Paras 12-13
[85] TBC/3B Paras 7.21-28, TBC/5 Para 14
[86] BAL/3B App E Scenarios 1 and 4, TBC/3A Para 7.39, TBC/5 Paras 15-17

has been demonstrated that an acceptable scheme of highway improvements would be approved, deliverable and effective.[87]

6.3.5 The law in that regard is clear. A Grampian condition would restrict the development to 300 dwellings. Such a condition would limit the phases of development that could come forward until schemes of mitigation are shown, at the relevant time, to be effective in avoiding unacceptable traffic congestion in Tamworth. If an acceptable scheme were delivered to mitigate the highway impact of further development there would be no highway objection to such additional development. This is the Monitor and Manage approach.[88]

6.4 Social Infrastructure

6.4.1 Some progress has been made in identifying a means by which funds may be made available by the developer to LDC and on to TBC which is a section 106 obligation which addresses the TBC impacts with LDC acting as banker. It is common ground that such a legal mechanism would be effective.[89]

6.4.2 However, a dispute remains. BSL and LDC do not agree on the use of CIL monies or an amended CIL charging schedule to address impacts in Tamworth Borough. The section 106 obligation includes a 'blue pencil' clause such that if the SoS accepts BSL's arguments on this topic then no payment would be made. TBC would have a significant phased development forming an extension to Tamworth's urban area which would provide nothing within Tamworth to mitigate the evident impacts.[90]

6.4.3 TBC does not believe the SOS would grant permission on that basis. It would be irrational as there is more than one available mechanism by which the particular circumstances might be accommodated. TBC has no power to do something or require somebody else to do something. Both BSL and LDC wish the SoS to grant permission. If such permission is to be legally secure the off-site impacts need to be addressed or it must be demonstrated that they fail the relevant policy and legal tests.[91]

6.4.4 Two issues remain:

i) Should LDC CIL fund the necessary infrastructure or should BSL fund it via its section106 obligation; and

ii) If the latter, is the TBC sporting infrastructure justified in Regulation 122 CIL and NPPF paragraph 204 terms?[92]

6.4.5 On the first issue TBC accepts LDC's submissions as to the availability of LDC CIL for Tamworth's sporting needs. Nothing to address Tamworth's sporting needs made it onto LDC's Regulation 123 list. The proper exercise is therefore to consider what the legal position is. LDC's Regulation 123

[87] TBC/5 Paras 18-19 & 22, ID/7
[88] TBC/5 Para 20-21
[89] TBC/5 Para 23, CD/30
[90] TBC/5 Paras 24-26
[91] TBC/5 Paras 27-29
[92] TBC/5 Para 30

list has not been amended and the essential social infrastructure for Tamworth does not feature in the LDC CIL. Neither TBC nor the SOS has the power to change that.[93]

6.4.6 BSL maintains that the Tamworth BDL was before the Examining Inspector and note that the extent of the LDC CIL was capped pursuant to the report on the draft LDC CIL. However, it is clear that such viability assessments as were undertaken of the strategic development areas made allowances for section 106 obligations when assessing their viability. BSL confirms that it has not presented any evidence as to the viability of the Arkall Farm scheme. It is not suggested that the application scheme would be hampered by the requirements of Schedule 7 to the section 106 obligation.[94]

6.4.7 It is wrong for BSL to state that it would have discharged its liabilities upon payment of CIL. There is a deficit of sporting infrastructure and a proven need for the items listed in Schedule 7. Lichfield's CIL Regulation 123 list only provides for the improvement of indoor sports provision to serve Lichfield City and its hinterland. Arkall Farm is not part of the hinterland but would become part of the urban area of Tamworth. Finally BSL suggests that LDC should pay over CIL monies to TBC. However, LDC will not pay over such monies and cannot be compelled to do so.[95]

6.4.8 BSL makes 5 points in relation to the section 106 obligation. Firstly, BSL states that projects are not locationally defined, specifically costed, nor are they certain to be delivered. This ignores the context. The proposal would be phased and funding would come forward associated with each phase and could result in payments being made up to 2030. Funding needs to come forward first. It would be a nonsense to expect the planning authority to have a site in wraps waiting for a substantial development, such as Arkall Farm, at some unspecified distant point. Notwithstanding that TBC has undertaken feasibility studies for potential sites, including an October 2012 study for a site at Gungate, that has not been criticised. Costings have been worked out at an appropriate level for a feasibility study.[96]

6.4.9 Secondly, there would not be any 'double dipping' as alleged by BSL. The LDC Regulation 123 list does not include provision for Tamworth sport and there would therefore be no 'double dipping'.[97]

6.4.10 Thirdly, Schedule 7 of the section 106 obligation would not breach the restrictions on pooling contributions. Tamworth's view is that existing contributions secured from developments within Tamworth do not prevent contributions from also being collected from developments in neighbouring authority areas. A number of contributions have been secured towards a multi-purpose leisure centre from development in Tamworth, including a swimming pool, as set out in Table 3 of Mr Bower's Proof of Evidence. However, the second, third, and fourth listed developments (0275/2014,

[93] TBC/5 Paras 31-32
[94] TBC/5 Paras 33-34,BSL/2, CD/29, LDC/3B Vol 4 Tab B20D p443 Para 2.4, Mr Shaw XX Day 4
[95] TBC/5 Paras 35-36, BSL/2 Para 26, CD/15 p6, Mr Shaw XX Day 4
[96] TBC/5 Paras 37, 39-41, BSL/2 Para 24, ID/16
[97] TBC/5 Paras 37 & 42

0105/2014, and 0308/2016) are not specific to any of the three items in schedule 7. Whilst BSL asserted a contrary view it had little evidential support.[98]

6.4.11 Fourthly, whether the CIL Regulation 123 list refers to section 106 obligations for Tamworth sport does not address the real question which is whether there is a need to be addressed and whether a section 106 obligation would do so. The purpose of CIL is to gather reasonable funding to be pooled for specified infrastructure and is not an injunction against all section 106 obligations, except where specifically specified in the Regulations. BSL's support for this point was not supported by legal submissions.[99]

6.4.12 Finally, BSL alleges a failure to comply with TBLP Policy IM1, which is a material consideration. However, the proposal would fail to comply with the Policy unless and until the essential sporting infrastructure is adequately provided for via a suitable funding mechanism, which the section 106 obligation would do. If schedule 7 were removed by applying the 'blue pencil' clause (ID/23 Clause 4.9) there would not be compliance with TBLP Policy IM1. "Planning permission for new development will only be granted if it is supported by appropriate infrastructure at a timely stage" consequently permission should be refused.[100]

6.4.13 The absence of a reference to section 106 monies in the Tamworth IDP fails to have regard to Policy IM1 which is what counts. It refers to contributions but in any event the development plan is clear about the need to provide for Tamworth's infrastructure.[101]

6.4.14 An attempt was made to discredit the use of the Sport England calculator. However, the document says on its face that it is to be used to look at the costs of additional infrastructure to meet the needs of new residential communities. No one has identified a different still less a better means of calculating the appropriate sum.[102]

6.4.15 It was alleged that no credit had been given for the existing capacity that exists within Tamworth's sporting infrastructure but in any event this was undone by reference to the Tamworth Sports Strategy Update 2014. Demand for a swimming pool and sports hall provision significantly exceeds the total supply. Furthermore, the playing pitch strategy is clear on the need for 3G pitches.[103]

6.4.16 BSL has run a number of points against the provision it has made in schedule 7 but has provided little evidence to suggest that schedule 7 fails the CIL 122 and NPPF paragraph 204 tests. All three sporting infrastructure items are rooted in the development plan of the immediately adjoining planning authority where the need arises. There is a strong

[98] TBC/5 Paras 37 & 43, TBC/4A pp26-28 Table 3
[99] TBC/5 Para 37 & 44, CD/30
[100] TBC/5 Paras 37 & 45
[101] TBC/5 Para 46-47, CD/01, CD/02 p157
[102] TBC/5 Para 47, ID/15
[103] TBC/5 Para 48, CD/15 Para 3.24 p39, Para 4.24 p51, Section 6 text box p60, XX Mr Bowers Day 3

policy basis, founded in an evidence base that has produced an adopted LP. It is hard for BSL to undermine that position and it has not done so.[104]

6.4.17 It is contended that if the planning balance weighs sufficiently in BSL's favour the permission may be granted without mitigation of off-site effects. Whilst this might happen with affordable housing that is a policy requirement not an off-site impact. It cannot be right that the stronger the needs and benefits then the fewer off-site impacts it is necessary to mitigate. If BSL fail in its 'CIL is the only way' argument all that is left is this balancing point. NPPF paragraph 204 is concerned with the necessity of mitigation. The 204 tests are met and the mitigation should be provided. The available mechanism at the time of this report is the section 106 obligation. It should be given effect.[105]

6.5 Affordable Housing

6.5.1 The section 106 obligation deals with affordable housing and provides for an allocation of those affordable units between LDC and TBC. There was an issue about the appropriate proportions but this has been resolved between the parties as a 60:40 split in TBC's favour.[106]

6.6 Conclusion

6.6.1 TBC has concerns about the timescale of development arising from suggested conditions 3, 4 and 5, which might mean it could be 2030 before reserved matters are submitted for anything more than 500 units.[107]

6.6.2 There has been resolution of highway and affordable housing issues. Movement on essential social infrastructure means that TBC can report it is entirely satisfied with the provisions of schedule 7 of the section 106 obligation. All the SoS needs do is find that, in accordance with the TBLP, that sporting items of infrastructure are necessary and accept the Sport England calculator as an appropriate instrument to calculate costings. With an appropriate mechanism to ensure off-site mitigation TBC supports the grant of planning permission, subject to agreed conditions and the provisions of schedule 7 of the section 106.[108]

7.0 The Case For Staffordshire County Council

7.1 Introduction

7.1.1 Discussions between the four main parties, BSL, LDC, TBC and SCC have addressed the concerns that had been expressed by SCC in relation to Highways and Education.[109]

7.2 Highways

7.2.1 The Applicant has, from the beginning, sought to promote a Monitor and Manage approach for highways mitigation. SCC has always accepted that

[104] TBC/5 Paras 49-50
[105] TBC/5 Paras 51-53
[106] TBC/5 Para 54, ID/23
[107] TBC/5 Para 55
[108] TBC/5 Paras 56-60
[109] SCC/5 Para 1, ID/8

such an approach could work in principle but maintained that for it to work there must be a supporting mechanism through planning conditions, and a realistic prospect that a mitigation scheme of some sort could come forward. The parties have been mindful of the duty under paragraph 187 of the NPPF to "look for solutions rather than problems".[110]

7.2.2 SCC is clear that there are still issues about the most appropriate form of mitigation for this scheme. The work of LDC's Highways expert has been considered, including analysis of the "with CPO" modelling. SCC concludes that this demonstrates that in principle the additional traffic can be accommodated on the network without giving rise to severe impacts. The County and TBC consider that additional land outside the adopted Highway Boundary will be necessary whilst LDC and BSL do not.[111]

7.2.3 Notwithstanding this, SCC believes that there is sufficient evidence to show that an alternative "with CPO" scheme is a realistic prospect to mitigate this strategically important scheme. Subject to conditions on the operation of the Monitor and Manage scheme, SCC is satisfied that the scheme can come forward as follows:

i) No more than 200 homes shall be occupied before the Fountains Junction improvements shown on drawing 28648-5502-012A shall be implemented. The mechanism to ensure this is set out in suggested condition 27.

ii) No more than 300 dwellings shall be completed until a Monitor and Manage assessment has been undertaken. The Monitor and Manage strategy must be approved by LDC in conjunction with SCC as Highways Authority. Depending on the outcome of the Monitor and Manage assessment the mitigation proposals must consider a range of options, in sequential order, as required by suggested condition 28. On current evidence SCC considers that the preferred option could require the compulsory acquisition of land to widen the highway and maintain appropriate footpath widths.

iii) No more than 500 homes shall be completed before a further Monitor and Manage assessment and consideration of appropriate mitigations as was carried out to go beyond the 300 homes part. This would be ensured by suggested condition 29.[112]

7.2.4 It is important that whichever authority promotes any CPO it is not fettered by the SOCG both as to whether a compelling case in the public interest exists and as to the amount of land required to accommodate the traffic generated by the development. SCC would be mindful of the need to promote enhancement of the existing network and the responsibility placed on it by sections 32 and 35 of the NPPF in that respect.[113]

[110] SCC/5 Paras 3-4, ID/7 Para 3, ID/8
[111] SCC/5 Paras 4-6
[112] SCC/5 Paras 7-9, ID/7
[113] SCC/5 Para 10

7.3 Education

7.3.1 The highways and education impacts of this scheme, and their proposed mitigations are intrinsically linked.[114]

7.3.2 Through section 106 contributions and the phasing of highways mitigation SCC as the Local Education Authority (LEA) can adopt the following approach:

i) Construction of the school on site during phase 2 (201-300 dwellings)

ii) Open the school on site during phase 3 (301-500 dwellings) as required;

iii) Extend the school on site during phase 4 (501-1000 dwellings) as required.[115]

7.3.3 Because the decision to commit to building the new school takes place in phase 2 (201-300 dwellings) SCC would not seek financial contributions for "transitional arrangements", which was the sole remaining education issue between the Applicant and SCC. Due to the Education Position Statement and the terms of the unilateral undertaking relating to education mitigation SCC no longer has any education concerns.[116]

8.0 Interested Persons and Written Representations

8.1 Mr Kovach, the Chairman of Shuttington and Alvecote Parish Council (PC), was represented by **Mr Hope**. The PC's main concern is the impact of more traffic. People already use unsuitable narrow local roads as 'rat runs'. They are attractive to avoid congestion on the main roads in the peak periods causing stand-offs and road rage. **Mr Mitchell** has been a resident of Tamworth for 37 years. Current facilities in the form of the NHS, GP's Surgeries, primary schools and highways are inadequate to cope with more housing without additional infrastructure. In terms of sustainability, proposals would have to exclude buses until the new houses were built. Whilst a Travel Plan exists for the local academy many students are brought by car. The highway network needs major investment to make a difference. Housing developments under construction promote sustainable transport but little evidence has been seen of an increase in walking, cycling or use of the No2 bus.[117]

8.2 **Pauline Blake** is also concerned about the lack of infrastructure. There are three GP's surgeries in the area but it is very difficult to get a same day appointment and up to three weeks to get a non-urgent appointment. Both primary and secondary school provision is inadequate. Traffic problems are also a concern of **Kate Sharp** who considers that the LDC development would be like a cuckoo in Tamworth's nest and that occupiers would be a burden on Tamworth's facilities. **Steven Grainger** supports

[114] SCC/5 Para11
[115] SCC/5 Para 13, ID/9
[116] SCC/5 Paras 12 and 14, ID/9
[117] ID/28

the PC comments about the narrow road and considers that the public good is being sacrificed to show a profit.

8.3 **Frances Wolferstan** spoke on behalf of North East Tamworth Residents' Group. They had commissioned independent traffic consultants to review expert evidence which had highlighted significant omissions, contradictions and shortcomings that had not been acted upon. Based on their findings and their knowledge of local traffic conditions the Residents' Group considers that no dwellings should be allowed at Arkall Farm. **Mr Laxton** stated that the trains and the railway car park are full and roads are repeatedly dug up. There are no doctors to put in GP's surgeries and whilst a primary school would be provided there is little provision for secondary schools which are over-subscribed. Tamworth does not have the infrastructure to cope with more housing.[118]

8.4 At call-in stage there were over 100 written submissions and two petitions, one of which had comments, whilst at application stage there were again two petitions and considerably more representations reflecting the depth of feeling of local people. It is generally accepted that there is a need for new housing but that the number of proposed dwellings and their location were considered inappropriate. The effect of the additional traffic that would be generated and its impact on the local highways network is a major concern, as is the lack of infrastructure in terms of education facilities and healthcare. Residents of the proposed development would rely on facilities in Tamworth, which are limited, rather than Lichfield. Also of concern, albeit to a lesser extent, is the impact on the environment and heritage assets.[119]

9.0 Conditions and Section 106 Deed

9.1.1 The four main parties have suggested a suite of conditions, the majority of which are agreed, which they maintain should be attached to any planning permission granted. Conditions 1 to 7 address commencement and timescales and are not agreed. TBC considers that the timescales are much too long. Provision at the rate of 50 dwellings a year has been mentioned and at that rate the first reserved matters application for phase 2 could be within 4 years, phase 3 within 5 years, and phase 4 within 7 years. The Applicant disagrees and maintains that given the size of the proposed development the timescales requested would be realistic.

9.1.2 Suggested Condition 8 requires a Surface Water Drainage Strategy to be submitted prior to the submission of any reserved matters. It should be in accordance with the Flood Risk Assessment and subsequent phases should be in accordance with the approved Strategy.

9.1.3 A site wide Design Framework is sought prior to commencement, broadly in accordance with the parameter plans, and the principles set out in the documents referred to in Condition 9. Condition 10 similarly seeks a Statement to demonstrate that details of reserved matters would accord with the design principles of the approved Design Framework. On or

[118] ID/19, ID/21, ID/22, ID/29
[119] ID/01 App A

before the submission of first reserved matters Condition 11 would require a detailed phasing plan to be approved including phasing of surface water drainage, green infrastructure, playing fields and community facilities. Before the commencement of development in any particular phase Condition 12 would require a Traffic Management Plan/Construction Method Statement and sets out matters to be included in such documents.[120]

9.1.4 Condition 13 would require a written scheme of archaeological investigation for each particular phase including details of a programme of archaeological works to be carried out across surviving areas of ridge and furrow within the site. Before commencement of any particular phase Condition 14 would require full details of the proposed foul water drainage system to be approved whilst Condition 15 sets out the process for ensuring that there is no contamination of the site through a site investigation, and verification and validation documents.

9.1.5 Measures to protect trees and hedgerows to be retained would be required to be submitted for approval by suggested Condition 16 whilst Condition 17 would require the submission of any scheme of external lighting. Condition 18 addresses details of all proposed boundary treatments and details are specifically sought for boundaries in Public Open Spaces and a trespass proof boundary adjacent to the railway. Before the commencement of development in any particular phase a detailed noise and vibration assessment would be required by Condition 19 and details of any vibro-impact works together with a detailed method statement and risk assessment as would be required by Condition 20.

9.1.6 Suggested Condition 21 would seek details of existing and proposed ground levels, earthworks, excavation and hedge and tree removal. Conditions 22 and 23 would require the submission and approval of a Construction Environment Management Plan for each phase as well as a Habitat Management Plan and the details and number, in excess of 8, of bat and bird boxes of varying design.

9.1.7 Full details of a Monitor and Manage scheme based on the principles in the Peter Brett LLP Report 'Monitor and Manage' dated December 2014 ref 28648/5503 would be required by suggested Condition 24. A monitoring strategy pursuant to Condition 24 is set out in Condition 25. Condition 26 provides that monitoring should be undertaken upon commencement of development. Details of what should happen at the trigger points of not more than 200, not more than 300, and not more than 500 dwellings are in general terms set out in Conditions 27, 28, and 29. Condition 30 provides for the submission of certain identified off-site highway works.

9.1.8 Suggested Condition 31 would seek to require details of the sustainability measures/technology to be used on any phase whilst Condition 32 would require a Site Waste Management Plan.

9.1.9 A number of ecological matters would be addressed by suggested Conditions 33-37. These would include site clearance being outside the

[120] ID/04

bird nesting season, details of Ecological Mitigation Measures and Enhancement being broadly as outlined in the Environmental Statement dated November 2017, securing a badger mitigation licence if required, the replacement of any tree, hedge or shrub planted as part of the approved landscape scheme lost within five years of first planting and preventing the topping or lopping of planted, or retained, trees hedges or shrubs.

9.1.10 In respect of the local centre, Condition 38 would require details of a scheme for the control of odour and other emissions from any A3, A4, and/or A5 uses within the local centre. Condition 40 would relate to the provision of a retail impact assessment should the local centre provide more than 100m² of A1 floor space.

9.1.11 Condition 39 would prevent the lowering of ground levels adjacent to railway land and preclude any encroachment on it by building works or fencing whilst Condition 43 would require a method statement before the erection of any scaffold within 10 metres of the boundary with the railway line.

9.1.12 The ES, updated in November 2017, includes Noise and Vibration mitigation measures and enhancement measures and the development should be carried out in accordance with those measures. Suggested Conditions 41 and 44 would require details, before any development were to begin, of any noise attenuation measures and of the housing mix for the relevant phase. Suggested Condition 44 is necessary to ensure that housing mix can be dealt with as a 'reserved matter' to enable the development to meet the identified housing needs of both the Local Planning Authority and the adjacent Authority TBC.

9.1.13 A signed Deed has been submitted. It is a bipartite Agreement between the landowner and LDC, a unilateral undertaking containing covenants in favour of SCC, and obligations for the benefit of TBC for which LDC as the local planning authority would act as banker and point of liaison. The parties are not in agreement that every matter within the Deed meets the tests set out in CIL Regulations 122 and 123 and the guidance in the NPPF and Planning Practice Guidance (PPG). If the SoS confirms in his Decision Letter that any obligation of the Deed fails one or more of those tests then Paragraph 4.9 of the Deed indicates that the obligation shall be deemed severed from the Deed.

9.1.14 The contents of the Deed are summarised in a section 106 matrix, provided by LDC, which contains a justification for each request. The Deed contains obligations pertaining to:

i) Affordable Housing (Schedule 2);

ii) Open Space (Schedule 3);

iii) Education(Schedule 4);

iv) Travel Plan (Schedule 5);

v) Sustainable Transport (Bus Service) (Schedule 6);

vi) TBC section 106 requests(Schedule 7);

vii) Network Rail Contribution (Schedule 8);

viii) Community Facilities(Schedule 9); and,

ix) Retail Facilities (Schedule 10).

9.1.15 The only section 106 obligations not agreed between the parties are:

i) The Council's Monitoring Fee is disputed as a matter of principle as the Applicant considers it a statutory function of the local planning authority;

ii) The Tamworth Sports Hall Contribution;

iii) The Tamworth Swimming Pool Contribution; and

iv) The Tamworth 3G Grass Pitches Contribution.

9.1.16 In addition, Network Rail has requested £12,000 to provide improvements at the station in the form of additional cycle parking. This is considered to be section 106 not CIL as the mitigation would be outside the district boundary and not covered by LDC's IDP. However, despite requests by LDC, no justification has been provided for the sum sought and it cannot therefore be considered to be reasonably related in scale and kind to the proposed development. It would, therefore, fails the Regulation 122 test.

10.0 Inspector's Conclusions

[The references in square brackets are to earlier paragraph numbers in this report]

10.1 Introduction

10.1.1 BSL the Applicant, LDC the local planning authority, and the two Rule 6 Parties who asked for the Application to be called-in, TBC and SCC, all confirmed, at both the PIM and the opening of the Inquiry, that there is no 'in principle' objection to the proposed scheme. Topics that were examined at the Inquiry, amongst others, were highways, education, affordable housing, and social infrastructure, particularly the provision of indoor sports facilities. The issues between the main parties have significantly narrowed during the course of the Inquiry.[4.1.1, 5.1.1, 6.1.1, 6.1.2, 7.1.1]

10.2 Planning Policy

10.2.1 The development plan comprises: the *Lichfield Local Plan Strategy*, adopted in February 2015 (LLPS); the *Lichfield District Local Plan (saved policies)* (1998) (SLP); and, the *Wigginton and Hopwas Neighbourhood Plan*, adopted in December 2016 (NP). It is agreed that the TBLP and the NPPG are material considerations.[3.1, 4.2.1]

10.2.2 The NP was prepared in accordance with the LLPS and the BDL, and NP Policies WHC1 and W1 reflect the Policy: North of Tamworth and no new issues are raised. The boundaries of the Application site are a significant distance from the villages of Wigginton, Hopwas and Comberford sufficient to prevent any coalescence. The proposal would, therefore, accord with the NP.[3.3, 4.2.3]

10.2.3 The Grade II listed farm complex is the nearest heritage asset. Historic England agrees with the ES that the impact on the Farm would be less than substantial. As a result NPPF Paragraph 134 requires any harm to be weighed against the public benefits of the development.[4.2.4]

10.2.4 The site lies within the administrative area of LDC adjoining the administrative area of TBC. The LLPS identifies a Broad Development Location (BDL), including the application site, north of Tamworth. The LLPS states that around 1,000 homes will be delivered in the BDL, to assist in meeting the needs of south east Staffordshire. Land beyond the railway to the west also lies within the BDL. Outline planning permission was granted for 165 dwellings on this western site in February 2015 and is now under construction. This is in line with the spatial strategy for Tamworth Borough which recognises that not all locally derived housing needs can be met within its Borough boundary." Indeed, half of the proposed 1,000 dwellings would be for TBC.[2.2, 3.2]

10.2.5 LLPS Policy:North of Tamworth recognises that any provision to the north of Tamworth, but within Lichfield District, will be reliant on infrastructure delivered within Tamworth, particularly those proposed within the *Tamworth Borough Council's Spatial Strategy.* LLPS Core Policy 1: The Spatial Strategy (CP1) provides for the majority of future development to be directed to a number of locations, including the North of Tamworth BDL which includes the Application site. The explanatory text to CP1explains that the "spatial strategy seeks to direct development towards the most

sustainable locations". However, the site is not only intended to contribute to LDC's housing need but its location close to Tamworth would allow it to meet part of TBC's unmet housing need which LDC has undertaken to provide for.[4.2.2, 6.2.1]

10.2.6 LLPS Core Policy 2 (CP2) reflects the statutory presumption in favour of the development plan. Given its relatively recent adoption the development plan has been developed, examined and adopted post-NPPF and so is in accordance with it. Core Policy 6:Housing Delivery (CP6) relies on the BDL delivering 1,000 homes over the plan period equating to some 10% of LDC's total housing to 2029. The proposed development is policy compliant and essential to both LDC and TBC in delivering the identified housing needs of both.[4.2.3]

10.2.7 A number of infrastructure elements have already been provided by the Anker Valley and Browns Lane schemes. The residual on- and off-site infrastructure requirement arising from the proposal will be met by a package of measures delivered by section 106 deed and CIL contributions.[4.2.4]

10.2.8 Support for the BDL carries through into the emerging Local Plan Allocations (Focused Changes) which continues to commit LDC to the delivery of 1,000 homes at the site, of which 500 are to meet TBC's unmet need. The BDL and the development plan policies behind it have been considered independently through the local plan process and found to comply with the requirement to be sustainable.[4.2.5]

10.2.9 TBLP Policy SU7 is a relevant policy in an adjoining local planning authority. It provides for a network of sport and recreation facilities to meet Tamworth's current and future needs by public funding new and enhanced facilities, in particular a new multipurpose community sports centre in an accessible location, with appropriate facilities and 3G pitches, to meet identified need. Supporting text states "Delivery of enhanced and new smaller sports facilities will be funded through planning obligations". The Tamworth Infrastructure Delivery Plan (IDP) identifies infrastructure which is required to support the development proposed by the TBLP. The IDP expressly identifies the three pieces of sporting infrastructure for which TBC contends.[6.2.2, 6.2.3]

10.2.10 TBLP Policy IM1 states "Planning permission for new development will only be granted if it is supported by appropriate infrastructure at a timely stage. Developer contributions will be sought where needs arise as a result of new development, the infrastructure development plan specifies the infrastructure required, when and where it will be needed in the plan and how it could be funded. Policy IM1 would be complied with if effect is given to Schedule 7 of the section 106 Deed in this case.[6.2.4]

10.3 **Highways**

10.3.1 The proposal would have an impact on the local highway network and mitigation would, therefore, be required. Given the strategic nature of the site, a Monitor and Manage scheme that would provide an appropriate level of mitigation to meet the actual highway conditions at the relevant future time has been suggested. There would still be some differences of opinion

between the experts but the advantage of Monitor and Manage is that any differences can be tested, and mitigation tailored to the actual level of impact at that time.[4.3.1]

10.3.2 TBC considers that modal shift, and the simple highway improvements originally proposed, would do little more than mitigate very modest levels of development. Pedestrian trip generation would not reflect the distance to local amenities, the route along Upper Gungate would be unattractive to cyclists and the take up of buses elsewhere in Tamworth does not justify a modal share of 2.5%. In addition, modelling of the Fountains Road junction improvements would be optimistic and the Offa Drive junction changes raise some safety concerns. Notwithstanding that, all the highway experts agree that there is a reasonable prospect that adequate mitigation for the full 1,000 dwelling scheme could be satisfactorily provided under the Monitor and Manage scheme. Travel plans would help secure modal shift. Their use for that purpose is widespread, which would not be the case if they were not effective.[4.3.2, 6.3.1, 6.3.2, 6.3.3, 6.3.4, 6.3.5]

10.3.3 In accordance with the duty in paragraph 187 of the NPPF to look for solutions rather than problems, a 'cascade' solution has been identified. All parties agree that the final option, based on the MODE CPO option that would require additional land, could mitigate the full 1,000 dwelling proposal. This is documented in the Highways SCG. However, BSL and LDC do not consider that land beyond the highways boundary would be necessary. There would be no legal or policy impediment to granting planning permission. This is important given the contribution it would make to meeting the housing needs of two local planning authorities.[4.3.3, 5.2.1, 7.2.1, 7.2.2]

10.3.4 Subject to conditions on the operation of the Monitor and Manage scheme, SCC in its role as highway authority is satisfied that there is a reasonable prospect that a scheme would come forward to mitigate the full proposal. In terms of Monitor and Manage, suggested Condition 27 would ensure that no more than 200 homes would be occupied before improvements were made to the Fountains Road junction. A Monitor and Measure assessment would be completed before more than 300 dwellings were completed and, depending on the outcome, mitigation options would be considered sequentially in line with suggested Condition 28. No more than 500 homes would be completed before another Monitor and Manage assessment, and consideration of appropriate mitigation was carried out to go beyond the 300 homes trigger. This could be ensured by suggested Condition 29.[4.3.3, 5.2.2, 5.2.3, 7.2.3]

10.3.5 Notwithstanding the concerns and reservations of local residents, whose transport report predates recent developments but which generally aligns with comments originally made by SCC, all four highway expert witnesses now agree that the site could provide 1,000 dwellings and there are no remaining areas of dispute in respect of highways matters that would justify dismissing the Application.[4.3.4]

10.3.6 Should a CPO be required in due course, SCC would consider the need to enhance the existing highway network and the responsibility placed on it by NPPF paragraphs 32 and 35.[7.2.4]

10.4 Education

10.4.1 The Applicant and SCC, as local education authority, agree that the full scheme would require mitigation in the form of a 1.5 FE primary school on site, and a financial contribution towards secondary education calculated by reference to the number of market dwellings that would be provided. A section 106 Obligation would secure the secondary education contribution. The only remaining dispute between the parties was a request for a 'transitional' contribution.[4.4.1]

10.4.2 SCC's stated approach is now to build the primary school on site during phase 2 (201-300 dwellings), open the school during phase 3 (301-500 dwellings), and extend the school during phase 4 (501-1,000 dwellings) as required. Consequently, SCC no longer seeks a 'transitional' contribution and its Position Statement states "On these terms, SCC has no education objections to the scheme. Despite the concerns of local residents there is little evidence that would justify a different conclusion.[4.4.1, 4.4.2, 7.3.2, 7.3.3, 8.1, 8.2, 8.3, 8.4]

10.5 Affordable Housing

10.5.1 Whilst the parties were a long way apart before the Inquiry opened, Agreement has been reached on the meaning of affordable housing, the proportion of affordable housing rights, the process of approval of registered provider and a mechanism for achieving consensus.[5.4.1]

10.5.2 Affordable housing would be provided in line with LDC's 'dynamic model'. TBC would have the nomination rights to around 60% of the dwellings, some 240 units, whilst LDC would have 40%, around 160 units. The Southern Staffordshire Districts Needs Study and SHMA update identified an annual need of between 377 and 702 affordable homes per annum demonstrating a significant and growing shortfall of affordable housing provision. In this context, the provision of approximately 400 affordable houses would be a very significant benefit.[4.5.1, 4.5.2, 6.5.1]

10.6 Social Infrastructure

10.6.1 The only unresolved issue between the parties is Tamworth's request for funding towards indoor sports facilities within TBC. It is agreed that there would be an impact on Tamworth's facilities due to the proximity of the Application site to TBC's administrative area. LDC initially accepted that its IDP would be a 'living' document that would be updated along with the CIL Regulation 123 list. CIL monies collected would then be transferred from LDC to TBC. LDC has resiled from that approach. The current position is that LDC and TBC now maintain that CIL monies could not be used to fund infrastructure within Tamworth or for infrastructure to support Tamworth but constructed outside the administrative boundary. They now seek section 106 contributions from Arkall Farm to mitigate the impacts.[4.6.1, 4.6.2, 4.6.3, 4.6.4, 4.6.5, 5.3.2, 5.3.3, 5.3.14, 6.4.1, 6.4.2]

10.6.2 BSL's section 106 obligation includes a blue pencil clause. If BSL's arguments on this topic are accepted then no payment would be taken into account. TBC would have a significant development on the edge of its administrative area but with no provision for mitigation in respect of indoor

sports and leisure facilities. Two points remain. Firstly, whether funding should be provided by CIL or section 106 contribution. LDC's Regulation 123 list includes nothing to mitigate Tamworth's sporting needs. Neither TBC, BSL, nor the SoS have the power to change that.[6.4.2, 6.4.3, 6.4.4, 6.4.5, 6.4.7]

10.6.3 A legal opinion sought by TBC considers a section 106 approach. TBC has objected to the Local Plan Allocations citing the duty to co-operate and allegations that the Allocations Plan is not consistent with the NPPF due to its failure to address Tamworth's infrastructure needs arising from Arkall Farm. These matters are for the Local Plan Allocations Inquiry. LDC has acknowledged that the development would result in the use of infrastructure in Tamworth consequently it would be inappropriate for LDC to take all the CIL monies generated by BDL and ignore the needs of the neighbouring authority.[4.6.4, 4.6.5, 4.6.7, 4.6.8, 4.6.9, 4.6.10, 4.6.19, 5.3.15]

10.6.4 LDC adopted its CIL schedule in April 2006 but TBC has yet to adopt its schedule. The Applicant has not made a viability case in respect of the section 106 obligation and there is no suggestion that the inclusion of schedule 7 of the section 106 obligation would hamper the proposed development in terms of viability. The BDL, and the LDC draft Regulation 123 list, were before the 2016 CIL Inspector. Contributions were required towards education and on-site playing pitches as well as a CIL charge as those factors were part of the viability assessment considered at the CIL examination. The CIL contribution set was £14/m², reduced from £55/m² on the basis of ensuring viability. Even if off-site requirements at Arkall Farm were added they would not, therefore, increase the £14/m² that CIL would provide. Neither BSL nor TBC made any representations during the emergence of Lichfield's charging schedule or Regulation 123 list. BSL's stance is that as it is paying CIL any further contribution would amount to 'double dipping'. In any event, the LDC Report to Committee states that there was a significant funding gap, £119.5 million at the time of charging schedule examination. Bidding for CIL monies is a competitive process and all the qualifying developments would not cover the costs of all the necessary infrastructure. [4.6.11, 4.6.12, 4.6.13, 4.6.20, 5.3.4, 5.3.12, 6.4.6, 6.4.9]

10.6.5 TBC considers that it would be unrealistic to expect authorities to have a site for mitigation development and that funding must come first. However, in this case whilst a possible site at Gunsgate has been identified, and a feasibility study produced in October 2012, with costings appropriate for that stage, there is no certainty mitigation would be delivered. The proposal would be phased and payments could be required up to 2030 [6.4.8]

10.6.6 LDC disagrees with BSL that the matter should be dealt with by transfer of CIL monies from LDC to TBC. Neither the IDP nor the Regulation 123 list makes provision for indoor sport in Tamworth and infrastructure on the IDP can be funded either by CIL or section 106 obligation. Power to transfer monies under CIL Regulation 59 enables a 'charging authority' to fund infrastructure "outside its area" where to do so "would support the development of its area". Whether the transfer of monies would be appropriate or fair is not a relevant legal test.[5.3.13, 6.4.7]

10.6.7 The infrastructure to be "funded in whole or in part by CIL" is that on the list. The 'charging authority' cannot transfer monies collected for infrastructure not on the list and the SoS has no legal power to change the list or require a transfer to take place.

10.6.8 The acceptability of a scheme without any provision for indoor sports facilities is a planning judgement (*Working Title Films*). The adverse impacts of non-provision of indoor sports facilities have to be balanced against any benefits of the scheme. LDC and TBC seek to use the mechanism of a section 106 obligation and whilst there is an alternative in the form of amendment of the Regulation 123 list and the IDP that is a matter for LDC and the SoS has no powers in relation to it. Reference has been made to a development at Browns Lane but that predated the Lichfield CIL coming into effect and it is therefore unsurprising that it contained a section 106 obligation.[5.3.9, 5.3.10, 5.3.11, 6.4.17]

10.6.9 Section 106 obligations are also governed by 'pooling restrictions' that preclude taking more than 5 such obligations into account for the same project or type of infrastructure. Tamworth's IDP includes a leisure centre including a sports hall, swimming pool and 3G pitches. So far there have been several contributions towards all or part of the leisure centre and TBC considers that existing contributions received from developments in Tamworth would not prevent contributions also being sought from developments in neighbouring authorities. I disagree as increasing the number of contributions would negate the purpose of limiting the number of contributions in the first instance. In this case there have been 5 contributions towards sport and leisure facilities as well as other contributions towards artificial pitches. I consider that the obligations in respect of indoor sports and leisure cannot, therefore, be taken into account.[4.6.18, 6.4.10]

10.6.10 There are contributions to be made towards education and for the on-site provision of playing pitches, community facilities and open space. These are in line with both LDC's IDP and Regulation 123 list. The IDP specifically identified infrastructure required as part of the development of the BDL, the Regulation 123 list specifically requires that both secondary education contributions and on-site pitches and community facilities are made outside of the CIL regime. These section 106 contributions do not duplicate any item or type of infrastructure in the Regulation 123 list, they are permissible as they do not constitute 'double dipping'.[4.6.21]

10.6.11 The Applicant is powerless to make LDC do what it has long promised to do about amendment of its IDP/Regulation 123 list. Although the SoS has no powers of compulsion, he is entitled to expect neighbouring authorities to act reasonably in respect of their dealings with each other. Unless TBC receives some funding, it would be likely to actively consider pursuing the existing objections to the Allocations Plan. TBC and LDC have collaborated in the past with three MOUs up to 2014. The expectation that LDC will do what it has said it would do is not fanciful, not least as the present IDP still makes that promise. [4.6.23]

10.7 Other Matters

10.7.1 Arkall Farm House and its associated buildings are listed Grade II. However, the indicative layout shows the approach hedgerow would be retained and an undeveloped buffer would be provided around the farm buildings. Wigginton and Amington Conservation Areas lie some 475 and 300 metres from the Application Site respectively. Development would be sited away from areas of ridge and furrow and most areas of medieval field boundaries would be retained. The listed buildings and Conservation Areas, and their settings, would be preserved and Historic England, the LBC Conservation Office and SCC's Archaeology Officer do not raise any objection to the proposal.[3.4, 3.5]

10.7.2 Although some local residents have highlighted concerns with the drainage systems, the Staffordshire Flood Authority considers that there would be a minimal impact on flood risk or drainage issues, a view shared by the Environment Agency. Severn Trent Water advises that subject to a detailed drainage scheme it has no objection to the proposal.

10.8 Planning Balance

10.8.1 Numerous benefits have been highlighted and none are challenged by the main parties. Although local residents have raised a number of concerns their assertions are met by evidence, and mitigation set out in the ES. Some 150 FTE jobs would be supported by around 300 indirect jobs. Roughly £16 million would be added to the local economy and there would be significant New Homes Bonus payments. Moreover, there would be substantial CIL payments.[4.8.1, 8.0]

10.8.2 Up to 1,000 homes would be provided, of which up to 40% would be affordable, contributing to meeting LDC and TBC's unmet housing need. The site would provide a community centre, local shop and a new primary school, together with 2 playing pitches, changing rooms, and 33 hectares of informal open space, well in excess of that required by policy. In addition, a section 106 contribution would help improve local bus services.[4.7.1]

10.8.3 The proposal would be sustainable and travel plans would encourage modal shift and less reliance on private vehicles. There would be footpath and cycle linkages into both Tamworth and the open countryside. Community orchards and allotments would be provided and there would be extensive new planting as well as the retention of significant hedgerows and mature trees. Bio-diversity would be increased through the management of existing and new green infrastructure, the creation of water bodies, and wetlands, through the implementation of a SUDS system.

10.8.4 The Monitor and Manage approach would allow for the appropriate Highway mitigation solution to be implemented at the appropriate time. Given the 'cascade' of highways options there is a reasonable prospect that the development would be capable of providing the full 1,000 homes. Contributions agreed between BSL and SCC as education authority would meet both the Primary and Secondary Education requirements arising from the proposals. The only dis-benefit identified is the loss of lower value agricultural land.

10.8.5 All those sums required in accordance with LDC's CIL Charging Schedule and by way of section 106 to cater for specifically identified impacts would be paid. The Applicant can do no more and the SOS is entitled to expect LDC and TBC to work co-operatively to apply those sums towards infrastructure regardless of which district it lies in.

10.8.6 The Applicant and LDC agree that the proposal is in accordance with the development plan and TBC does not argue that there is any breach of the development plan or CIL regime. In accordance with paragraph 14 of the NPPF the application should be approved without delay.

10.9 Conditions and Section 106 Obligations

10.9.1 In respect of the suggested conditions, I understand the view of TBC that the timescales in Conditions 1-7 would be in excess of the norm and note their reasoning for a shorter timescale. However, the proposal is a major scheme with involved phasing/mitigation that would take a significant length of time to build out. I consider that there is, therefore, justification for allowing an element of flexibility rather than paring the timescales to a minimum.[9.1.1]

10.9.2 LDC asked that a couple of additional monitoring locations be added to suggested Condition 25. The addition would lead to better information when it comes to assessing what mitigation would be required when mitigation triggers are reached in the future. I consider that Conditions 1-7 should be left as originally suggested but that Condition 25 should be amended as suggested. All the other suggested conditions would satisfy the tests and they should all be attached to any permission.[9.1.7]

10.9.3 Turning to the section 106 Deed, I consider that the following agreed by the parties and set out in the Obligation matrix (ID/23) meet the tests in CIL Regulation 122/ NPPG paragraph 204 and should be considered: Primary and Secondary education contributions; affordable housing; provision and future maintenance of public open space; on-site retail facilities; on-site community facilities; residential travel plan but not the management fee; and the provision of a bus service linking the site, town centre, and railway station Monday to Saturday 0700 to 1900.

10.9.4 In *Oxfordshire County Council v Secretary of State for Communities and Local Government et al* [2015] EWHC 186 Admin 2015 WL 376069, (ID/26) it is stated that although the SoS has a broad power to make provision for the payment of fees for matters such as applications, reserved matters and discharge of conditions he has decided not to make provision for the payment of fees for the admin and monitoring of section 106 agreements. Whilst it is possible that an Inspector in the exercise of his planning judgement might conclude that administration and monitoring fees satisfied the Regulation 122 tests such cases were likely to be exceptional. I do not consider that to be the case here notwithstanding that this is a major development scheme. The section 106 Monitoring fee of £14,684, and the Travel Plan Monitoring fee of £6,430 are not justified and fail the Regulation 122/NPPG paragraph 204 tests.

10.9.5 It is accepted that there would be an impact on Tamworth's indoor sports facilities given the proximity of the proposed development to Tamworth.

10.9.6 A planning obligation should only be sought where it is:

i) Necessary to make the development acceptable in planning terms,

ii) Directly related to the development, and,

iii) Fairly and reasonably related in scale and kind to the development. [4.6.15, 5.3.8]

10.9.7 In terms of schedule 7 of the Deed, LDC agrees that planning permission should be granted, even if the section 106 package was not secured because of the overwhelming benefits. It is not therefore "necessary". It is a long held ambition for TBC to develop a new multi-use leisure centre in Tamworth. That ambition has been the subject of studies in both 2009 and 2012 due to an existing deficit in facilities. It is not, therefore, a requirement arising wholly out of the proposed development at Arkall Farm. TBC's request fails the NPPF paragraph 204 test, and consequently should not be taken into account in the decision making process even if it were to be offered.[4.6.16]

10.9.8 Tamworth Local Plan Policy IM1 'Infrastructure and Developer Contributions' provides that the IDP *"specifies the infrastructure required, when and where it will be needed in the plan, and how it could be funded".* The funding stream identified for the purposes of the adopted development plan does not include developer contributions. The Sport England Calculator is agreed to be an appropriate tool but it represents only a start in satisfying limbs (ii) and (iii) of the tests. The calculator generates a figure based solely on identified need (in this case 2,300 people) and does not take account of existing supply shortfall. The question arises therefore as to whether those forecasts already take into account at least half of Arkall Farm, given that it is to meet TBC's unmet need. What is needed to meet both those elements of the tests is certainty as to cost and delivery in order to compare the development permitted and the costs claimed in respect of it.[4.6.16, 4.6.17, 5.3.5, 5.3.6, 5.3.7, 6.4.11, 6.4.12, 6.4.13, 6.4.14, 6.4.15]

10.9.9 Network Rail's request for £12,000 to provide additional cycle parking at the station has not been justified, despite requests by LDC. Consequently, the sum sought cannot be considered to be reasonably related in scale and kind to the development and therefore fails the Regulation 122 test and has not been considered.

11.0 Overall Conclusion and Recommendation

11.1 Overall Conclusion

11.1.1 The proposal would preserve the setting of the Grade II listed Farm complex and the less than substantial harm would be outweighed by the public benefits.

11.1.2 Indeed, the very extensive planning benefits that would be generated by the proposal would, in the circumstances of this application, justify allowing the proposal despite the lack of mitigation in terms of indoor sports and leisure facilities. The section 106 Monitoring fee of £14,684, the Travel Plan Monitoring fee of £6,430 and the Network Rail request for

£12,000 for additional cycle parking are all unjustified and fail the Regulation 122/NPPG paragraph 204 tests.

11.2 **Recommendation**

11.2.1 I recommend that the Application be approved, subject to the suggested conditions, and the section 106 Deed.

Ken Barton

Inspector

Appendix A

APPEARANCES

FOR BARWOOD STRATEGIC LAND II:

Jeremy Cahill QC assisted by Christian Hawley	Instructed by Bird Wilford and Sale
They called	
Richard Shaw BA(Hons) MRTPI DipUrbDes (Planning)	Director, Savills Planning
Michael Parkinson BSc(Hons) MICE MIHT MIRSO (Transport & Highways)	Partner, Peter Brett Associates LLP
Stephen Clyne LCP DIpSMS CertEd MAE	EFM, Education and Social Infrastructure Consultancy

FOR LICHFIELD DISTRICT COUNCIL:

Gary Grant of Counsel	Instructed by Bal Nahal, Head of Legal, Lichfield District Council
He called	
Ashley Baldwin BSc(Hons) MA MRTPI (Planning Policy)	Spatial Policy and Delivery Manager, Lichfield District Council
David Frisby BEng(Hons) C Eng FCIHT (Hignways)	Director, Mode Transport Planning
Jon Allinson BA(Hons) DipTrp MRTPI (Planning Balance)	Principle Planning Officer Development Management, Lichfield District Council

FOR TAMWORTH BOROUGH COUNCIL:

Richard Kimblin QC	Instructed by Antony Collins LLP
He called	
Chris Holloway CEng(Hons) MCIHT (Highways)	Director, BWB Consulting Ltd

Matthew Bowers MSc MRTPI (Planning)	Head of Managed Growth, Regeneration and Development, Tamworth Borough Council

FOR STAFFORDSHIRE COUNTY COUNCIL:

Paul Tucker QC assisted by Philip Robson of Counsel	Instructed by John Rowe. Senior Solicitor, Staffordshire County Council
They called	
Peter Blair BEng CEng FICE FCIHT (Transport)	Head of Transport Planning North, WYG International Consultancy
Andrew Marsden PGDip	County Commissioner for Access for Learning, Staffordshire County Council

INTERESTED PERSONS

Gary Hope standing in for Kurt Kovach	Chairman, Shuttington & Alvecote Parish Council
John Mitchell	Local Resident
Pauline Blake	Local Resident
Kate Sharp	Local Resident
Steven Grainger	Local Resident
Frances Wolferstan	North East Tamworth Residents' Group
Huw Loxton	Local Resident

Appendix B

DOCUMENTS

Barwood Strategic Land's Documents

BSL1	Barwood Strategic Land's Statement of Case
BSL2	Opening Submission
BSL3A	Richard Shaw's Proof of Evidence
BSL3B	Appendices 1-10 to Richard Shaw's Proof of Evidence
BSL3B	Appendix 11 to Richard Shaw's Proof of Evidence
BSL3C	Richard Shaw's Summary Proof of Evidence
BSL3D	Richard Shaw's Rebuttal Proof of Evidence
BSL4A	Michael Parkinson's Proof of Evidence
BSL4B	Michael Parkinson's Summary Proof of Evidence
BSL4C	Michael Parkinson's Rebuttal Proof of Evidence
BSL5A	Stephen Clyne's Proof of Evidence
BSL5B	Stephen Clyne's Rebuttal Proof of Evidence
BSL6	Closing Submissions

Lichfield District Council's Documents

LDC1	Lichfield District Council's Statement of Case
LDC2	Opening Submission
LDC3A	Ashley Baldwin's Proof of Evidence
LDC3B	Vol 1 Appendices B1-B1I to Ashley Baldwin's Proof of Evidence
LDC3B	Vol 2 Appendices B2-B11 to Ashley Baldwin's Proof of Evidence
LDC3B	Vol 3 Appendices B12-B19 to Ashley Baldwin's Proof of Evidence
LDC3B	Vol 4 Appendices B20-B26 to Ashley Baldwin's Proof of Evidence
LDC3C	Ashley Baldwin's Summary Proof of Evidence
LDC3D	Ashley Baldwin's Rebuttal Proof of Evidence
LDC4A	David Frisby's Highways Proof of Evidence
LDC4B	Appendices to David Frisby's Highways Proof of Evidence
LDC4C	David Frisby's Summary Highways Summary Proof of Evidence
LDC4D	David Frisby's Rebuttal Highways Summary Proof of Evidence

LDC4E	Mode CPO Scheme, Stage 1 Road Safety Audit, and mode non CPO Scheme
LDC5A	Jon Allinson's Planning Proof of Evidence
LDC5B	Appendices to Jon Allinson's Planning Proof of Evidence
LDC5C	Jon Allinson's Summary Planning Proof of Evidence
LDC5D	Jon Allinson's Rebuttal Planning Proof of Evidence
LDC6	Closing Submissions

Tamworth Borough Council's Documents

TBC1A	Tamworth Borough Council's Statement of Case
TBC1B	Vol 1 of Appendices to Tamworth Borough Council's Statement of Case
TBC1C	Vol 2 of Appendices to Tamworth Borough Council's Statement of Case
TBC2	Opening Submissions
TBC3A	Chris Holloway's Proof of Evidence
TBC3B	Appendices to Chris Holloway's Proof of Evidence
TBC3C	Appendices to Chris Holloway's Summary Proof of Evidence
TBC4A	Matthew Bowers Proof of Evidence
TBC4B	Matthew Bowers Summary Proof of Evidence
TBC5	Closing Submissions

Staffordshire County Council's Documents

SCC1	Staffordshire County Council 's Statement of Case
SCC2	Opening Submissions
SCC3A	Peter Blair's Proof of Evidence
SCC3B	Appendices to Peter Blair's Proof of Evidence
SCC3C	Peter Blair's Summary Proof of Evidence
SCC3D	Peter Blair's Rebuttal Proof of Evidence
SCC4A	Andrew Marsden's Proof of Evidence
SCC4B	Appendices to Andrew Marsden's Proof of Evidence
SCC4C	Andrew Marsden's Rebuttal Proof of Evidence
SCC4D	Appendices to Andrew Marsden's Rebuttal Proof of Evidence
SCC5	Closing Submissions

Core Documents

CD01	Lichfield District Local Plan Strategy 2008-2029
CD02	Tamworth Local Plan 2006-2031 FINAL 5.2.16
CD03	Tamworth Adopted Policies Map FINAL
CD04	Tamworth Town Centre Inset Adoption
CD05	Map of allocations and permissions Tamworth North
CD06	Southern Staffordshire HNS SHMA 2012
CD07	Housing OAN Tamworth update 2014
CD08	Tamworth HNS Study 2012 update 2015
CD09	MoU signed Oct 2014
CD10	Anker Valley Sustainable Urban Extension Transport Package Appraisal prepared by BWB
CD11	Lichfield Local Plan Strategy policies maps
CD12	Adopted North Warwickshire Core Strategy 9th Oct 2014
CD13	Tamworth Sport Strategy Update 2014
CD14	Tamworth Borough Integrated Transport Study 2014
CD15	Lichfield CIL Regulation 123 List updated February 2017
CD16	MOU Browns Lane
CD17	JCT TN 16008 B1.1 11 April 2016
CD18	PBA TN27 Nov 2016
CD19	PBA TN28 Nov 2016
CD20	TN025 Upper Gungate Assessment 160229
CD21	TN16008 Upper Gungate 22 Feb 16 Issue 1.2
CD22	Staffordshire County Council Education Planning Obligations Policy (EPOP)
CD23	Lichfield District Council Planning Committee Report of 27 February 2017
CD24	Lichfield District Council current IDP
CD25	Tamworth Borough Council current IDP
CD26	Report on the Examination into the Lichfield District Local Plan: Strategy
CD27	Local Plan Allocations Regulation 19 (March 2017)
CD28	Wiggington, Hopwas & Comberford Neighbourhood Plan
CD29	Report on the Examination of the Draft Lichfield District Council CIL Charging Schedule
CD30	Opinion – Mitigation of Off-Site Impacts prepared by Richard Kimblin QC

CD31 PiM note – November 2017

CD32 Secretary of State's Call-In Letter (20 April 2017)

Essential Supporting Documents

ESD1.1 Covering letter (Savills 16 May 2014)

ESD1.2 Application forms, including certificates (16 May 2014)

ESD1.3 Context Plan (UD02E)

ESD1.4 Site Extent (UD03C) (redline site plan 1:5000@A3)

ESD1.5 Development Concept Plan (UD04A)

ESD1.6 Indicative Masterplan (UD05F)

ESD1.7 Indicative Development Parcels Plan (UD06E)

ESD1.8 Indicative Building Heights (UD07C)

ESD1.9 Indicative Housing Density (UD08D)

ESD1.10 Indicative Street Hierarchy (UD09E)

ESD1.11 Indicative Sustainable Transport Plan (UD10F)

ESD1.12 Indicative Character Area Plan (UD11D)

ESD1.13 Indicative Land Use Plan (UD12E)

ESD1.14 Planning Design and Access Statement (Savills) May 2014

ESD1.15 Environmental Statement (Savills) May 2014. Volume 1: Main Statement

ESD1.16 Environmental Statement (Savills) May 2014. Volume 2: Technical Appendices (Part 1 of 2)

ESD1.17 Environmental Statement (Savills) May 2014. Volume 2: Technical Appendices (Part 2 of 2)

ESD1.18 Environmental Statement – Non-Technical Summary (Savills) May 2014

ESD1.19 Statement of Community Consultation (Savills) May 2014

ESD1.20 Energy Statement (PBA) May 2014

ESD1.21 Lighting Assessment (PBA) May 2014

ESD1.22 Utility & Physical Infrastructure Technical Report (PBA) May 2014

ESD1.23 Flood Risk Assessment (PBA) May 2014

ESD1.24 Transport Assessment (PBA) May 2014

ESD3.1 Lichfield District Council Validation Letter, 5 June 2014

ESD3.2 Lichfield District Council Planning Committee Report, 27 February 2017

ESD3.3	Lichfield District Council Planning Committee Minute, 27 February 2017
ESD6.1	Covering letter (Savills, 29 January 2016)
ESD 6.2	Development Concept Plan (Drawing no.UD04B)
ESD 6.3	Indicative Masterplan (Drawing no.UD05J)
ESD 6.4	Indicative Development Parcels Plan (Drawing no.UD06G)
ESD 6.5	Indicative Building Heights (Drawing no.UD07E)
ESD 6.6	Indicative Housing Density (Drawing no.UD08G)
ESD 6.7	Indicative Street Hierarchy (Drawing no.UD09H)
ESD 6.8	Indicative Sustainable Transport Plan (Drawing no.UD10H)
ESD 6.9	Indicative Character Areas Plan (Drawing no.UD11G)
ESD 6.10	Indicative Land Use Plan (Drawing no.UD12G)
ESD 6.11	Planning, Design and Access Addendum, February 2015
ESD 6.12	Environmental Statement Addendum 2016. Volume 1: Main Statement
ESD 6.13	Environmental Statement Addendum 2016. Volume 2: Technical Appendices (Part 1 of 3
ESD 6.14	Environmental Statement Addendum 2016. Volume 2: Technical Appendices (Part 2 of 3
ESD 6.15	Environmental Statement Addendum 2016. Volume 2: Technical Appendices (Part 3 of 3
ESD 6.16	2016 Environmental Statement Non-Technical Summary
ESD 6.17	Transport Assessment Addendum (PBA) June 2016
ESD 6.18	Barwood Letter 30 November 2016
ESD 6.19	Written Opinion of Jeremy Cahill QC
ESD 6.20	Technical Note – Monitor and Manage post QC note (TN28 PBA November 2016)
ESD 6.21	Technical Note – Monitor and Manage; potential future options and justification (TN27 PBA November 2016)
ESD 6.22	Updated Version of Monitor and Manage Report (PBA Revision A 09/12/16) (appendices D-M available on request)
ESD 6.23	Land North East of Tamworth Ashby Road/Offadrive Potential Improvements (28648/5502/004A)
ESD 6.24	Land North East of Tamworth Ashby Road/Offadrive Potential Improvements (28648/5502/005A)
ESD 6.25	Land North East of Tamworth Upper Gungate/Offadrive Potential Improvements (28648/5502/006A)
ESD 6.26	Land North East of Tamworth The Fountain Junction Potential Improvements (28648/5502/010A)
ESD 6.27	Land North East of Tamworth Ashby Road/Offadrive Potential Improvements

	(28648/5502/011)
ESD 6.28	Land North East of Tamworth The Fountain Junction Potential Improvements (28648/5502/012A)
ESD 6.29	Ashby Road Footbridge (28648/002/006A)
ESD 6.30	Proposed cycle route to Landau Forte Academy (28648/002/007)
ESD 6.31	Ashby Road site frontage. Site accesses and traffic calming proposals (28648/002/008B)
ESD 6.32	Ashby Road site access. Crescent Access (compact roundabout) (28648/002/009B)
ESD 6.33	Ashby Road site access. Local Centre access (T junction) (28648/002/010B)
ESD 6.34	Ashby Road site access. Avenue Access (T junction) (28648/002/001B)
ESD 6.35	Ashby Road 30mph Gateway (28648/002/012A)
ESD 6.36	Covering letter to PINs (22 November 2017) accompanying 2017 Environmental Statement and plans in response to PINs Regulation 22 request for further information.
ESD 6.37	Environmental Statement 2017. Volume 1: Main Statement
ESD 6.38	Environmental Statement 2017. Volume 2: Technical Appendices (Part 1 of 2)
ESD 6.39	Environmental Statement 2017. Volume 2: Technical Appendices (Part 2 of 2)
ESD 6.40	Environmental Statement 2017. Volume 3: Technical Appendices
ESD 6.41	2017 Environmental Statement Non-Technical Summary
ESD 6.42	Site extent (UD03D)
ESD 6.43	Development Concept Plan (UD04D)
ESD 6.44	Masterplan (UD05M)
ESD 6.45	Housing Density Plan (UD07G)
ESD 6.46	Street Hierarchy Plan (UD08J)
ESD 6.47	Land Use Plan (UD12H)
ESD 6.48	Phase 1 Plan (UD15C)
ESD 6.49	Phase 1 and 2 Plan (UD16D)
ESD 6.50	Phase 1, 2 and 3 Plan (UD17D)
ESD 6.51	Phase 1, 2, 3 and 4 Plan (UD18D)
ESD 6.52	Planning, Design and Access Statement 2017

Documents Submitted at the Inquiry

ID01	Statement of Common Ground October 2017
ID02	Statement of Common Ground Education
ID03	S106 with track changes
ID04	Draft Conditions
ID05	Note on Environmental Statement and Statutory Requirement
ID06	Suggested Site Visit Locations
ID07	Statement of Common Ground on Highways
ID08	Position Statement on Highways and Transportation Matters
ID09	Position Statement on Education Matters
ID10	Statement of Common Ground between Lichfield D C and Tamworth B C
ID11	Staffordshire C C's Casework Briefing Note
ID12	Local Plan Allocations (Focussed Changes) Duty to Cooperate Paper Jan 2018
ID13	Tamworth Borough Council's Community Infrastructure Levy Draft Charging Schedule for Submission (August 2017)
ID14	Sport England's Sports Facility Calculator
ID15	Labosport's 3G Facility Feasibility Stage Report
ID16	FMG Consulting Feasibility Study for a New Leisure Centre in Tamworth (October 2012)
ID17	Response to letters received by LDC on the 2017 ES
ID18	*J A Pye (Oxford) Estates Ltd v. West Oxfordshire District Council & Anon* (1982)
ID19	Woods Ferrer Limited – Traffic Report on behalf of the NE Tamworth Resident's Group (July 2016)
ID20	Browns Lane Report to LDC Planning Commitee
ID21	LDC Update note on ID/19
ID22	SCC Response to Woods Ferrer Transportation Note
ID23	'Clean' version of S106 Deed and Plans, LDC's Matrix summarising obligations and justifications and Applicant's Explanatory Note
ID24	Tree Preservation Order No4 2017
ID25	Neal Allan Associates Swimming Pool and Sports Hall Feasibility Study Final Report (October 2013) for LDC
ID26	*Oxfordshire County Council v. Secretary of State for Communities and Local Government [2015]EWHC 186 (Admin)*
ID27	*The Queen on the application of Working Title Films Limited v Westminster City Council v Moxon Street Residential (Luxembourg) Sarl I2016]EWHC 1855 (Admin)*
ID28	Statement read by Mr Mitchell

ID29	Statement read by Ms Wolferstan
ID30	Amended Draft Condition 25
ID31	Suggested Needs and implementation clause

Appendix C

SCHEDULE OF CONDITIONS

1) The development authorised by this permission shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.

2) The first reserved matters application for Phase 1 of the development as indicated on the phasing plan WIPL321567/UD15 rev C shall be made within 3 years from the date of this planning permission.

3) The first reserved matters application for Phase 2 of the development as indicated on the phasing plan WIPL321567/UD16 rev D shall be made within 5 years from the date of this planning permission.

4) The first reserved matters application for Phase 3 of the development as indicated on the phasing plan WIPL321567/UD17 rev D shall be made within 7 years from the date of this planning permission.

5) The first reserved matters application for Phase 4 of the development as indicated on the phasing plan WIPL321567/UD18 rev D shall be made within 12 years from the date of this planning permission.

6) All applications for the approval of reserved matters shall be in accordance with the following approved drawings:

   WIPL/UD03 rev. D Site Extent

   WIPL/UD04 rev. D Development Concept Plan

   WIPL/UD07 rev. G Building Heights Plan

   WIPL/UD08 rev. I Housing Density Plan

7) This is an outline planning permission and no development shall be commenced within any respective phase until details of the following have been submitted to, and approved in writing by, the Local Planning Authority by way of a reserved matters application/s: layout of the site including the disposition of roads and buildings; scale, the external appearance of all buildings and structures; the means of pedestrian and vehicular access and parking layout; and the landscape and planting of the site. The development shall be carried out in accordance with the approved details.

CONDITIONS to be complied with PRIOR to the submission of any reserved matters:

8) Before the submission of any Reserved Matters, pursuant to Condition 7, a detailed Surface Water Drainage Strategy shall be submitted to, and approved in writing by, the Local Planning Authority for that phase of the development. Subsequent Reserved Matters applications shall accord with the approved details. The Surface Water Drainage Strategy shall be in accordance with the Flood Risk Assessment ref. 28648/007 dated May 2014 and shall include:

   i) Provision of sufficient storage and routing of surface water for up to and including the 1 in 100 year plus climate change storm event;

ii) Demonstration that any surface water outflow rates are not greater than equivalent greenfield rates of run off for the undeveloped site;

iii) Details of how and by who the surface water drainage design will be managed and maintained;

iv) Finished floor levels to be set at least 1 metre above bank levels of the water courses present within the site; and,

v) Provision of a suitable easement for access and maintenance of watercourses within the site.

The development shall thereafter be carried out in accordance with the provisions of the approved Surface Water Drainage Strategy.

CONDITIONS to be complied with PRIOR to the commencement of development hereby approved

9) Notwithstanding the details shown on the approved plans (including the illustrative concept Masterplan UD05M), on or before the submission of any Reserved Matters pursuant to Condition 7, a Site-Wide Design Framework for the entire site, shall be submitted to, and approved in writing by, the Local Planning Authority. This Framework shall be broadly in accordance with the approved Parameter Plans as listed in condition 6 and in accordance with the principles set out on the Indicative Masterplan (WIPL/UD05), the 2017, Planning, Design and Access Statement and the November 2017 Environmental Statement and shall include the following:

i) Access Strategy;

ii) Movement framework, including connections to the surrounding area and through the site for all modes;

iii) Street types and road hierarchy, including any required speed restriction measures;

iv) Building forms, heights, having regard to finished floor levels;

v) Housing mix;

vi) Street layout and character areas;

vii) Corner treatment;

viii) Building and surface materials palette;

ix) Boundary treatments principles;

x) Mitigation of impact on the Arkall Farmhouse complex, including a plan showing a no build zone that will be kept free from built development around the complex;

xi) Landscape design principles and strategy;

xii) The locations, layout and specifications for the on-site public open space, play areas and SuDS; and,

xiii) Parking strategy including the provision of secure cycle parking facilities for each dwelling unit.

Proposals contained within applications for the approval of Reserved Matters pursuant to Condition 7 shall thereafter conform to the principles contained in the approved Design Framework.

10) Each application for the approval of Reserved Matters, pursuant to Condition 7, shall be accompanied by a statement that demonstrates that such details of reserved matters accord with the design principles of the

approved Design Framework, pursuant to Condition 9. The statement shall include matters of the following:

i) Building Mass;
ii) Public realm and amenity space;
iii) Accessibility for all;
iv) Footpaths and cycle ways;
v) Car and cycle parking, including visitor car parking and secure cycle parking;
vi) Vehicular accesses and circulation;
vii) Service arrangements;
viii) Principles of hard and soft landscaping;
ix) Ecological design principles;
x) Existing and proposed finished floor levels;
xi) Security and safety;
xii) Principles of energy efficiency;
xiii) Housing mix;
xiv) Materials;
xv) Layout; and,
xvi) The findings of up to date ecological surveys, together with details of any mitigation measures required.

The development of each Reserved Matters phase shall not be commenced until the statement has been approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the details approved.

11) On or before the submission of first Reserved Matters, pursuant to Condition 7, a detailed scheme for the phasing of the development of the entire site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include details of the phasing of surface water drainage, green infrastructure, playing fields and community facilities. The development shall thereafter be undertaken in accordance with the approved phasing plan.

12) Before the development in a particular phase is commenced, a Traffic Management Plan/Construction Method Statement comprising; arrangements for the parking of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; construction hours; pedestrian and cyclist protection; proposed temporary traffic restrictions; arrangements for turning vehicles; noise control devices (silencers, smart reversing alarms etc.); delivery routeing and hours; the erection and maintenance of security hoarding; wheel washing facilities and methods of prevention of mud being carried onto the highway; safeguarding air and water quality; measures to control the emission of dust and dirt during construction; and, a scheme for the recycling/disposing of waste resulting from demolition and construction works shall be submitted to and approved in writing by the Local Planning Authority. The approved Traffic Management Plan/Construction Method Statement shall be implemented prior to the

commencement of any works on the site and shall be maintained throughout the entire construction period of the development.

13) Before the development in a particular phase is commenced, as approved pursuant to condition 7, a written scheme of archaeological investigation for that particular phase shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall provide details of a programme of archaeological works, to be carried out within the specific phase of the development, including details of a programme of archaeological earthwork surveys to be carried out across surviving areas of ridge and furrow within the site. The scheme shall include post-excavation reporting and appropriate publication. The scheme shall thereafter be implemented in full in accordance with the approved details and timescales.

14) Before the development in a particular phase is commenced, approved pursuant to condition 7, full details of the proposed foul water drainage system for that specific phase of development shall be submitted to and approved in writing by, the Local Planning Authority. No building shall be occupied until connected to the approved drainage system.

15) Before the development in a particular phase, approved pursuant to condition 7 is commenced a remediation strategy for that particular phase that includes the following components to deal with the risks associated with contamination of the site shall be submitted to, and approved in writing by, the Local Planning Authority:

    i) A site investigation scheme based on the recommendations proposed in Section 7.2 of the Phase I Ground Conditions Desk Study carried out by Peter Brett Associates (report 28468/006 dated February 2014) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;

    ii) The results of the site investigation and detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;

    iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy (ii) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

    A validation report shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed (if needed), to ensure that all contaminated land issues on the specific phase of development have been adequately addressed prior to the first occupation of any part of that phase of the development. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

16) Before the development in a particular phase is commenced, approved pursuant to condition 7, the trees and hedgerows that are to be retained as part of the approved landscape and planting scheme for that phase of the development and adjacent to that phase shall be protected in accordance with BS 5837:2012, in accordance with details to be first submitted to, and approved in writing by, the Local Planning Authority. The agreed tree/hedge protection measures shall be put in place prior to the commencement of any construction works within a particular phase and adjacent to that phase and, shall be retained for the duration of construction works within that phase (including any demolition and / or site clearance works). No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed for that phase of development.

17) Before the development in a particular phase is commenced, approved pursuant to condition 7, a scheme of any proposed external lighting shall be submitted to, and approved in writing by, the Local Planning Authority. The approved lighting scheme shall be implemented in accordance with the approved details.

18) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of all proposed boundary treatments within the respective phase, including full details of any treatment within Public Open Spaces, and a trespass proof fence to be erected adjacent to the railway boundary, shall be submitted to, and approved in writing by, the Local Planning Authority. The approved trespass proof fence shall be implemented prior to the first occupation of any dwelling and thereafter be retained for the life of the development. The Public Open Space boundary treatment shall be provided before first use of that Public Open Space. The residential boundary treatments shall be implemented in accordance with the approved details prior to the occupation of the dwellings the respective boundary treatment is to serve.

19) Before the development in a particular phase is commenced, approved pursuant to condition 7, a detailed noise and vibration assessment for that phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. This shall include an assessment of all sources of noise and vibration, including that associated with any classes within Use Class A, B and D (as defined under the Town & Country Planning (Use Classes) Order 1987, as amended and the Town and Country Planning (General Permitted Development) Order 2015, as amended) forming part of the development, and details of any mitigation required. The approved mitigation and conclusions shall be carried out in full prior to first occupation of any approved A, B and D Use Class within the development.

20) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of any vibro-impact works proposed within the respective phase of development shall be submitted to, and approved in writing by, the Local Planning Authority through a detailed method

statement and risk assessment. Any vibro-impact works shall thereafter be undertaken fully in accordance with the approved method statement.

21) Before the development in a particular phase is commenced, approved pursuant to condition 7, details of existing and finished ground levels, earthworks, excavations and hedgerow / tree removal to be undertaken as part of the development process for that specific phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

22) Prior to the commencement of development in any particular phase hereby approved, a Construction Environment Management Plan (CEMP) and a Habitat Management Plan (HMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The CEMP/HMP should include:

i) Details of future habitat creation works proposed, including location and amount;

ii) Details of current soil conditions of any areas designated for habitat creation, together with what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil PH);

iii) Descriptions and a plan showing any exclusion zones, (including vehicular and for storage of materials) required to avoid any unnecessary soil compaction on areas to be utilised for habitat creation;

iv) Details of species composition and abundance where planting is to occur;

v) The method and a timetable for the establishment of the habitat creation works and ecological monitoring to ensure the habitats' good condition for at least 25 years post establishment.

The approved details shall thereafter be implemented in accordance with the timetable approved herein.

23) Before the development in a particular phase is commenced, approved pursuant to condition 7, full details of the number (in excess of 8), designs and locations of bat and bird boxes of mixed designs to be provided within that phase shall be submitted to, and approved in writing by, the Local Planning Authority. The approved bird and bat boxes shall thereafter be implemented in accordance with the approved designs.

24) No development, hereby approved, shall be commenced on site until full details of a 'Monitor and Manage' Mitigation Strategy to monitor and, if necessary mitigate the impact of the respective proposed phases of development on the local highways network has been submitted to, and approved in writing by, the Local Planning Authority. The Monitor and Manage Strategy shall include full details of a strategy to identify trip generations from the specific phases of development and impacts on the Gungate Corridor and the nearby highways network; the carrying out of traffic surveys, their frequency and locations; modelling criteria; definition of acceptable network conditions; and identification of junction capacities; queue lengths and delays on the local highway network. The Monitor and Manage Mitigation Strategy shall be based upon the principles outlined in the Peter Brett LLP report 'Monitor and Manage' dated December 2014 ref.

28648/5503. The development and any required mitigation identified shall be carried out in accordance with the approved details and timescales.

25) The monitoring strategy pursuant to condition 24 to be approved shall include details of data collection to fulfil the following;

i) Traffic entering and leaving the development at Land north of Ashby Road, to 'identify trip generation from specific phases of development';

ii) Origin-Destination data to understand journey times (identify delay) and impact from the development; and,

iii) Traffic data for the local highway network, to identify impacts (junction capacity, queue lengths and delay) on the Gungate Corridor and nearby highway network, including;
- traffic count data on highway links
- turning movements at junctions
- queue data at junctions, and
- pedestrian movements at junctions with signals (as this affects the signal timings and pedestrian phases).

Details of locations of data collection shall be submitted for approval to include an automatic traffic counter (ATC) will be placed at each of the three site accesses (or whichever one is built at the time of the surveys) to record the volume of vehicles coming in and out of the proposed development. ATC will also be installed at the Anker Valley site access and on Manston View (access to new development north of Browns Lane), from which gathered data could be used to understand the volume of development traffic from these sites during the morning and evening peak hours.

ATCs will also be located on the local highway network on:

- Ashby Road between the development and Browns Lane
- Upper Gungate between the Fountains junction and Offadrive, and
- Offadrive east of Upper Gungate.

Automatic number plate recognition (ANPR) cameras will be installed to at the following locations to record the volume of development traffic using that route:

- site accesses (eastern, central and western site access; whichever are built at the time)
- key links on the highway network most likely to be impacted by the trips generated by the proposed development:

- Gillway Lane east of Comberford Road
- Comberford Road northwest of Fountains junction
- Upper Gungate south of Fountains junction
- Upper Gungate between Offadrive junction and Hospital Street
- Offadrive west of junction with rail station access, and
- Aldergate north of Lichfield Street.

Manual turning counts and queue length surveys will be undertaken at the following junctions:

- Site accesses (eastern, central and western site access; whichever are built at the time)
- Comberford Road / Coton Lane / Gillway Lane staggered junction
- Ashby Road / Brown's Lane / Perrycrofts Crescent staggered junction
- Fountains junction (including the Comberford Road / Wigginton Road junction)
- Upper Gungate / Croft Street junction
- Upper Gungate / Salters Lane / Offadrive junction
- Upper Gungate / Aldergate / Hospital Street / Albert Road / Lower Gungate junction
- Lichfield Street / Aldergate / Church Street / Silver Street junction,
- A513 / Albert Road / Stationfields roundabout; and
- Gillway Lane / Wiggington Road / Browns Lane

Pedestrian movements (including direction of movement) will be recorded as the number of times the pedestrian phase is called at a junction (in an hour) for the following junctions:
- Fountains junction
- Upper Gungate / Salters Lane / Offadrive junction
- Upper Gungate / Aldergate / Hospital Street / Albert Road / Lower Gungate junction,
- Lichfield Street / Aldergate / Church Street / Silver Street junction; and
- A513 / Albert Road / Stationfields Roundabout

26) Upon commencement of development monitoring shall be undertaken and thereafter repeated in line with the details and frequency approved pursuant to conditions 24 and 25 above.

27) No more than 200 dwellings hereby approved shall be occupied until the improvements to Fountains Junction as set out in drawing number 28648-5502-012A have been completed in accordance with the approved details, and an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation Strategy, approved pursuant to Condition 24 of this permission, have been submitted to, and agreed in writing by, the Local Planning Authority. The assessment of network conditions shall be used to inform further mitigation that may be required pursuant to conditions 28 and 29.

28) No more than 300 dwellings shall be completed ready for occupation on site, until an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation Strategy, approved pursuant to condition 24 of this permission, has been submitted to, and agreed in writing by, the Local Planning Authority. Should the network conditions not be found to be acceptable, a scheme of mitigation to create acceptable network conditions for the erection of up to 500 dwellings (including timeframes for completing any mitigation thereby required), shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the commencement of the 302nd dwelling.

Such a scheme shall include consideration of one or more of the mitigation options as set out in the following drawings and in this order of preference subject to the necessary approval of those mitigation options (and provided that this list of options is not exhaustive):

28648-5502-010B,

28648-5502-004A,

28648-5502-005A,

28648-5502- 006A,

28648-5502-011A,

J32-3125-PS-106 B, and

J32-3125-PS-113A.

In addition to the potential physical changes to kerbs, stop lines and junction forms that could be made as noted in the above drawings, an evaluation of the signal staging and operating regime shall be made to assess potential increase in capacity. Mitigation schemes shall be tested sequentially in the order of priority set out in this condition in order to determine the extent of mitigation actually required. Development shall be carried out in full accordance with the agreed details and not more than 302 units shall be constructed unless and until the agreed works have been completed.

29) No more than 500 dwellings shall be completed ready for occupation on site, until an assessment of the network conditions in accordance with the agreed Monitor and Manage Mitigation strategy approved pursuant to condition 24 of this permission, has been submitted to, and agreed in writing by, the Local Planning Authority. Should the network conditions not be found to be acceptable, a scheme of mitigation (including timeframes for completing any mitigation) to create acceptable network conditions for the erection of up to 1000 dwellings (including timeframes for completing any mitigation), shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the commencement of the 502nd dwelling

Such a scheme shall include consideration of one or more of the mitigation options as set out in the following drawings and in this order of preference subject to the necessary approval of those mitigation options (and provided that this list of options is not exhaustive);

28648-5502-010B,
28648-5502-004A,
28648-5502-005A,
28648-5502-006A,
28648-5502-011A,
J32-3125-PS-106 B, and
J32-3125-PS-113A.

In addition to the potential physical changes to kerbs, stop lines and junction forms that could be made as noted in the above drawings, an evaluation of the signal staging and operating regime shall be made to assess potential increase in capacity. Mitigation schemes shall be tested sequentially in the order of priority set out in this condition in order to determine the extent of mitigation actually required. Development shall be carried out in full accordance with the agreed details and not more than 501

units shall be constructed unless and until the agreed works have been completed.

30) Before the development hereby approved commences, details of the following offsite highway works, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved drawings and details before any part of the development hereby approved is first occupied.

i) Proposed principle access as broadly indicated on drawing 28648/5510/003,

ii) Proposed secondary access as broadly indicated on drawing 28648/002/010B and 28648/002/011B

iii) Proposed traffic management scheme on Ashby Road as broadly indicated on drawing 28648/002/008C,

iv) Proposed cycle route to Landau Forte Academy as broadly indicated on drawing 28648/002/007, and

v) Toucan crossing on Ashby Road as broadly indicated on drawing 28648/5510/003

31) Before the development of any particular phase is commenced, pursuant to condition 7, details of the sustainability measures/technologies to be used on that particular phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved sustainability measures/technologies shall thereafter be implemented, in accordance with the approved details.

32) Before the development in any particular phase is commenced, approved pursuant to condition 7, a Site Waste Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved Site Waste Management Plan.

All other CONDITIONS to be complied with:

33) All site clearance works associated with the development hereby approved, shall take place and be completed outside of the bird nesting season (March to September).

34) The development shall be carried out in full accordance with the Ecological Mitigation Measures and Enhancement outlined within the Environmental Statement dated November 2017, such details to be submitted to, and approved in writing by, the Local Planning Authority for each phase of the development.

35) Before development in any particular phase is commenced, a Badger Mitigation licence under the Protection of Badgers Act 1992 shall be secured if required and shall be submitted to the Local Planning Authority before any works commence.

36) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.

37) No trees, shrubs or hedgerows planted or retained as part of the approved landscaping and planting scheme carried out in compliance with reserved matters approved pursuant to Condition 7 of this permission shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.

38) The Reserved Matters submitted in respect of the relevant phase of development containing the local centre, approved pursuant to condition 7 of this permission shall include details of a scheme for the control of odour and other emissions from any A3, A4 or A5 uses within the local centre. The development shall thereafter be carried out in accordance with the approved details.

39) No lowering of ground levels shall be carried out on land adjoining the boundary with railway land, nor shall any fencing or construction works encroach onto railway land.

40) Should the local centre provide more than 100 m^2 of A1 floor space, the relevant reserved matters to be submitted pursuant to condition 7of this permission, shall be accompanied by a retail impact assessment in order to justify the level of retail proposed. The development shall thereafter be carried out in accordance with the approved details.

41) The Reserved Matters within each phase of development to be submitted pursuant to Condition 7 of this permission shall include details of noise attenuation measures designed to protect future occupants of that particular phase from noise nuisance arising from external noise sources including road and rail traffic and existing and future residents from potential noise sources from uses and activities within the site, including the community hub and sports pitches. Any required approved noise mitigation measures shall thereafter be implemented in accordance with the approved details, prior to the occupation of any dwelling.

42) The development shall be carried out in full accordance with the Noise and Vibration Mitigation measures and enhancement measures outlined within the Environmental Statement updated November 2017, unless otherwise approved pursuant to the approval of details in respect of other conditions attached to this permission.

43) Before the erection of any scaffold within 10 metres of a boundary of the railway line, a method statement, including details of measures to be taken to prevent construction materials from the development reaching the railway (including protective fencing) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved measures shall be retained in place throughout the construction phase on the specified dwellings.

44) Before the development in each phase is commenced, approved pursuant to condition 7 of this permission, details of the housing mix for that phase of development shall be submitted to, and approved in writing by, the Local Planning Authority. The development of that phase shall thereafter be carried out in accordance with the approved details.

Appendix D

GLOSSARY

BDL	Broad Development Location
BSL	Barwood Strategic Land II LLP
CIL	Community Infrastructure Levy
CPO	Compulsory Purchase Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
FE	Form Entry
FTE	Full Time Equivalent
IDP	Infrastructure Development Plan
LDC	Lichfield District Council
LLPS	Lichfield Local Plan Strategy (February 2015)
MoU	Memorandum of Understanding
NP	Wigginton and Hopwas Neighbourhood Plan
NPPF	National Planning Policy Framework
PC	Parish Council
PIM	Pre-Inquiry Meeting
PINS	Planning Inspectorate
PPG	Planning Policy Guidance
SCC	Staffordshire County Council
SCG	Statement of Common Ground
SoS	Secretary of State
SLP	Lichfield District Local Plan Saved Policies (1998)
TBC	Tamworth Borough Council
TBLP	Tamworth Borough Local Plan

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

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.