



Ministry of Housing,
Communities &
Local Government

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Cerde Planning
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Sutton Coldfield
West Midlands B72 1XH

Our ref: APP/W3710/W/18/3217924
Your ref: 18.478

4 November 2019

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BELLWAY HOMES WEST MIDLANDS LIMITED
LAND AT THE LONG SHOOT, LAND NORTH OF GREENDALE ROAD, NUNEATON
CV11 6EU
APPLICATION REF: 035623**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Julia Gregory BSc (Hons) BTP MRTPI MCMI who held a public local inquiry between 25 June and 18 July 2019 into your client's appeal against the decision of Nuneaton and Bedworth Borough Council to refuse planning permission for the erection of 75 dwellings including public open space, associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works, in accordance with application ref: 035623, dated 3 May 2018.
2. On 19 June 2019 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

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

Matters arising since the close of the inquiry

5. The Community Infrastructure Levy (Amendment) (No.2) Regulations 2019 came into force on 1 September 2019. These Regulations removed the limit on the number of planning obligations that could be used to fund an infrastructure project. The Secretary of State has considered the implications of the amended regulations in relation to this

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appeal and is satisfied that this matter does not need to be referred back to the parties as the amendments do not change the overall conclusions in this appeal case.

6. An application for full/partial costs has been made by Bellway Homes West Midlands Ltd against the Rule 6 party and a further application for a partial award of costs has been made by Bellway Homes West Midlands Ltd against Nuneaton and Bedworth Borough Council (IR2). These applications are the subject of a separate decision letters.

Policy and statutory considerations

7. 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.
8. In this case the development plan consists of the Nuneaton and Bedworth Borough Council Borough Plan (LP) 2011-2031, adopted 11 June 2019 (IR10). This replaces the 2006 Local Plan. The Secretary of State considers that relevant development plan policies include those set out at IR12-33.
9. 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 documents referred to at IR37-38. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

Supply and spatial distribution of housing

10. For the reasons given in IR239-251, the Secretary of State agrees with the Inspector at IR241 that the examination of the LP generally supports the provision of housing on the appeal site in strategic terms, and that the overall development need for the Borough as set out in LP policy DS4 is of at least 14,060 homes between 2011-2031 (IR242).
11. The Secretary of State notes that the appeal site is within the settlement boundary referred to in policy DS3 and that DS5 identifies strategic sites of which HSG1 is a strategic allocation. He further notes that the allocation was specifically considered by the LP Inspector when the plan was examined and found to be sound (IR245).
12. At the time of examination into the LP the 75 dwellings on the appeal site were not included in the policy allocation figure of 4,419 as the developer and land owner had not reached agreement (IR246). The Secretary of State notes that this has now been resolved. He agrees with the Inspector that the additional 75 dwellings would not result in development that would be out of scale with the overall allocation or be inconsistent with policy (IR248) and would not overheat the local housing market (IR250). For the reasons given in IR247-250 the Secretary of State agrees with the Inspector at IR247 that there is nothing in principle to prevent the 4,419 figure from being exceeded.
13. Overall the Secretary of State agrees with the Inspector's conclusions at IR251 that the development would comply with the provisions of the development plan in respect of the supply and spatial distribution of housing within the Borough, and in these respects would be consistent with LP policies DS4, DS5 and HSG1.

Five-year housing land supply

14. For the reasons given in IR17-18 and IR242-244 the Secretary of State agrees with the Inspector it has been demonstrated that there is a five-year housing land supply against the housing requirement following the adoption of the LP (IR242).

Loss of green space

15. The Secretary of State acknowledges that residents living adjacent to the open land may have had an aspiration that this land might remain as open space and woodland. For the reasons given in IR254-257 he agrees with the Inspector that there is no such specification within any of the criteria of policy HSG1 that requires this land to be woodland or open park and that the policy and accompanying text is silent in this respect (IR 254). He agrees with the Inspector that had the Council considered that to be the right approach, then this would have been a requirement expressly identified in the relevant LP policy (IR257). The Secretary of State therefore considers that there would be no conflict with policy HSG1 in this respect.

Other matters

16. The Secretary of State agrees with the Inspector's assessment of matters relating to contributions sought by the Rule 6 party (IR206), promotion of the site, consultation and bats (IR258-261).

Planning conditions

17. The Secretary of State has given consideration to the recommended conditions set out at IR 209-236 and the reasons for them, and to national policy in paragraph 55 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 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

18. The Secretary of State has carefully considered the Inspector's findings on the S106 unilateral undertaking (UU) at IR184-208 and at IR262-272. For the reasons given at IR186-188, the Secretary of State agrees with the Inspector that the UU is flawed and does not meet all the formal requirements of UUs. Therefore it cannot be relied upon and no weight should be attached to it (IR188 and IR271).
19. The Inspector also raised concerns regarding lack of supporting evidence to ensure the limit of five pooled CIL contributions would not be exceeded (IR193, IR195, IR197 and IR269). However, the Secretary of State considers this matter is no longer an issue since the Regulations referred to at paragraph 5 of this decision letter came into force on 1 September 2019.
20. The Council and Warwickshire County Council have indicated that the provisions of the UU are acceptable to them (IR184). However, the Inspector considers that contributions towards the cycleway have not been justified as material was not submitted to corroborate how the sum was arrived at. The development would therefore be contrary to the thrust of LP policy HS2 and national policy to promote more sustainable forms of transport (IR192-193). She considers that it has not been shown that there is an inadequacy in library services in the area currently and on that basis cannot conclude

that the library contribution would be necessary (IR198). With respect of open space contributions, she considers that evidence has not been provided on how the figures are calculated, or whether there is a deficiency locally or whether the sums are of a scale appropriate to the development. Without any provision that can be taken into account the development would be contrary to LP policy HSG1 (IR201). With respect to the sports, recreation and community provision the Inspector considers that because the amount specified has not been properly justified, it would not meet the CIL provisions and therefore cannot be taken into account. There would be a conflict with LP policies HSG1 and HS6 if no sports provision is made (IR202-203). The Secretary of State agrees with the Inspector's assessments of these matters.

21. Because the UU as a whole is flawed, the Inspector also considers that the development would fail to comply with LP policy NE3 because biodiversity offsetting would not be provided (IR262), that it is not possible to ensure adequate surface water drainage in perpetuity (IR264), that the provision of affordable housing, in line with LP policy HS2, could not be guaranteed (IR267), and that the scheme would not accord with paragraph 94 of the Framework or LP policy HSG1 in respect of education provision. The Secretary of State agrees.
22. Overall the Secretary of State agrees at IR271-272 that the UU cannot be relied on and that the development would make inadequate provision for infrastructure and other provisions, resulting in conflict with LP policies HS1, DS3, SA1, HSG1, HS2, HS5, HS6 and NE3.

Planning balance and overall conclusion

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP policies HS1, DS3, SA1, HSG1, HS2, HS5, HS6 and NE3 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
24. The Secretary of State has carefully considered whether to issue a 'minded to allow' letter seeking further information and a corrected UU since the scheme is otherwise in accordance with the development plan with respect to the supply and spatial distribution of housing. However, due to the technical and complex nature of the evidence which is likely to be required, as set out in paragraph 20 above, the Secretary of State considers that this is not the appropriate approach in this case.
25. The Secretary of State considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that permission should be refused.

Formal decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of 75 dwellings including public open space, associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works in accordance with application ref: 035623, dated 3 May 2018.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. 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.
28. A copy of this letter has been sent to Nuneaton and Bedworth Borough Council and the Rule 6 party, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf



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

by Julia Gregory BSc (Hons) BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Date: 23 August 2019

Town and Country Planning Act 1990

Nuneaton and Bedworth Borough Council

The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

Appeal by

Bellway Homes West Midlands Limited

Inquiry held on 25, 26, and 27 June 2019

The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

File Ref: APP/W3710/W/18/3217924

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The Long Shoot, Land North of Greendale Road, Nuneaton CV11 6EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bellway Homes West Midlands Limited against the decision of Nuneaton & Bedworth Borough Council.
- The application Ref 035623, dated 3 May 2018, was refused by notice dated 20 November 2018
- The development proposed is the erection of 75 dwellings including public open space, associated earthworks to facilitate surface water drainage, landscaping, car parking and other ancillary works.

Summary of Recommendation: the appeal be dismissed

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ABBREVIATIONS

AQA	Air Quality Assessment
AQMA	Air Quality Management Area
CIL	Community Infrastructure Levy
Framework	The National Planning Policy Framework, February 2019
ha	Hectare
HLS	Housing land supply
LP	Nuneaton and Bedworth Borough Council Borough Plan 2011-2031
POE	Proof of evidence
PPG	Planning Practice Guidance
SHMA	Strategic Housing Market Area
UU	Unilateral Undertaking

Recovery by Secretary of State

1. The Secretary of State recovered the appeal for his own determination on 19 June 2019. The appeal was recovered so that the Secretary of State can consider the appeal in the context of the scale of the currently consented development in the area.

Preliminary Matters

2. At the Inquiry an application for costs was made by the appellant against the Rule 6 party¹. This was also the subject of representations in writing after the event but before the Inquiry was closed². An application for costs was also made by the appellant against the Council, to which the Council responded in writing³. These applications are the subject of a separate report.
3. The Council stated that they wished to withdraw the reason for refusal and no longer give evidence to the Inquiry⁴.
4. It was confirmed at the Inquiry that the Rule 6 Party comprised the group of six local residents of Callendar Close and Gloucester Close. Keith Kondakor, one of the residents, is a Borough and County Councillor, but he appeared not for either Council, but as a local resident. He confirmed at the Inquiry that he was not a member of the Planning Committee and had taken no part in the determination of the application by the Council.
5. The Inquiry was closed in writing on 18 July 2019 following the submission of the signed Unilateral Undertaking (UU)⁵, and the conclusion of correspondence about the costs claim against the Rule 6 party.
6. The UU is dated 11 July 2019. In brief, it makes provision for the following:
 - 25% affordable housing, comprising 75% affordable rented housing and 25% as shared ownership;

¹ DOC30

² DOC32

³ DOC31

⁴ Letter to the Planning Inspectorate dated 13 March 2019

⁵ DOC33

- A biodiversity contribution of £33,494.06;
 - A cycleway contribution of £247,875.00;
 - An education contribution of £419,440.00 for primary (£209,840), secondary (£187,550), secondary special needs and sixth form education. (£22,050.00);
 - A healthcare contribution (Acute and Accident and Emergency Care) of £43,236.00;
 - A Libraries contribution for improvement to Nuneaton libraries of £1,384.00;
 - A maintenance scheme for the Open Space Land;
 - The formation of a management company to provide the management services to manage and maintain the Open Space Land and the management of the SUDS;
 - The provision of an Open space contribution of £118,078.27 for improvements at Riversley Park and Buttermere Park and Higham Lane Allotments;
 - A sports, recreation and community contribution of £91,000.00 for Pauls Land Recreation Ground football and cricket pitch improvements, Sandon Park Recreation Ground football pitch improvements; and
 - A Sustainable Urban Drainage system provision and maintenance.
7. I shall consider the UU later.
8. For the avoidance of doubt, I have made my recommendations taking into account the Hoare and Lee Air Quality Assessment Revision 3 dated 27 September 2018.⁶
9. The site visit was accompanied by representatives for the main parties and a representative of the Council. Starting in Greendale Road, I walked across the site close to its boundary with properties in Callendar Close and Gloucester Close. I familiarised myself with the general area unaccompanied by any party.

Planning Policy

10. The Council based its reasons for refusal on the Local Plan 2006⁷. At that time the draft LP was still being examined. The Inspectors report of the examination was dated 9 April 2019. Various sections of the report were referred to by the parties including paragraph 41 and 109-113. On 11 June 2019 the Council adopted the Nuneaton and Bedworth Borough Council Borough Plan 2011-2031 (LP).⁸ The LP replaces the Local Plan 2006.⁹ The main parties have had the opportunity to make representations about the relevance of the contents of the LP. The recommendations in this report are based on the new LP.
11. Because the LP has only recently been adopted, much of the written evidence of the main parties that was submitted before the Inquiry has been superseded by events.

⁶ DOC24

⁷ Policies with the Questionnaire

⁸ DOC6

⁹ DOC6 paragraph 1.1

12. LP policy DS1 promotes the presumption in favour of sustainable development.
13. LP policy DS2 specifies that Nuneaton has the primary role for employment, housing, town centre, leisure and service provision. Most development will be directed to Nuneaton as the primary town.
14. LP policy DS3 identifies that new development within settlement boundaries, as shown on the proposals map, will be acceptable subject to there being a positive impact on amenity, the surrounding environment and local infrastructure.
15. LP policy DS4 sets overall development needs for the Borough with at least 14,060 homes planned for and provided between 2011 and 2031. This takes into account the needs of Coventry City Council.
16. LP policy DS5 allocates HSG1 North of Nuneaton for residential development and associated infrastructure as shown on the proposals map. The allocation site comprises some 200ha adjoining the northern edge of the Weddington and St Nicholas Park residential areas of Nuneaton. The policy identifies HSG1 as a strategic site and indicates 4,419 dwellings.
17. At the time that the application was determined, the Council was unable to demonstrate a 5-year housing land supply (HLS). The LP indicates that the 5-year supply on adoption from 2018 to 2023 would be 5.5 years using the Liverpool method which deals with the shortage of housing over the remainder of the plan period.
18. The Council's 5-year housing land supply calculation as of 1 April 2019 identified 5.83 years supply, based on the housing requirement of 14,060 dwellings specified in the LP. It is based on an updated trajectory containing a list of deliverable housing sites. The appeal site is not included in the trajectory figures.
19. There is not therefore a housing delivery shortfall, but LP policy DS8 specifies that the Council will monitor the delivery of housing and take the necessary action to address any shortfall. LP policy DS9 identifies the circumstances in which the plan will be reviewed.
20. LP policy SA1 sets development principles for strategic sites.
21. LP Policy HSG1-North of Nuneaton states that the strategic housing site will be developed for a mix of residential, schools, local centres and community uses. It sets 18 key development principles and 11 criteria in respect of the form of development. It specifies that there will be provision of at least 4,419 dwellings in a mix of dwelling types and sizes. There is no maximum provision set in the policy. The development will be required to come forward in accordance with the concept plan. The concept plan is included in the LP, although I note that paragraph 7.6 advises that detailed site concept plans will be within supplementary planning documents to sit alongside the LP.¹⁰
22. LP paragraph 7.28 states that strategic housing allocation HSG1 is a sustainable and deliverable urban extension to Nuneaton. LP paragraph 7.29 indicates that

¹⁰ Page 53

the site is in multiple ownerships and there have been a number of planning applications granted, and paragraph 7.30 identifies that the allocation will be delivered in a phased manner. However, there is no specification for phasing in the policy or concept plan.

23. Furthermore, although infrastructure provision and contributions are specified in the policy, there is nothing to suggest that infrastructure needs to be provided before any specific part of the development takes place. Nonetheless, LP policy HS1 seeks to ensure that development provides infrastructure appropriate to the scale and context of the site in order to mitigate any impacts of the development, and address any needs associated with the development. Infrastructure should be suitably phased with the associated development and regard should be had to the Council's Infrastructure delivery Plan.
24. Furthermore, three school sites are shown on the concept plan. None of them are within the appeal site. LP paragraph 7.34 identifies that a key part of the allocation will be the delivery of new amenity facilities, including school provision to meet educational needs of future residents and existing residents in the north Nuneaton area.
25. LP paragraph 7.36 identifies that the residential development will be integrated with informal open space that either forms an extension to existing areas or consists of new community parks. Green linkages and paths will be incorporated.
26. It was confirmed at the Inquiry that the appeal site had been included as part of the HSG1 allocation site boundary throughout the evolution of the LP, albeit that the 75 dwellings proposed had not been included in the yield. The reference in the committee report to the site being adjacent to the allocation is an error ¹¹.
27. The report of the Examination of the Nuneaton and Bedworth Borough Plan¹² recommended that the revised capacity of HSG1 over the plan period should be a minimum of 4,419 dwellings¹³. The Inspector also recommended the inclusion of the concept plan¹⁴. In order to be found sound an additional allocation was required by the inclusion of Hawkesbury Golf Course HSG12¹⁵.
28. LP policy H1 specifies the range and mix of housing to be provided within the Borough. LP policy H2 seeks 25% affordable housing on sites of 15 or more dwellings.
29. LP policy HS2, amongst other transport sustainability issues, seeks to ensure that the impact on air quality is not exacerbated. Electric charging points are suggested as infrastructure that may help to deal with issues of air quality. LP paragraph 11.17 promotes a 15% modal shift target for strategic sites. Without that shift the transport network is unlikely to operate at a satisfactory level.

¹¹ The reference in the committee report dated 20 November 2018 under principle of development to the land being adjacent to the Strategic site HSG1.

¹² 9 April 2019-appendix 10 DF POE

¹³ Paragraph 109

¹⁴ Paragraph 110

¹⁵ Paragraph 192

30. LP policy HS5 requires all major development to demonstrate that they would have an acceptable impact on health and wellbeing.
31. LP policy HS6 promotes sport and exercise facility provision where justified.
32. LP policy NE3 seeks to ensure biodiversity. Biodiversity offsetting will be required as a last resort.
33. LP policy BE3 on sustainable design and construction sets development criteria. It specifies that a supplementary planning document on Sustainable Design and Construction will set out detailed guidance for developers. This is forthcoming.
34. The National Planning Policy Framework (the Framework) is national planning policy revised in February 2019. Paragraph 11 identifies that plans and decisions should apply a presumption in favour of sustainable development.
35. For decision-taking that means approving development proposals that accord with an up-to-date development plan without delay. The Council has a 5 year housing land supply and the LP has only recently been adopted. There is no suggestion that its policies which are most important for determining the application are out of date. Framework paragraph 15 identifies that the planning system should be plan-led. Chapter 5 identifies the Government objective to significantly boost the supply of homes and the measures necessary to support that objective.
36. Chapter 9 promotes sustainable transport. Paragraph 94 identifies the need for sufficient choice of school places are available to meet the needs of existing and new communities. Chapter 15 seeks to conserve and enhance the natural environment.
37. The Affordable Housing Supplementary Planning Document¹⁶ is now somewhat dated, referring to superseded LP and cancelled national planning policy. Nonetheless, there is no suggestion that general principles for the provision of affordable housing should be set aside.
38. The Residential Design Guide 2004¹⁷ sets out various guidance including advice on estate layouts and privacy, aspect and light. This is also dated because it refers to superseded LP and cancelled national planning policy. Nonetheless, the distance standards are not disputed by the main parties.

The Site and Surroundings

39. The HSG1 allocated land lies to the north east of Nuneaton. Part of HSG1 lies adjacent to the A5 which forms part of the Borough's administrative boundary. The application site is within the allocated site. It can be identified on the plan at appendix 14 of Ms Debbie Farrington's proof of evidence(POE). Although it was established at the Inquiry that the red line boundary shown on that plan is not entirely accurate as far as the overall allocation boundaries is concerned, the plan gives a helpful orientation as to the location of the site.
40. The land comprises some 2.7ha of overgrown former agricultural land which would be accessed off Greendale Road, the long road through new estate

¹⁶ DOC3

¹⁷ DOC4

development which leads from The Long Shoot, which is the A47. There is new housing comprising Phase 2 of the Bellway Royal Park scheme to the south.

41. The land has not been farmed since 2013. As a result there are wild flowers and grasses that have colonised the site. The land is mostly flat and has some hedgerow with some trees to the boundaries. There are some stretches of hedgerow forming the boundaries with back gardens at residential dwellings in Callendar Close and Gloucester Close. These properties comprise modern detached dwellings dating from the 1980s.

Planning History

42. Details of relevant planning applications to HSG1 were provided in the POE of Ms Farrington¹⁸. The site was not included within the application site of any other phase of Bellway proposals, sites H, phase 2 of 120 dwelling, which was corrected to 125 at the Inquiry (plus 5) and site I, phase 1 of 254 dwellings.
43. Site A has full planning permission for 245 dwellings.
44. Site B has outline planning permission and reserved matters approval for 400 dwellings which was corrected to 414 at the Inquiry (plus 14).
45. Site C has a submitted outline application for up to 1,700 dwellings, mixed use district centre and community / health centre, primary and secondary schools and area of open space, landscaping, balancing ponds, cycleways and associated infrastructure. This is yet to be determined.
46. Site D has planning permission for 253 dwellings. A part of this site falls outside the allocation area but I understand from evidence at the Inquiry that this part of the site would not have housing.
47. Site E has outline permission for up to 200 dwellings. Reserved matters are yet to be determined. This site falls outside the allocation boundary.
48. Site F has a resolution to grant outline planning permission subject to a s106 agreement for up to 850 dwellings and mixed-use local centre including retail development and community buildings.
49. Site J has outline and reserved matters approval for 150 dwellings.
50. Sites K and L have planning permission for 155 dwellings in total.
51. The total number of dwellings on these sites was calculated in appendix 14 to be 4,527 excluding the appeal site. The figure would be 4602 including the appeal site. Nonetheless, if site E is excluded as it is not within the allocation, it would be 4,327, or 4,402 with the appeal site. To this should be added the 19 additional dwellings corrected at the Inquiry. Also, there is development that lies within the area to the south east of area I which has not been included in the assessment. This is 48-130 The Long Shoot which amounts to some 66 dwellings. If these are both added that would amount to 4,412, or 4,487 including the appeal site. Of these, some 2,550 dwellings on sites C and F did not at the time of the Inquiry have the benefit of planning permission.

¹⁸ Appendix 14

52. At the Inquiry the Council's recent housing trajectory was produced.¹⁹ This does not include the appeal site. The trajectory included only 1,380 dwellings instead of 1,700 for site C and 770 dwellings instead of 850 for site F within the plan period. The trajectory indicates that the total capacity over the plan period would be 4,009.

The Proposals

53. The application is for full planning permission. 75 dwellings would be provided comprising of a mix of 1 bedroom flats, 2 and 3 bedroom dwellings. There would be 25% affordable housing which would amount to 19 units. Dwellings would be arranged around internal estate roads and laid out in a series of perimeter blocks. There would be provision of a pedestrian/cycle path connection to Pallett Drive to the south west of the site. There would be access to public open space to the south of the site.
54. There would be a large surface water attenuation feature to the south of the site which would be a feature of the open space. Hedgerows and trees on boundaries would be retained and further trees would be planted. The design of dwellings would follow closely the design of dwellings in phases 1 and 2.
55. The application site includes Greendale Road and its connection to the Long Shoot A47.
56. There has been a subsequent almost identical planning application which has been refused planning permission by the Council²⁰. It has been requested that plans 18-008-01 and 02 Rev P²¹ which had been part of the subsequent application be substituted for plans 18-008-01 and 02 Rev K. This changes landscaping details on the boundary with residential properties. The Rule 6 party confirmed that this plan was preferable and the Council had no objections to the substitution. I consider that no party would be prejudiced by considering the plan as part of the application.
57. When the subsequent planning application was being considered by the Council, consultation responses were made in respect of biodiversity and from the fire services which are relevant to the consideration of the appeal. I will consider these later in this report.

The Case for the Rule 6 Party

Jo Johnson (Education)

58. Jo Johnson is a resident living in Callendar Close Nuneaton. She works for a local authority education department, but she appeared in the capacity of a local resident. An additional statement was provided at the Inquiry.²²
59. Schools need to be built before the homes. There is a current lack of school places which will be exacerbated by the development of homes. There is a need for new primary school.

¹⁹ DOC20

²⁰ Ref 036092- DF POE appendix 10

²¹ DOC21

²² DOC7

60. The development of an additional secondary school is many years away as the site is yet to get outline planning permission.
61. There is already a shortfall of places available locally, which will only be made worse by the development of more housing on top of the figure set by the emerging local plan. With no affordable transport to schools outside the area, there are huge financial and time implications for parents which may lead to financial hardship. The lack of school places also impacts on the whole community as parents and carers are forced to travel distances that are too far to walk, leading to additional traffic congestion and thus air pollution not just in the local area but across the town.
62. Ms Johnson provided two case studies. The first case study showed an example of one family who have moved into phase 2 of the Bellway development and shows the lack of joined up thinking between the housing department and school admissions, and also an insight into the fact that this phase has been passed by a local authority without regard to the statutory question of providing local education for children. They cannot access any year one places in all of Nuneaton. A child has missed school until school places and transport was organised. The local authority has to pay for the transport.
63. The second case is of a child living in Callendar Close who is stuck in Stockingford School where she was before the family moved. Her mother has to travel across town twice a day.
64. The primary pupil forecast for Nuneaton and Bedworth shows the majority of planning areas have less than 4% available capacity for reception entry and a decreasing amount of cover capacity available overall.
65. Nuneaton North and East planning area in particular is forecast to have a shortfall by September 2018 onwards. This is due to housing development and the popularity of those schools attracting children from across Nuneaton town. The Nuneaton planning area is currently forecast to have an overall shortfall of places available from 2019.
66. However, for year seven entry, current forecasts suggest a shortage of places by the end of the 2018 -19 academic year. It is likely there will be pressure on in- year applications throughout the academic year rather than any pressure on year seven offers made for September entry. The expected shortfall in neighbouring Hartshill may compound this issue, with available capacity at Nuneaton schools being utilised by children from Hartshill planning area.
67. In year applications will be monitored closely and will require close working with the existing secondary schools to ensure all children moving into the area can be accommodated. There is a current deficit in places with an increasing deficit which is not being addressed. There is an 11% deficit predicted by 2022-23 in the north and east area where the Bellway development is planned.
68. Any shortfall is not acceptable. To add more housing over the figure agreed in the LP is short sighted and adding unnecessary pressure to an existing catastrophe for local children. The secondary school 2019 breakdown of offers shows that there are insufficient secondary places in both local secondary schools.

69. Places offered within 1.254 miles WCC Cat 5 there is still a 79 child waiting list as of May 2019. Etone shows a Cat C out of area distance of 1.704 miles with a waiting list of 61 pupils at May 2019.
70. Overall the Nuneaton table shows a 255 pupil shortfall. This is sound proof that new homes are being developed with no plan for building a single senior school place. The local secondary schools in the Bellway phase 3 area are Etone and Higham Lane. Here there is a current waiting list of 140 children. If these pupils are waiting on both lists that still leaves 70 children waiting for places at each of these schools. Because senior schools elsewhere in Nuneaton all have "require improvement" ratings, this adds to the demand for places in the north of Nuneaton.
71. A child living furthest away is 1.7 miles away from the school. This clearly shows the demand for schools in this area. Yet the potential for a secondary school to be built is still years away. Infrastructure such as schools is a key to building successful and sustainable communities. Education is a right for children which states the right to have their views respected and have their best interests considered at all times. Sending a child in a taxi twice a day because there is no local school available near home provided to them by their local authority is not in the child's best interests.
72. The Framework paragraph 94 identifies that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.

Steven Nestoruk (Consultation)

73. Stephen Nestoruk has been a resident of Gloucester Close for 32 years.
74. When initiating a planning request, according to the Planning Act 2008 it is incumbent upon developers to produce a statement of community consultation, in consultation with the relevant local authority or authorities, which describes how the applicant proposes to consult the local community about the project and then carry out consultation in accordance with that statement. Consultation is the process by which parties communicate and consult. Consulting is the mechanism by which information or advice is sought.
75. In March 2013 Bellway Homes produced and made available to various parties a flyer regarding a proposal for an attractive, high quality residential development and community park, that provides accessible countryside to local residents. The flyers were made available by means of an open day exhibition in the church hall of Corston Grange Ecumenical Church²³.
76. The document references the local plan, which states that the adopted local plan identifies the area of land to the east of St Nicholas Park as countryside. The document also stated that the plan states that development is only acceptable if it represents the land use for which there is a demonstrable need which cannot be met in the urban area. Bellway Homes issued this document in the context that no Borough Plan existed. Bellway Homes proposed a small

²³ DOC8

development of housing along with a new woodland, emphasising their proposal would create a natural countryside experience for walkers and informal recreation and that there was a substantial buffer to St Nicholas Park estate.

77. Bellway fully understood that the approval of this land from agricultural use to building use was a fundamental transition of land use. It was clear that Bellway were trying to sweeten the planning permission approval pill by using a countryside park as mitigation for any potential planning objections.
78. Despite feedback from residents being provided at this open day to Bellway and the Council, Bellway Homes did not subsequently answer, consult or communicate in any other manner. Bellway Homes did not provide any other details of their plan to residents, did not respond to any of the myriad of queries raised by residents nor did they solicit any other points of view or advice.
79. It should be noted that the phase 1 proposal alluded to 2 adjacent development areas with development potential to be promoted through the Borough Plan. Nowhere was there any suggestion that the woodland buffer would or even could become a development area. Bellway Homes may well believe their exhibition met requirements of the consultation obligation of community consultation but it appears rather as a manipulation of the system.
80. Having overcome the major hurdle of transitioning land usage with planning permission approval of the phase 1 planning request, Bellway Homes submitted a new planning proposal which they called phase 2. This plan focused on the development of land to the east of phase 1 that the Borough Plan was promoting. This planning proposal application was again made available to residents by Bellway Homes by way of a flyer and exhibition²⁴. Again there was no mention of phase 3. Bellway again would demonstrate their expertise in mitigating some of the objection points raised by residents in their phase 1 submission, these points including ecology, flooding, transport and access.
81. The phase 2 proposal stated that it " will be landscaped in a manner reflected that being delivered as phase 1". There was no communication or consultation regarding the change of use of the woodland features proposed in phase 1.
82. In late 2018 Bellway Homes produced another flyer for phase 3 development²⁵. This proposal was to contain 75 properties on land that the phase 1 application outlined as being woodland and substantial buffer to the St Nicholas estate. The flyer merely advised that 75 dwellings were proposed and that the Council would write to the residents once the planning application had been received so that we could view the details online and make any comments. Yet again Bellway did not conduct or invoke any other form of direct communication or consultation with residents when making this flyer available.
83. Despite residents proactively contacting Bellway Homes, they have not entered into any form of dialogue with residents. Such non-engagement is yet again evidence of the lack of consultation by Bellway.
84. In respect of the subsequent application, Bellway Homes has suggested that the development would reduce crime. It should be noted that there has never been

²⁴ DOC9

²⁵ DOC10

an issue with residential burglary or shed break-ins in Callendar Close or Gloucester Close despite their sometimes unfenced properties backing directly onto the proposed development site. There is no problem to solve in that context. Rather, the open farmland has served as a barrier against crime in the past since the movement of property across open fields is difficult and obvious.

85. There doesn't appear to be any evidence of consultation regarding antisocial behaviour complaints that had been received from phase 1 and phase 2 residents. It is known that complaints are being made and that criminal offences are occurring, that approval of phase 3 will only serve to exacerbate. The increase in vehicle access on the proposed development will undoubtedly provide more entry and exit points for opportunistic crime and antisocial behaviour. This will put more strain on the already overstretched local government and police services.
86. Bellway Homes appears to be leveraging affordable housing as being the rationale for planning permission being granted. Bellway know that once the LP is approved then their application becomes substantially undermined because there will be no shortage of new homes.

Melanie Allen (Biodiversity)

87. Melanie Allen is a resident of Callendar Close with real life knowledge of the site from observations on a day to day basis. An additional statement was provided at the Inquiry²⁶.
88. The Framework paragraph 170 states the planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
89. The biodiversity reports submitted on behalf of Bellway Homes for the application showed a net gain in biodiversity based on the land being farmed. However, the site has been fallow for some years and allowed to re-wild. This is confirmed by the biodiversity report submitted for the subsequent duplicate application on the same site. The only difference in the two applications is a couple of property types changing plot location.
90. The biodiversity report for the second application, also refused by the Planning Committee, showed a net loss in biodiversity. The mitigation would be the provision of £33,500 to improve the short mown grass at Tiverton Drive. Tiverton Drive forms part of the Horeston Grange Estate which is situated on the other side of Hinckley Road to St Nicholas Park. Where this site is placed would therefore play no part in mitigating the loss in biodiversity for this site. Not only has the site been allowed to re-wild, but there have been reported increased numbers and species of birds. The biodiversity map also shows part of the site is now a naturally formed wetland. Hedgehogs, a species under threat, are also being reported in increasing numbers. A family of foxes has been seen playing in the long grass, pheasants can be heard, birds of prey hover above the site. Bats forage along the hedgerows. There are butterflies and dragonflies.

²⁶ DOC15

How can improvements in short mown grass compensate for the loss of any of this?

91. The development should have given greater weight to the need for green infrastructure across HSG1, integrating the site with adjacent land as part of master planning. There would be only a 5m strip edged with hardstanding for most of its western boundary. Some of the site should be used to mitigate the loss of biodiversity.
92. Many residents are also concerned about a colony of legally protected bats proven to be present. Government guidelines state that where bats are confirmed to be present within or near the site, a specific bat survey is required. How can a survey conducted in 2012 be applicable to an application which was submitted in May 2018?
93. In 2012, the site in question was marked as part of a 4.6 ha country park, hence in the name Royal Park, with new homes built a considerable distance from the western boundary where the bats forage. This application brings the development within 5 m of the western boundary with approximately 15 properties front facing onto the boundary which will inevitably create light spill onto the bat foraging area which will have a detrimental impact as stated by the in-house ecologist.
94. Government Guidelines state that where bats are confirmed as present at or near the site, a bat specific survey is required. On 8 April, the Government wrote to developers to remind them of their legal obligation to consider the impact of any project on local wildlife and, where necessary, to take precautionary action to protect their habitats²⁷.
95. Developments should enhance natural environments, not destroy them. It is vital that developers take these words on board and play their full role to make sure new communities are delivered in an environmentally sustainable way. Bellway Homes demonstrated their lack of commitment to providing net gains in biodiversity by requesting the removal of condition 9 for Bellway phase 2 that read the "ELSMP must also demonstrate how measured across the site as a whole, the measures it contains will achieve a net gain for the biodiversity of the site, rather than simply neutralising the impact of the development". Sadly, the Council also failed in its obligation to protect biodiversity and approved the removal of this condition.

Peter Rogers (Drainage)

96. Peter Rogers is a chartered engineer who lives in Gloucester Close. He has lived there since 1987. An additional statement was provided at the Inquiry²⁸. He has experienced a waterlogged garden in inclement weather and much more recently what is known as the "Bellway Lake" on the appeal site. That surface water covers a larger area than shown on the pre-development habitat plan²⁹.
97. Earlier phases of Bellway Homes development have caused severe flooding to existing properties on Pallett Drive. The site is the lowest section of the eastern

²⁷ Not provided

²⁸ DOC16

²⁹ Shown on page 6 of POE

half of the HSG1 allocation, but was excluded from being assigned any housing as it was originally planned by Bellway Homes to be a 4.6 ha Community Park.

98. Historically this area has always been waterlogged. It floods during rain storms causing the ditch adjacent to the western boundary of the field to fill to the point where the water table is about 0.5 inches below the level of the lawns of the existing properties on Callendar Close and Gloucester Close. The land historically has underground drainage channels that led to the ditch delineating the western boundary of the proposed site, but these channels have been since lost over time. Every winter a lake forms around the 84m contour level, which remains for several months.
99. The attenuation pond proposed is inadequate in size and the drainage on the site would need to be changed so that it attenuates flows that used to be captured by the lake and winter crop cover. Of great concern is the fact that the plan shows the site levels would be increased to reduce the possibility of flooding in the new development, but this will increase the amount of water which will then drain off towards the existing properties.
100. Even when the lake was not formed, the area is constantly waterlogged. The waterlogging was evident when the 4 Wheel Drive Land Rover being used by the developer to take samples and drill holes became stuck up to its axles and had to be pulled out by a JCB. There is extreme concern about this application due to the probability of the building causing flooding to properties on Callendar Close and Gloucester Close.
101. Warwickshire County Council has commented that there is no flooding risk on this site, but this comment was not made following a site visit but only as a result of a desk-based survey. No developer can guarantee that 100% of the rain falling on their site will enter their drainage system, however well designed.

Michele Kondakor (Air Quality)

102. Michele Kondakor is a resident in Gloucester Close. She is a dentist who is interested in all aspects of health and well-being. She is particularly concerned about air pollution and its effects and has been an active campaigner on air pollution in the Borough for about a decade. An additional statement was provided at the Inquiry³⁰.
103. The Air Quality Assessment report (AQA) submitted as part of the application does not reflect the true impact of the development on air pollution in the area, as it does not look at the effect of the development on the air quality monitoring area. It states that the proposed development is located approximately 1.5 km from the nearest air quality management area and is not expected to cause an impact on the area due to the distance from the site. This ignores the fact, as correctly mentioned in the officer's report to the committee, that all traffic from the development has to pass through that area to get to the town centre. The Air Quality Management Area (AQMA) is by Etone School and Sixth Form.
104. The officer's report also states that the development will lead to an increase in traffic on the local roads, which may impact on air quality at existing residential properties. The Transport Statement uses information from 2014/15.

³⁰ DOC17

Five years on, anyone who lives in the area will know how much worse traffic has become locally. So, the information on which the air quality assessment is modelled is not up-to-date. Table 15 shows the traffic figures on which the air quality assessment is based.

105. It is not possible that there is less traffic along the A47, A5 and Hinckley Road with the development than without. The AQA also assumes the traffic is flowing at speed limit, when in reality it is going considerably slower and with some queueing at peak times.
106. The AQA for the application at Top Farm correctly models the gyratory and reduces the modelled speed, the more the development takes place. Planning Practice Guidance quoted in the AQA states that whether or not air quality is relevant to a planning decision will depend on the proposed development on its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. This is absolutely the case with this development. There are massive concerns about the additional effects in the AQMA particularly as there has been a lot of development, generating traffic through this area that is not yet showing in the reported data. The proposed receptors used are not placed at the points where people will be most affected and are not actual places where there is real-time collection of data via monitoring tubes.
107. For example, the application uses points where houses are set back from the road along Hinckley Road and yet has no receptors on Leicester Road, where houses are much closer to the road, the traffic flow is slower and the air pollution is already greater.
108. For example, 46 Leicester Road, which is on the point of the gyratory, has its face just 4.6 m from the curb, while the receptors used in the report on the Hinckley Road are some 20m back from the traffic.
109. Mrs Kondakor does not believe that any actual pollution monitoring has been carried out for this application as the AQA mentions roads that are not in Nuneaton or the Borough, suggesting that most of the information was cut and pasted from a report for elsewhere. Parsonage Road and Watson Street are not local areas.
110. The pollution within the development is not the issue. The bulk of the effect will be due to the traffic it would generate and this will be part of a cumulative effect from it and other developments on the AQMA. The AQMA was declared in 2007 and has an ever-increasing amount of traffic passing through it. While there are some annual improvements in emissions per vehicle, these will be overwhelmed by the increase in traffic and reductions in speed within the air quality monitoring area.
111. Proposals to improve the Hinckley Road will only increase the flow within the existing area with no plan to improve the flow over the Leicester Road bridge expected until 2027 at the earliest. There is no PM10 or PM 2.5 monitoring happening in the Borough so all the figures are guesswork, based on figures from elsewhere. As Nuneaton has poorer health than many other areas, we cannot know if the figures are truly reflective of the area and the harmful effects it may cause.

112. The AQA states that the concentrations of NO₂, PM₁₀ and PM_{2.5} will remain below the objective at proposed receptors in 2020. No future years are mentioned. It is unknown whether 2020 will be the worst year. It is unlikely that 2020 will be the worst year as other developments are still taking place, and so traffic will continue to increase. There is no likely traffic mitigation before 2027. As there is no PM monitoring in the Borough, this is purely speculative.
113. The proximity of the site to homes is of concern when one reads the section of the AQA regarding dust emissions during construction. The AQA states that as the site has not been previously developed, it is likely that substantial earthworks will be required. The total site area to be affected by earthworks is also likely to be greater than 10,000m². In accordance with IAQM criteria, the potential dust emissions magnitude from earthworks is considered to be large. Homes will be massively impacted by this. As someone who has had to use an asthma inhaler when she lived in London, she is seriously worried that all the dust generated will cause her to suffer from asthma again. Bellway Homes has not taken the proximity of homes to this development into account. Legal limits are not necessarily safe limits and ill effects will be seen well below the legal limits.
114. Speed enforcement on the phase 1 site was virtually non-existent, with lorries speeding along and creating dust clouds in the Buttermere Avenue area.

Keith Kondakor (Principle of development)

115. Keith Kondakor has been the Borough Councillor for Weddington Ward since 2012. He is also a County Councillor for Weddington division. For three of his seven years as a Borough Councillor he sat on the Planning Applications Committee and played a major role in opposing the LP. He gave evidence as a local resident who lives in Gloucester Close. He made opening and closing statements on behalf of the Rule 6 party³¹
116. The application is one of a long run of planning applications in the north-east of Nuneaton since 2011. The new LP was delayed repeatedly as it was due to be in place to cover the period 2010 to 2028 some nine years ago. It is a time of great transition as the LP was adopted just 15 days before the start of the Inquiry. The LP has had a long and painful development and adoption process.
117. The appellant developed phase 1 which appeared to be the first of a two phase development of around 370 homes. This is still under construction. The second phase of around 250 homes is progressing slowly with probably around 30 homes sold each year.
118. Both these phases were included in the proposed LP housing site HSG1 which included sites for 4,419 homes to be built over the period 2011 to 2031. It is now expected that not all these homes will be completed by 2031. While the LP was being examined, several additional planning applications were approved including an additional 35 onto the outline application for 120 at the north end of the Long Shoot, 23 at the A5 aquatics site and 200 at the north end of Higham Lane. There is a live planning application for 55 homes on the A5 site to

³¹ DOC2 and DOC28

increase the density of that site. The extra growth from employment sites created in the LP will only exist sometime after the plan is adopted.

119. This application and the duplicate application have been rejected by the Council and it is not included in the new LP. It was not actively promoted by the applicant in the LP hearing sessions on HSG1. Both planning applications were rejected due to the cumulative impact of this additional housing at this stage on the area. The LP provided as many houses as North Nuneaton could accommodate. The Council has also just rejected two significant greenfield applications in Weddington and Nuneaton East which were on top of allocations in the LP, due to cumulative traffic impact.
120. The key issue is whether there is an exceptional need for this particular site to be developed now for 75 homes when it is not in the LP and it would have significant cumulative negative impact on sites north of Nuneaton providing infrastructure.
121. Now the LP is adopted, the Council has well over the required five years housing land supply at the rate of demand stated in the plan. There are already more homes in HSG1 than can be built before 2031. The application will undermine sites in the plan. It is made clear in the LP Inspector's report, which was based on applications as of March 2018, that when the plan was adopted the Council would have a clear five year HLS.
122. In addition, 200 homes have been approved on land off Higham Lane, which increased the oversupply in the next five years. The extract from the housing trajectory shows the position without the extra approval since March 2018. It was the LP Inspector's view that the inclusion of allocation HSG12 would provide a sound 5-year supply on adoption. This position has been made more secure by recent approvals.
123. The amount of housebuilding allocated to the north of Nuneaton is as much as the market can bear at 4,419 homes. On top of this there are an additional 200 homes approved at the north end of Higham Lane and 23 at Meadow Croft Farm. Also, sites have had their density increased which will provide even more pressure on infrastructure. For example, Lower Farm outline application was for 400 homes but the final reserved matters applications were for 193 and 221, giving a gain of 14 homes. Even more relevant is that Bellway phase 1 was originally 120 homes but is now listed as 125.
124. Since the production of the proof of evidence the Council has produced an updated trajectory³². It is clear that the Council has sites in the LP or with outline planning permission for at least 5,428 homes for the plan period in the locality that is Weddington and Nuneaton East County Council division.
125. At least 676 were completed before April 2018, around 400 to 500 will have been completed in 2018/19 and around 500 could be completed in each of the next five years where the demand and finance to exist. Comparing the expected housing supply in the locality to housing need for the whole Borough shows that it would not be viable to build and market more than 500 homes in one part of the Borough so far from Coventry. The demographic need for the whole

³² DOC19 and DOC20

Borough is around 328 homes a year. Applying the uplift of affordability gives a total of 420 based on the government's new methodology and 2016 ratio of median house prices to median incomes. Repeating this process with combinations of the 2014 MHCLG/2016 ONS housing projections and 2016/17/18 affordability ratios gives adjusted annual needs for the whole Borough of between 374 and 429 homes per year.

126. The strategic housing market area (SHMA) has become saturated as new local plans for the other districts have been adopted and affordability ratios are so high in Warwick and Stratford-upon-Avon. Completions for the SHMA are already at the required level due to rapid build rates in the south of the county. There are also rising levels of empty homes which shows the market is not short of housing.
127. The LP requires that there is an expansion of open space near Buttermere Park. The only thing that Bellway Homes developments are contributing was expected to be open spaces and the site of this application was not expected to contain even more housing.
128. The consultation document from phase 1 identified native woodland and an opportunity for a Community Park. The LP is not expecting the site to be part of the north spine road but there is a walking route across to Calendar Farm phase 2. The LP recognises the importance of the northern spine road and shows its rough location. All the sites on the path of the eastern section of spine road have at least outline planning permission. The delivery of this section of road with cycle route is essential to connect homes to schools and provide the only chance for a bus service to penetrate the east side of HSG1.
129. The LP covers the period 2011 to 2031 to match other plans in the local housing market area. The proposed housing target of the Borough has been increased from 7900 over 18 years in the early drafts to 14,060. The trajectory recognises that not all of HSG1 will be built in the plan period, but other sites make up the shortfall so that the overall figure of 14,060 would be achieved.
130. However, the local objectively assessed housing need, using current data and methods, will be considerably lower. The Borough has been left behind by employment growth elsewhere and has had very slow employment and housing growth since the 2008 recession.
131. At the Planning Meeting on 30 April 2019 the Planning Committee voted to refuse a duplicate application for phase 3 and two significant applications by Gladman for sites in Weddington and Nuneaton East. The duplicate phase 3 application had a revised biodiversity calculation showing that there will be a significant net loss of on-site biodiversity. The applicant now accepts that the baseline for calculation should be the site at the time of the application. The biodiversity baseline has the site as being overgrown and akin to set aside with an area of wetland in the winter.
132. The duplicate application also exposed that the site exceeded the amount of housing that the fire and rescue service would accept off a single point of access without emergency access routes. The fire service had believed that phases 1 and 2 had an emergency access via the cycle path but that was never provided due to land ownership issues. The mitigation proposed by the applicant was the fitting of the sprinkler systems to all except for the first 23 homes. The Gladman

applications were both turned down on highways grounds due to unacceptable impact on highway safety and a severe impact on the road network.

133. There is also an outline application for around 195 homes on the Hinckley Road at the North Warwickshire and Hinckley College site. The applicant is currently trying to overcome issues with highways and loss of sports pitches. Work is just starting on the two sites at the north end of Higham Lane with trees and hedgerows removed in May. Both these sites are about to become active with applications for sales offices under consideration. The large Callendar Farm phase 2 is 850 homes and it is expected that the first reserved matters application is about to come forward. It is likely that the site will take over a decade to be built.
134. The Top Farm application for around 1700 dwellings is the only part of HSG1 that is still under consideration for outline planning permission. That application has been in since 2017 and is expected to go to planning committee in the next month or so. The Top Farm planning application included probably the least inaccurate air quality report once an error was corrected. It does indicate a serious problem with an NO2 pollution on Old Hinckley Road with or without the Top Farm development due to the cumulative impact from all the other developments. It is the only report that includes the projected change in traffic speed when calculating change and pollution.
135. At the moment there are four sales outlets in Weddington Road, 2 to soon open on Higham Lane, 2 open on the corner of Eastboro Way and The Long Shoot, 2 open on the Long Shoot itself with a third to open soon. Next year it is expected that Callendar Farm phase 2 will start from the A5, the HSG12 site will start on Eastboro Way but the Davidson site on Weddington Road will complete. The north-east of Nuneaton is clearly oversupplied with potentially 10 to 13 sales outlets operating in 2020. Housing demand around Weddington /St Nicholas and infrastructure constraints are at limits on the rate of building.
136. There has been an oversupply of larger homes. Developing other sites that are on the market with permission, where they are lacking developer interest are more suitable options. As the last area of HSG1 without any approved planning permission its use for market housing would delay other developments which include primary school provision. The application will add to the shortage of available primary school places and the unsustainable travel being induced by the lack of primary school in Nuneaton East division.
137. There needs to be either the provision of the school allocated on Callendar Farm phase 2 before the site is developed or a primary school incorporated on part of the site. Development of this site would potentially delay the connection from phase 2 all the way to the A5 via Callendar Farm phase 2 and would delay the northern spine Road. This site is a distraction from providing connections from the Long Shoot and Higham Lane via the proposed spine road.
138. There is no evidence that the applicant has considered the Infrastructure Delivery Plan or the phasing of infrastructure such as the proposed future primary school on the Callendar Farm phase 2 or the highway improvement to mitigate the route into Nuneaton town centre and Railway Station. Until primary school provision is increased, parents without places on St Nicholas Park or a car face problematic bus/taxi trips.

139. Almost all the housing that has been delivered has been in the north of Nuneaton. There is considerable inequality in the approval rates between north and south of the Borough. There is a plentiful supply of housing with South Warwickshire now over delivering on their and the SHMA targets.
140. Rather than there being an undersupply of housing in Coventry and Warwickshire, the supply and demand is in South Warwickshire where employment is high and south central Coventry where the two universities just expanded sharply.
141. The site will only have one vehicle access until sites to the north are developed. A second exit will not be established early enough for both phase 2 and this application to safely supply significant additional five -year land supply. The internal connections between Bellway phases and the primary school on the Callendar farm phase 2 are essential to keep flows for school run traffic off the at capacity Long Shoot.
142. In respect of conditions, recommendations are made on lowering ground levels, improving surface water drainage and increasing the width of the attenuation feature. Ditches need to be widened and maintained. There needs to be early provision of school capacity, GP provision and other infrastructure. There needs early connection to Callendar Farm phase 2 and early provision of the possible primary school.
143. Action is requested to reduce the transport and pollution impact of the development. Conditions should support local bus services and funding for shelters etc. A cycle route on The Long Shoot should be put in place before the first home is occupied. A condition or legal agreement to partly fund improvements to Nuneaton Railway Station is requested. Measures to prevent the appellant avoiding planning trigger points for Bellway phase 2, which could delay funding for mitigation, should be put in place.
144. There is a need to considerably improve the impact on biodiversity. Construction controls should be put in place to control noise and dust. There should be funding for the Leicester Road air quality monitoring area and the introduction of real-time automatic monitoring of an NO2 within the air quality management area.

Written Representations

145. The committee report dated 20 November 2018 identified that 20 letters of objection from 14 addresses were initially received by the Council opposing the development. The addendum to the committee report identifies further letters were received. The local objections centre around concerns about the impact on surface water drainage, character and appearance of the area, location of development, layout, the relationship of properties to existing development in Gloucester Close and Callendar Close, need for a cycle way, street lighting, noise and disturbance, air pollution, and traffic, protection of trees and wildlife, effect on infrastructure including schools and public consultation.
146. In addition to these representations made at application stage which have been submitted with the questionnaire, 13 letters have subsequently been received at appeal opposing the development. 4 of these are from people within

the Rule 6 party.3 additional letters were submitted at the Inquiry. These representations focus on similar matters.

147. Various consultations were undertaken by the Council and the responses are set out in the committee report and addendum.

Representations by Cllr Robert Tromans

148. Councillor Tromans is Ward Councillor for St Nicholas in Nuneaton. He appeared as Ward Councillor rather than on behalf of the Council. Nonetheless, he supported the Council's refusal of planning permission. He considered that no particular inferences should be drawn from the Council choosing not to defend the appeal.
149. He believed that it would be misleading to say that the Inspector who examined the LP was saying that HSG1 must contain a minimum number of houses. If he had intended that he would have been explicit. He believed that the Inspector's comments were an observation that from the information made available to him about applications already approved, or in progress or expected that he believed HSG1 would include at least a certain number. It was not an instruction that HSG1 must contain a certain number. To be clear, he did not stipulate that it must contain a minimum number.
150. Nor is there any statement to say that additional housing numbers above the figure quoted would in all circumstances be desirable, they wouldn't, and it was misleading of the appellant's representative to give that impression in his opening and then later when he said that the Inspector's view was that any additional housing numbers in HSG1 would be all good and would represent "happy days". The Councillor feels sure that had the Inspector intended to convey that message he would have done so clearly and used more circumspect language.
151. The Council may have only chosen to list one reason why the application was declined by the planning committee but it was a very good reason that the LP would already meet the housing land supply requirements without any homes being built on the land outlined, in Bellway phase 3, and so those houses were not needed to fulfil the Council's land supply obligations.
152. Given all the other concerns about the overdevelopment of the north of Nuneaton area of pressure on roads, schools and doctors etc that should be reason enough to uphold the decision and dismiss this appeal. Although the land is in the allocation rather than adjoining HSG1, no new housing numbers had been attributed to that land in order to meet 5- year HLS and so it was concluded by members of the Planning Committee, not unreasonably, that having already demonstrated a five year HLS, that these additional housing units were not required.
153. The area to the north of Nuneaton has already had a disproportionate share of development, leading to it being over developed, with the local schools already being significantly oversubscribed. Local doctors were also facing similar over-demand pressures and these would all get worse once already approved developments were built out without adding this development.
154. The area is the last open land left in a huge swathe of over 4000 houses over an area of farmland where development had traditionally been restrained. Also,

residents stated and provided evidence that in the original consultations with Bellway Homes, the land now outlined would be retained as green space or parkland of some kind.

155. There has been a massive increase in traffic through an area that is already an air quality monitoring area. In addition, dust and fumes from developments had apparently caused serious respiratory illness to be exacerbated amongst local residents. The development would have a disproportionate impact on this.
156. There is a review promised of the LP with a view to reducing the housing target in the light of the latest regional housing requirement assessments from the Government. This would reduce the requirement for housing numbers in the Borough and so to allow this development would be particularly perverse as it would be over delivering on a target that was itself likely to be reduced.
157. Whilst no one claimed that houses were likely to flood to a significant depth, it has been observed that swales and other drainage measures put in place across phases 1 and 2 were not operating as promised with long-term puddling and ground and gardens staying waterlogged for prolonged periods of time rendering them useless for months of the year. Also, there were concerns about driveways, paving and hard landscaping being undermined and damaged prematurely.
158. Serious objections were raised at the time of Bellway phase 1 and again at phase 2 application stage that with such large developments it was unsafe to have only one access and that in an emergency this would seriously hamper fire, police and emergency services. The A47 was already so busy and routinely had fuel and hazardous substance tankers travelling on it, that an accident at the junction of Bellway estate and the A47 Long Shoot could leave thousands of people stranded. This concern has finally been picked up on by the emergency services, with the fire service lodging an objection as the size of the site would now exceed new guidelines on the maximum number of properties off one access road.
159. From local knowledge and informal discussions with those engaged on building and selling the new homes on the many other developments in the immediate area, it was clear that all sites were operating at lower capacity than they would have liked. Quite simply, there is a finite limit on the number of people that want to buy and/or live in the dwellings in the north of Nuneaton. This point has already been reached with the existing developments simply competing for the same pool of potential occupants. In view of this local market saturation, even without a 5-year HLS, it could not be reasonably claimed that approving this scheme would meaningfully contribute towards land supply figures as the local market is saturated and likely to remain so for years.
160. In short, the additional housing numbers are not needed to meet the Council's HLS obligations and the overdevelopment in the local vicinity was so severe that this area would reasonably be the last place in the Borough to take additional housing, even if the Council were minded or required to do so.

The Case for the appellant

161. The appellants case is set out in the POE of Debbie Harrington and the opening and closing statements. As indicated earlier, much of the text of POE has been overtaken by events.
162. The most pertinent policy is agreed to be LP policy HSG1 which sets the provision of at least 4,419 dwellings in a mix of dwelling types and sizes. It specifies the provision of a 2 form entry primary school for approximately 210 pupils and funding, including provision of early years.
163. Paragraph 7.28 of the LP specifies that the housing allocation HSG1 is a sustainable and deliverable urban extension to Nuneaton.
164. The site covers approximately 200ha, adjoining the northern edge of Weddington and St Nicholas Park residential areas of Nuneaton. This allocation site will deliver 4,419 new dwellings in a mix of sizes and tenures. The site is in multiple ownership, and has a number of planning approvals. New houses have been granted planning permission for plots accessed off Weddington Road in the west and the Long Shoot in the East.
165. The policy seeks to ensure that development of future parcels of land, the subject of individual applications, will be brought forward in an integrated manner in order to deliver wider community and infrastructure benefits for existing and future residents in the north of Nuneaton area. The allocation will be delivered on a phased basis across the plan period.
166. Other relevant LP policies are H1, HS1 and HS2.
167. The site is an allocated site within a very recently adopted LP. By definition therefore it is considered to be sustainable in every aspect. Strategic housing allocation HSG1 is a sustainable and deliverable urban extension to Nuneaton. There is no dispute that, in accordance with the LP, this development is coming forward in accordance with the concept plan.
168. Prior to the adoption of the LP, and since November 2018 three officer recommendations appraised the scheme and came back with recommendations of approval. The details contained within those three reports are commended in full to the Inquiry, subject to the error later corrected in the 1 November 2018 report.
169. There has been significant engagement on the part of the appellant which includes the usual consultation requirements. It is entirely normal for local communities to feel that they have not been consulted enough, but it is also the reality that for many individuals no amount of consultation would make a difference to their position. On phase 3, the appellant has done all that could be done to include the local community in the process. The proposals were consulted upon in the usual way. The Council's website has hundreds of separate documents pursuant to this proposal and the proposals and their objectives have remained consistently transparent throughout.

170. Woodland did not form part of the red line plan submitted as part of either phase 1 or phase 2, and was never part of the planning application area³³. There was no particular condition seeking to guarantee woodland on the appeal site. Further, there is nothing in the concept plan contained in policy HSG1 which supports woodland on the site.
171. There is no and there has never been an objection from any statutory consultee consulted on these proposals.
172. Any outstanding adverse impacts are to be mitigated through conditions and a comprehensive UU, the latter of which offers a substantial amount of money to provide infrastructure appropriate to the scale and context of the site in order to mitigate any impacts of the development, and address the needs associated with the development.
173. The appellant has done everything that is required to address the issue of school places, including being policy compliant and making the necessary contributions to infrastructure. The LP envisages the level of provision required for school places in policy HSG1. The appellant site fulfils its obligations. The policy says nothing about the timing of these provisions nor indeed does it suggest that one part of the development in one area ought to be held up in order to wait for another to complete what is required. To expect this to be the case would grind the whole system of delivery and process to a halt. The case studies provided by the Rule 6 party add little to the wider assessment undertaken by the plan making process. A significant amount of money is being contributed as part of the UU.
174. The evidence submitted to the Inquiry on biodiversity matters adds nothing more to numerous previous complaints lodged with the Council. There has been countless correspondence with the Council seeking clarification and questioning their reasoning. Mrs Kondakor spoke at Planning Committee to once again underline her concerns. Ultimately, they have all failed and the Council officer recommendation remained in place. Nonetheless, the appellant has responded to the concerns, as reflected in the latest biodiversity measures and mitigation proposed, including on-site and off-site contributions as secured in the UU. Biodiversity and species-related matters were never before and are not now a reason for refusal.
175. Even the members who disagreed with the officer recommendation did not consider it a point on which to refuse planning permission. There has been an ecological survey undertaken and accepted by the Council. All relevant parties consulted, statutory consultees or otherwise, have not objected. Warwickshire Wildlife Trust chose to leave matters to the Council's ecological experts, but they were consulted and had the opportunity to respond. The appellant has improved upon what was originally offered.
176. Mr Rogers' representations had already been put to the Council. They had been carefully considered, consulted upon and mitigation measures proposed. No new evidence has been produced and no expert advanced to suggest that the previously submitted flood risk assessment was either incorrect, or that the mitigation proposed was not sufficient to address the concerns raised. Mr

³³ DOC18

Rogers accepted that the County Council were satisfied. He also accepted that he did not have any new material. He accepted that his evidence was based solely on his own experience, and he took the opportunity to engage in the conditions discussion. There is a condition dealing specifically with his concern, namely the surface water drainage issue. Everything possible has been done to mitigate this problem.

177. In respect of air-quality, the methodology is set out at page 13 of the revised version 3 of the report. The comprehensive work complies with industry standards, as accepted by the Council. The Council was satisfied with the baseline air-quality data presented and used as part of the analysis and the conclusion of the report. The table compiled in the report directly informs the conditions and mitigation measures provided in line with the relevant policies.
178. The environmental health team were content with the report and its findings. There was no Judicial Review challenge to the report, it informed the recommendation to approve and there is no reason for refusal based on air-quality. The impacts from traffic generated by the proposed development, together with the cumulative impacts of traffic generated by other consented schemes have been assessed. The actions taken, the reports produced and the mitigation offered are policy compliant.
179. LP policy HS2 provides that the impact on air-quality is not exacerbated. The Council would support measures such as the provision and integration of infrastructure which may help to deal with the issues of air-quality, such as electric charging points. This proposal for 75 dwellings will provide prior to any occupation, an electric vehicle charging point at a rate of one charging point per dwelling with dedicated parking.
180. The number of dwellings being delivered is in line with what the LP would expect to be a minimum within the plan.
181. The trajectory document produced by the Council clearly indicates that over the plan the total capacity for the site is 4,009. This is some way off the minimum figure, even when the 75 dwellings offered by the site is added. It is also some way off the expectation to exceed. Even if the five year HLS position is accepted, namely above five years housing land supply, this does not include the granting of planning permission for the site, in other words that figure is a floor not a ceiling. The sales and marketing of units to be sold by the appellant is not a material consideration. What is a material consideration is whether or not these proposals, as realised on the allocation, are sustainable.
182. This development is sustainable. Allowing this allocated development is not a threat to the overall spatial strategy of the Borough. In the context of the examiner's report on the now adopted LP, it is obviously a significant contribution to the overall target across the plan. Mr Kondakor has consistently opposed developments in the locality of the LP policy HSG1 allocation. This development has consistently been recommended to be approved. The proposal is for full planning permission, and can be delivered relatively swiftly as part of a wider allocation.
183. It accords with the development plan and should be allowed. Whilst there have been a number of issues raised by the Rule 6 party, there are no material considerations which indicate otherwise. This is a sustainable development

which seeks consent. The proposal accords with the recently adopted LP policies.

Obligation

184. The committee report refers to CIL contributions and sets out various contributions required. The Council does not have an approved CIL charging schedule. The contributions are instead contained within the UU. The Council confirmed that whilst the obligation is a UU rather than a planning agreement, its terms are acceptable to them and to Warwickshire County Council. Both made requests for contributions.
185. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind. These tests are set out as statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL regs) and as policy tests in the Framework.
186. It is first necessary to consider whether the UU is legally sound. The Town and Country Planning Act 1990 s106 9b requires that the land which the person entering into the obligation is interested in is identified. The UU includes a definition of "site". To quote from page 11 of the UU it "means the land against which this Deed may be enforced as shown edged red on the plan and being the land at Callendar Grove Farm, The Long Shoot, Nuneaton (CV11 6JH) in the County of Warwick Shire". The appellant had the opportunity to further define the land or to attach the plan edged red to the document but has not done so. Although there is a plan, that is showing the public open space areas. There is no land edged red attached to the UU. It is not in any other way defined in the signed UU.
187. Furthermore, the site is identified in the first schedule as title number WK496024³⁴. This does not include Greendale Road which is included in the application site. No explanation has been provided as to why this land is not referred to in the UU.
188. For both these reasons, whatever the merits of its provisions, which I shall turn to shortly, I consider the UU to be flawed. As it does not meet all the formal requirements of UUs, it does not have the status of a planning obligation and therefore I consider that no weight should be attached to it. It is for the Secretary of State to decide, if he is minded to allow the appeal, whether an opportunity should be provided to the appellant to amend the UU.
189. The appellant and the Council rely on the UU and, notwithstanding my finding above, I will conclude on whether its provisions fulfil the statutory tests contained in Regulation 122 of the CIL regs. For a contribution to be justified the method to its formulation must be acceptable and it must meet an identified deficiency.
190. Authorities can seek planning obligation contributions to pooled funding 'pots' intended to provide common types of infrastructure for the wider area but no

³⁴ DOC23 Title documents

more than 5 obligations can be pooled towards a single piece of infrastructure. If there would be more than 5 pooled contributions then the provision cannot be taken into account under CIL regulation 123(3). However, the Community Infrastructure Levy (Amendment) (England)(No2) Regulations 2019 come into force on 1 September 2019. Regulation 11 will remove regulation 123 of the 2010 CIL Regulations in its entirety, so there will then be no limit on the number of planning obligations that could be used to fund an infrastructure project. My report predates the change to legislation.

191. Paragraph 8 of the UU indicates that if any obligations are found to be incompatible with the CIL Regulations that they shall cease to have effect and the owner shall have no obligation to comply with them.
192. The cycleway contribution would be used to provide cycling infrastructure as cycleway works. This accords with sustainable development principles and HSG1 key development principles. I understand from the discussion at the Inquiry that it is a specifically costed project and that this is intended to be a proportionate amount which would be used to connect the site for cyclists from the new homes. I also note that pedestrian and cycleway links are to be contiguous with the boundary of the site.
193. However, I can find nothing within the submitted documents to corroborate how this sum is arrived at. This was not provided at the Inquiry. Whilst the Council may well have the information to justify it, that has not been provided. The contribution merely states that the cycleway works means the provision of the cycling infrastructure between the development and Nuneaton Town Centre which is a broad area. There is also insufficient evidence on pooled contributions for cycling infrastructure between the development and Nuneaton Town Centre. I am therefore unable to conclude that there are no more than 5 pooled contributions. This contribution cannot therefore be taken into account. On that basis, without the provision sought by HSG1 the development would be contrary to the thrust of LP policy HS2 and national policy to promote more sustainable forms of transport.
194. LP policy HSG1 seeks the provision of a 2 form entry primary school and funding including provision of early years. However, the Education Authority specifies that no contribution should be required for this development for early years/pre-school as the current provision has sufficient capacity.
195. LP policy HSG1 also requires a financial contribution towards and provision of a new secondary school located off Higham Lane. The education contribution would provide for either the expansion of existing, or the provision of new, facilities for primary and secondary/secondary and post 16 Special Needs provision. The contribution is justified on the basis of current deficiency and calculated demand created by the development and the cost of provision. Nonetheless, there is insufficient evidence about pooled contributions to be able to conclude that accepting this contribution would not provide more than 5 pooled contributions. This contribution cannot therefore be taken into account. Without adequate CIL compliant provision for education, the development would be contrary to LP policies HSG1 and HS1.
196. The healthcare contribution would be put towards acute and accident and emergency care at George Eliot NHS Trust Hospital. From the detailed report provided on behalf of the Healthcare Trust, I am satisfied that hospital is at full

capacity and that this contribution would in amount provide for the estimated additional care of future residents. The payment is based on the costs associated with an additional 21 emergency admissions, which is the estimated number of admissions arising from the development in a year.

197. Although not specified as being required in LP policy HSG1, the contribution is supported by LP policies HS1, HS5 and DS3. However, again this is a tariff style contribution. No evidence has been provided to indicate that accepting this contribution would not provide more than 5 pooled contributions. In these circumstances, it is not possible to take the contribution into account. Without it, I conclude that the development would add unacceptable stress on the accident and emergency department.
198. The libraries contribution is based on a formula which identifies the likely usage of libraries by residents of the dwellings. It is based on the cost of each visit by those residents. However, it has not been shown that there is an inadequacy in library services in the area currently, and on that basis I cannot conclude that the contribution would be necessary. It cannot therefore be taken into account.
199. Affordable housing provision is required by LP policy H2. The amount and tenure split is compatible with the policy and is supported by the Council. It is not a pooled contribution. This contribution is necessary to make the development acceptable in planning terms. I consider that the obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.
200. The biodiversity contribution is supported by LP policy NE3 and is the calculated cost of re-seeding 0.37ha of short mown grass at Tiverton Road. This would offset the biodiversity loss accrued since the appeal site has been unfarmed. It is not a pooled contribution. Whilst I acknowledge that the provision is not on the site, Tiverton Drive is in the locality and the provision has been made at the behest of the Council. Given that the loss is small and results from the lack of use of the farmland, I consider that the offset amount is commensurate with that status.
201. The open space contribution would be phased in proportion with the occupation of the dwellings. It provides for specific payments for Riverside Park, Buttermere Park, and Higham Lane allotments for specific schemes. LP policy HSG1 requires a financial contribution towards the management and maintenance of play and open space. A table was provided at the Inquiry showing the breakdown of the costs³⁵. However, that does not detail how the figures are calculated. Furthermore, I cannot, from the evidence provided, conclude that there is a deficiency locally or that the sums are of a scale appropriate to the development. Nonetheless, without any provision that can be taken into account the development would be contrary to LP policy HSG1.
202. A sports, recreation and community contribution would provide for payments for specific projects at Pauls Land Recreation Ground which would be football and cricket Pitch improvements, and for Sandon Park Recreation Ground football pitch improvements. LP policy HSG1 and HS6 both require sport facilities. These

³⁵ DOC26

are specific contributions and the information from the Sports Development Manager is that existing facilities are full and that the contributions are based on the additional housing development placing demand pressure on existing facilities. I have no reason to doubt that statement, because the accompanying text for LP policy SA1 identifies that contributions are CIL compliant and demonstrated in the Infrastructure Delivery Plan. However, I have not been provided with that Plan and the documentation on which it is based and the methodology to reach the sum of £91,000, which would be the total amount, has not been clearly laid out in the evidence without pursuing embedded links to documents in representations.

203. I have little doubt that a contribution is required, but because the amount specified has not been properly justified, it would not meet the CIL Regulations and cannot therefore be taken into account. Given the thrust of LP policies HSG1 and HS6 to make provision for sport and physical activity, there would be a conflict with those policies if no sports provision is made.
204. SUDS specification, provision and maintenance is necessary to ensure the adequate surface water drainage of the site. This undertaking relates to the specifics of the scheme.
205. The provisions for open space land on the site itself and its transfer of ownership to a management company are justified to ensure its maintenance in the interests of the character and appearance of the area. This undertaking relates to the layout of the scheme.
206. The rule 6 party has requested various contributions. Contributions towards highway infrastructure have not been requested by the Highway Authority. Insufficient information has been provided for its justification against the CIL regulations. The Health Authority has not identified inadequate GP provision locally and so a contribution for extra infrastructure would not be justified. The Council has not requested funding for air quality monitoring equipment. Given the scale and location of the scheme, this would not be justified.
207. In summary, I have already concluded that the UU has no status. The appellant could be invited to correct the formal deficiency with the obligation. If that were to be remedied, there are parts of the UU which are required as they have been detailed to make the development acceptable; parts where the provision is required in its generality, but where the provision has not been demonstrated to be CIL compliant because the justification to the Inquiry has not been specific enough to ensure it can be legally taken into account; and parts that are not justified on the evidence, and I cannot recommend that they be taken into account.
208. It may be that the Council has all the information that could satisfy the Secretary of State on areas of concern, but no CIL justification schedule was provided at the Inquiry and the consultation responses are not sufficient.

Conditions

209. Various conditions were discussed at the Inquiry³⁶. These were based on the conditions in the committee report and those recommended in respect of the subsequent application. I have considered the conditions against the advice in PPG. I consider that the following alterations to the text of the conditions are required in the interests of certainty.
210. Where the conditions refer to "the Council", that should in all places be replaced by the words "the local planning authority".
211. The words "in any phase" should be deleted from condition 4 because there is not more than one phase. The last sentence of condition 4 should be deleted because it is explanation rather than a requirement.
212. The words "unless the Council consents in writing to any variation" should be deleted from the last sentence of condition 5.
213. The words "et cetera" should be deleted from condition 7 penultimate sentence because that is not precise. The word "will" should be replaced with the word "shall" in the last sentence of condition 7 to be correct in terms of grammar.
214. The words "Flood Risk Assessment" should replace "FRA" in condition 9 to be precise. Although I note in representations reference to the Lead Local Flood Authority, there is no definition of LLFA in the condition and it is for the local planning authority to determine with whom it wishes to consult in respect of any submitted details. The words "in consultation with the LLFA" should be deleted. Condition 9 is particularly detailed. It should be simplified to finish after the word "completed" on line 6. Ultimately it would be down to the local planning authority to determine whether the scheme can be approved or not in the light of any advice or guidance which was current at the time. Deleting the details given does not weaken it. Instead, it gives more flexibility to consider all matters pertinent at the time of determination.
215. Regarding Condition 10, I am not satisfied that the sprinkler system needs to be retained in perpetuity because at some stage there will be a secondary access provided which will enable better access for the Fire Service. The word maintained in perpetuity should therefore be replaced with the words "retained until there is a secondary access to link to the local road network".
216. Condition 11 is missing the word "sewerage" before the word "pumping". The words "The development shall take place in accordance with the approved details" are required to be added.
217. In condition 12 v) the words "including decorative displays and facilities for public viewing, where appropriate" should be deleted as there is no need for public viewing points or decorative displays as at present there is no through route.
218. Condition 13, the word "will" should be replaced with the word "shall" on the first line. The word "to" should be deleted on line 2 for it to make sense. The

³⁶ DOC25

words "in key phases" should be deleted as there is only one phase. I have added a submission and approval clause as follows for effectiveness: "The Communication Strategy shall be submitted to and approved in writing by the local planning authority before the development commences".

219. In condition 14 line 1, the word "will" should be replaced with the word "shall" and the approval shall be in writing.
220. In condition 15 line 2, the words "shall be" should be replaced with "has been".
221. In condition 16, the words after "1830" should be deleted as these are an explanation rather than a requirement.
222. In condition 17 line 4, "the phase being constructed" should be deleted and replaced with the words "the construction site". On the penultimate line "shall" should be replaced with "have" and the second "have" should be deleted.
223. The word "should" needs to be replaced with the word "shall" on the first line of condition 18 and the words "unless agreed otherwise by the Council" should be deleted.
224. Condition 19 line 2 should read charging "point" rather than "points".
225. Condition 20 needs to be revised to ensure that the details are submitted to and approved in writing by the local planning authority and the maintenance plan is subsequently implemented. I have reworded this condition entirely.
226. In condition 22, the word "should" needs to be replaced with the word "shall". "Is to" should be replaced with "shall" and " unless agreed otherwise in writing by the Council" should be deleted.
227. I have included a revised list reflecting all these alterations as Annex A. I have also added a landscaping implementation condition, which is missing, in the interests of the character and appearance of the area. I turn now to the justification for the conditions, as amended.
228. The suggested condition 1 gave a reduced commencement period of 2 years. Given that there is a 5 year supply of housing this is not justified to ensure speedy delivery of housing. I have therefore recommended 3 years. Condition 2 is necessary to ensure that development is carried out in accordance with the approved plans, in the interests of certainty.
229. Conditions 3,4 5, 7, 15 and 18 provide various biodiversity and ecological management measures that would be consistent with the requirements of the LP in the interests of sustainable development.
230. Conditions 5, 18 and 23 are required to protect and provide landscaping in the interests of the character and appearance of the area.
231. Conditions 6 and 10 are required to ensure the safety of future residents.
232. Condition 8 is necessary to satisfactorily survey and record archaeological significance.
233. Condition 9, 17 and 20 are necessary to ensure satisfactory surface water drainage in the interests of future residents' living conditions.

234. Condition 11 is necessary because no details of the elevations of the pumping station have been provided and they are required, in the interests of the character and appearance of the area.
235. Conditions 12, 13, 14, and 16 are necessary in the interests of neighbouring residents living conditions during construction.
236. Conditions 21 and 22 are required in order to promote alternative modes of transport to the private motor car. Condition 19 is required to promote the use of electric vehicles which would not add to fumes. This would accord with the provisions of the LP.

Conclusions

237. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.
238. I have considered all the evidence and the Council's reasons for refusing the application, and the matters on which the Secretary of State particularly wishes to be informed. The main considerations are:
- the effect of the development on the supply and spatial distribution of housing locally; and
 - whether the development would comprise sustainable development, including whether adequate infrastructure would be provided for the development.

Supply and spatial distribution of housing

239. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. [35] The 2006 LP has been superseded by the new LP which has very recently been adopted. I consider that the new LP policies already referred to are the most relevant to the consideration of the appeal. [10-33]
240. The Framework is an up to date expression of Government Policy, most recently reviewed in February 2019. Paragraph 47 of the Framework reiterates Section 38(6). [34-36]
241. The examination of the LP considered the overall housing numbers for the Borough, including provision for housing for Coventry City and the location of housing in the North of Nuneaton.[15,16,21-27] These matters generally support the provision of housing on the appeal site in strategic terms.
242. The overall development need for the Borough is set by LP policy DS4 as at least 14,060 homes between 2011 and 2031. [15] It has been demonstrated that there is a five year HLS against the housing requirement following the adoption of the LP.[17] Although the most recent 5 year HLS is healthy[18], there has been a significant under supply in past years, requiring a 20% buffer.[17]
243. The housing requirement on which the supply is based makes up the shortfall identified by the Council over the plan period [17], rather than making it up within a five-year period as favoured in Planning Practice Guidance (PPG).

244. Nonetheless, there is no reason to consider that the recently adopted LP is out of date in terms of Framework paragraph 11d.[35] The 75 dwellings would help to provide dwellings quickly, as the appellant is confident that the development can be started soon.[228] However, as there is a 5 year supply of housing demonstrated a shorter time period for implementation would not be justified and so a quick start would not be guaranteed.[228]
245. The site is within the settlement boundary referred to in LP policy DS3. The dwellings would be sited within the LP HSG1 allocation, which is a strategic site identified in LP policy DS5.[39] The allocation was specifically considered by the LP Inspector when the plan was examined and found to be sound.[10, 21] Nonetheless, there were some concerns expressed in the examination report about the need to provide a detailed concept plan for this strategically important site to ensure that potentially haphazard outcomes did not result.[11,21]
246. The 75 dwellings were not accounted for when the 4,419 figure contained within the allocation policy was agreed as a modification.[26] It was explained in the report to committee on the subsequent application that when the plan was submitted for examination there was uncertainty about its delivery because the developer had not reached agreement with the landowner. There is now no such uncertainty since the planning application has been made and the landowners have entered into the UU and are therefore demonstrated to be agreeable to the development.
247. There is nothing in principle to prevent the 4,419 figure from being exceeded. [16,21,149-150] Whilst the policy does not use the word "must" in respect of delivery, by using the words "at least", it is specified in the policy that 4,419 is the minimum number of dwellings that should be provided.[162]
248. At the time of the Inquiry the figure of 4,419 dwellings had not been exceeded by planning permissions granted on land within the allocation. [51,52,181] Some 2,550 dwellings on sites C and F did not have the benefit of planning permission. [51] Accounting for all the sites within the allocation that have potential for development, based on the evidence of Ms Farrington, and adding in the application dwellings, there would be some 4,487 dwellings permitted or in the pipeline. This would be more than 4,419 but not so much greater that it would result in development that would be out of scale with the overall allocation and inconsistent with the policy.
249. Additionally, if the 75 dwellings proposed here were to be added to the trajectory figure of 4,009 dwellings to be achieved within the plan period, it would amount to 4,084 dwellings. This would help to boost the provision of housing within the plan period.[52]
250. That the Council has approved additional dwellings on sites outside of the allocation in north Nuneaton does not affect the allocation itself.[47,118,123] I acknowledge that the LP may be reviewed at some stage and that a lower housing requirement might be arrived at. However, that is conjecture at this point in time, and these are matters that I can attribute very little weight, given the recent adoption of the LP.[10] I am satisfied that whilst local residents are concerned about the amount of development in north Nuneaton, 75 dwellings on this allocated site at this time would not be of a scale that would overheat the local housing market.[125, 135,136] Furthermore, its location would not

prevent other parts of the allocation from coming forward. There is nothing detailed on the HSG1 concept plan within the LP relating to the site itself that would preclude the development of the site.[21]

251. I conclude that the development would be consistent with LP policies DS4, DS5 and HSG1. It would therefore comply with the provisions of the development plan in respect of the supply and spatial distribution of housing within the Borough.

Sustainable development and infrastructure provision

252. Paragraph 11 of the Framework indicates that plans and decisions should apply a presumption in favour of sustainable development. [34,35] This is the context in which the LP was prepared, examined and adopted. [10] LP policy DS1 reiterates that presumption. [12] Furthermore, the Framework specifies that for decision making, the presumption in favour of sustainable development means approving development proposals that accord with an up-to-date development plan without delay.[35]
253. The LP states that the allocation represents sustainable development. [22,167] However that is on the basis that the development fulfills the key development principles and creates an appropriate form of development.[21]
254. There is no specification within any of the criteria of LP policy HSG1 that requires this land to be woodland or community park. [21,170] The key development principle 7 relates to land in the western part of the overall allocation rather than the eastern part. Key principle 8 relates to open space off Buttermere Avenue and Key principle 9 relates to a new community park off Change Brook Open space.[21] It has not been shown on the concept plan for that use [170] Had there been an anticipation by the policy of providing a community park and woodland on the application site adjacent to Gloucester Close and Callendar Close, I would have expected to see a similar key development principle provision for this site. Instead the policy and its accompanying text is silent in this respect.
255. Whilst the site was specified in some public consultation material issued by the developer as being for woodland or community park, that was many years ago, before the preparation and adoption of the LP. [170] At that time the previous LP was current and the application site and Bellway phases 1 and 2 were outside the settlement limit. [75,76]
256. There have been no formal planning applications for the use as woodland or community park. The two previous Bellway phases did not include the site in any way and were not dependent on woodland or community park provision on the site in conditions or obligations.[170]
257. It is understandable that residents living adjacent to the land have clung to the aspiration for this land to be open space and woodland because they have for many years had back gardens bordering open agricultural land, more recently unused. In addition, residents were given hope for that by the initial consultation by Bellway Homes in 2013. [75-77,93] However, had the Council considered that to be the right approach then this requirement should have been expressly identified in the relevant LP policy.

258. Examinations of local plans relate to matters of soundness. Given that the submission LP allocation did not preclude the development of the application site, there is no reason why the developer should have taken an active promotional approach regarding the site at the Examination. [11,18]
259. Whilst there is an encouragement of pre-application consultation with local residents by PPG, it is not mandatory for this type of application. Nor is it obligatory for developers to take onboard the comments and objections of local residents. It is for the applicant to determine the details of the scheme. It is then for the decision maker to determine the application in the light of s38(6). [82-83,169]
260. The appellants did notify local residents some while beforehand that the application was to be submitted. [82] The Council also fulfilled its statutory duty in respect of notifying local residents and so there has been adequate opportunity to make representations on the proposals, including when the subsequent application was submitted. That subsequent application has led to the appellant providing revised detailed landscaping on the western boundary, a biodiversity contribution and a condition to provide a sprinkler system which can all be incorporated into this scheme.
261. Trees and hedgerows would be protected. [230] No documentary evidence has been provided of bat roosts. No objection has been raised by Natural England or the local Wildlife Trust. [147] Although there may well be bat foraging along back garden hedgerows and elsewhere, the condition regarding lighting would go some way to protecting these areas which are close to houses now. [229]
262. The land was previously used for agriculture and if the biodiversity calculation were undertaken on that basis there would not be a net loss of biodiversity. It is only because it has been left unfarmed that the gain to its value has been achieved. The loss of that biodiversity could be mitigated by works elsewhere, which the Council has promoted. This is contained within the UU but at present that is defective. Since its provision is justified, the development would fail to comply with LP policy NE3 because without it biodiversity offsetting would not be provided. [32,88-90,174]]
263. The AQA was corrected in version 3 to address errors. [8] The report was not identified as being inadequate by the Council. There are measures put forward in conditions that require electric charging points, and travel packs for sustainable transport. The UU provides for a cycle way contribution. These all encourage transport that would not add to air quality issues some considerable distance from the site. These measures have been accepted by the Council and the Highway Authority and are consistent with the provisions of the LP. The charging points would be provided for individual dwellings. [224,236] The travel packs would be provided for each individual dwelling before occupation. The cycleway contribution would be paid before 50% of them would be occupied. Nonetheless, for the reasons already set out I consider that this contribution should not be taken into account. [192,193] Without cycleway provision, the emphasis on promoting sustainable transport in the Framework would not be achieved.
264. Local residents have first hand experience of surface water drainage issues, these having been well documented during the course of determination of the

application. [97-101] Drainage matters have been assessed by the developer and considered by the Council. The conditions and obligations proposed specify further details including the management and maintenance of any approved scheme. These matters are capable of being adequately controlled so that existing and future resident's living conditions are protected. [176,204] Nonetheless, because of the defects in the drafting and consequent enforceability of the UU, it is not possible to ensure adequate surface water drainage in perpetuity. Without control of provision, management and maintenance of the SUDS, the drainage of the site would not be adequate and the development would not comply with paragraph 165 of the Framework which identifies that major developments should incorporate SUDS unless there is clear evidence that this would be inappropriate. [186-188]

265. The layout, including the relationship of proposed buildings to existing properties, height of properties and alteration to ground levels and the dwelling types adhere to the principles of the Design Guide.[147]
266. Although paragraph 7.30 of the LP specifies that the allocation will be delivered on a phased basis across the plan period, there are no phasing thresholds that the development would fail to comply with.[22]
267. Affordable housing provision would be justified in line with LP policy H2 but because of the deficiencies in the UU, its provision could not be guaranteed. [28,37]
268. There is no dispute about the evidence of the County Council and the Rule 6 party that there is an inadequacy of available primary school capacity in Nuneaton North and East. [58-72,195] There is also an inadequacy in Secondary and SEN education.[195] The UU fulfils what was asked for by the Education Authority in respect of Education and the whole contribution would be paid before the occupation of 75% of the dwellings.
269. There is required to be provision of schools within the HSG1 allocation as a whole as a key development principle. Policy HS1 also requires the development of Infrastructure appropriate to the scale and context of the site. Whilst funding would be provided out of step with the provision on the allocation as a whole, this would resolve itself in due course. The Education Authority has not opposed the development. Nonetheless, I do not have the information on pooled contributions to be able to conclude that the contribution is CIL compliant. On that basis, even if other UU deficiencies were resolved, the education contribution cannot be taken into account. In these circumstances, the scheme would make no contribution to education and would not accord with paragraph 94 of the Framework which identifies that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities and the scheme would make inadequate contribution to education which is a key principle of allocation HSG1.[193-195]
270. I have already set out similar concerns about accident and emergency provision, the sport and recreation contribution and the open space contribution and compliance with the CIL Regulations. [196-197,201-203]
271. The UU cannot be relied upon. LP policy HS1 seeks to ensure the delivery of infrastructure.[23] This is sought to be achieved by the provisions of the UU which does identify the stages at which contributions will be provided, but

because of the defects of the UU it would not comply with this policy. The development would not have a positive impact on local infrastructure as required by LP policy DS3. It would not meet all the requirements for strategic sites laid down in policy SA1. It would not meet all the development principles of HSG1. It would also be contrary to LP policies HS2, HS5, HS6 and NE3 because of the failings of the UU. [186-188]

272. In conclusion, the scheme would be acceptable in terms of housing supply and the scale and distribution of housing development to the north of Nuneaton. Nonetheless, the development would make inadequate provision for infrastructure and other provisions as detailed earlier. As a result, it would not achieve the environmental and social objectives of sustainable development identified in paragraph 8 of the Framework. When these are weighed in the balance, it would not amount to the sustainable development advocated by the development plan and the Framework.

Recommendations

273. Having regard to all my findings, I recommend that the appeal be dismissed. If the Secretary of State is minded to allow the appeal, I recommend that the appellant be given the opportunity to correct the deficiencies of the UU and the Council and appellant be invited to provide detailed CIL justification for contributions reflecting my findings. Furthermore, Annex A lists the conditions that I consider should be attached to any permission granted.

Julia Gregory

Inspector

APPEARANCES

FOR THE RULE 6 PARTY (Callendar Close and Gloucester Close residents):

Cllr Keith Kondakor	Local resident
Melanie Allen	Local resident
Peter Rogers	Local resident
Michele Kondakor	Local resident
Jo Johnson	Local resident
Steven Nestoruk	Local resident

FOR THE APPELLANT:

Hashi Mohamed, of Counsel	Instructed by Bellway Homes West Midlands Limited
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He called Debbie Farrington	Associate Director, Cerda
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INTERESTED PERSON:

Cllr Robert Tromans	Ward Councillor for St. Nicolas in Nuneaton
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The Appellant's documents

INQ/APP/1	Proof of evidence of Debbie Farrington
INQ/APP/2	Appendices to the proof of evidence of Debbie Farrington

The Rule 6 Party documents

INQ/R6/1	Proof of evidence of Keith Kondakor plus summary and appendices
INQ/R6/2	Proof of evidence of Melanie Allen plus appendix
INQ/R6/3	Proof of evidence of Peter Rogers
INQ/R6/4	Proof of evidence of Michele Kondakor
INQ/R6/5	Proof of evidence of Jo Johnson and appendices
INQ/R6/6	Proof of evidence of Steven Nestoruk

DOCUMENTS SUBMITTED AT THE INQUIRY

DOC1	Opening submissions on behalf of the appellant
DOC2	Opening submissions for the Rule 6 party
DOC3	Affordable Housing Supplementary Planning Document
DOC4	Residential Design Guide 2004
DOC5	Report to cabinet 22 May 2019- Consideration of the Planning Inspector's report on the examination of the Nuneaton and Bedworth Borough Plan and adoption of the Local Plan
DOC6	Nuneaton and Bedworth Borough Council Borough Plan 2011-2031
DOC7	Statement of Jo Johnson
DOC8	Phase 1 consultation leaflet

DOC9	Phase 2 consultation leaflet
DOC10	Phase 3 notification card
DOC11	Letter from the occupier of 23 Pallett Drive opposing the development
DOC12	Email from the occupier of 1 Changbrook Close opposing the development
DOC13	Redacted Email objection to the development
DOC14	Submission of Cllr Robert Tromans
DOC15	Statement of Melanie Allen- resident of Callendar Close opposing the development
DOC16	Statement of Peter Rogers opposing the development
DOC17	Statement of Michelle Kondakor opposing the development
DOC18	Phase 1 and phase 2 details
DOC19	Five-year housing land calculation summary as of 1 April 2019
DOC20	Housing Land Supply information
DOC21	Further amended plans
DOC22	Draft UU
DOC23	Office copy of register of title
DOC24	Air Quality Assessment Report- Hoare Lea Revision 3, 27 September 2018
DOC 25	Schedule pf planning conditions
DOC 26	Calculation of open space contributions
DOC27	Evidence for S106 developer contributions for services Shakespeare Martineau
DOC28	Closing statement of Cllr Keith Kondakor
DOC29	Closing remarks on behalf of the appellant
DOC30	Costs submissions on behalf of the appellant
DOC31	Comments on Costs application by the Council
DOC32	Representations on costs application from the Rule 6 Party
DOC33	UU dated 11 July 2019

Annex A – Inspector Suggested Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

2. The development shall not be carried out other than in accordance with the approved plans contained in the following schedule:

Plan description	Plan Number
Red Line Plan 2	TLP3-RL-02
Planning Layout	AAH54545 01 Rev P
Materials Plan	ROY-MP3-01 Rev A
Site Sections	SK102
Detailed Landscape Proposals (1of2)	18-008-01 Rev P
Detailed Landscape Proposals (2of2)	18-008-02 Rev P
Proposed Drainage Strategy	932.Rev H
House type: 2 Bed 4 Per.SO2+LTH	SO2+- Plan-335
House type: 3 Bed 5 Per.SO3 LTH	SO3-Plan-03
Chorley Floor Plans	RP3-CHO-PL-01
Chorley Elevations (part render)	RP3-CHO-PL-02
Chorley elevations (brick)	RP3-CHO-PL-03
Almond (2b semi/ter Planning Layout	A/681/v3/00/01.Rev B
Almond (2b semi/ter Planning Elevations	A/681/v3/00/02.Rev A
Cherry 93b semi/ter)Planning Layouts	A/802c/v3/00/01.Rev B
Cherry 93b semi/ter)Planning Elevations	A/802c/v3/00/02.Rev A
Larch (3b semi/ter) Planning Layouts	A/1087v3/00/01.Rev B
Larch (3b semi/ter) Planning Elevations	A/1087v3/00/02.Rev B
House type: 2 Bed 4 Per.SO2+LTH	SO2+- Plan-03
House type: 2 Bed 4 Per.SO2+LTH	SO2+-Plan-01
House type: 3 Bed 5 Per.SO3 LTH	SO3-Plan-01
House type: SO8 (brick)	SO8-ROY3-02
House type: SO8 (part render)	SO8-ROY3-03
House type: SO12	SO12-Plan-04
Single Garage	WM_GAR_1BWE_01

3. No development including any site clearance shall take place until a Biodiversity Enhancement and Management Plan (BEMP) has been submitted to and approved in writing by the local planning authority. The approved BEMP shall be adhered to throughout the construction period. The content of the method statement shall include the: a) Purpose and objectives of the proposed work; b) Detailed design and/or working methods necessary to achieve the stated objectives; c) Extent and location of proposed works shown on appropriate scale maps and plans; d) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction; e) Persons responsible for implementing the work shall be carried out in strict accordance with the approved details and shall be retained in that manner thereafter.

4. No development including any site clearance shall take place until a Construction Ecological Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The approved CEMP shall be adhered to throughout

the construction period. The CEMP shall include details of: a) any pre-construction checks required; b) the species safeguards to be employed; c) appropriate working practices and timings of construction works; d) site clearance methods; e) the extent of buffer zones and stand-offs for sensitive ecological features; f) what to do if protected species are discovered during construction; g) details of the body or organisation responsible for the implementation and ongoing management, monitoring and remedial actions of the plan, including the mechanism for funding. The CEMP shall also include details of a suitably qualified Ecological Clerk of Works to oversee implementation of the CEMP and address any contingency measures where appropriate. The CEMP will set out key operations and associated points at which written reports will be submitted by the Ecological Clerk of Works to the Authority evidencing implementation of the contents of the CEMP through dated photographs and associated text. The approved plan will be implemented in accordance with the approved details. The above conditions for Ecological Works monitoring arrangements including a timetable covering all key stages and on-site actions including what operations an Ecologist will be present at and routine submission of written reports including dated photographic records of works and visits at each key stage.

5. No development including site clearance shall commence until an Arboricultural method statement has been submitted to and approved in writing by the local planning authority giving protection measures for the trees and hedgerows that are to be retained during the course of the development. The scheme shall show the typical canopy extent of the retained trees at maturity. No tree or hedgerow other than so agreed shall be removed, and no clearance shall commence unless the approved measures for the protection of those trees and hedgerows to be retained have been provided and are maintained during the course of the development. The scheme shall include a no dig methodology where necessary. The scheme shall conform to BS 5837:2012. Any tree or plant including any replacement which, within a period of five years from the implementation of that phase, dies, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with another of a similar size and species.

6. No development shall commence until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site has, has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until provision has been made in accordance with the approved details.

7. No development shall commence until full details of the lights used during construction and external lights and lighting columns for the development including those on the proposed adopted highway have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be developed with the input of a suitably qualified ecologist to outline how the lighting scheme avoids potential negative effects upon the habitats used by foraging and commuting bats. The scheme will include a lighting contour lux diagram demonstrating that there will be no increased light reaching ecological habitat and corridor areas from permanent lighting including from lighting for the adopted highway. Full details of lamp columns luminaires, cowls/shrouds must be submitted. The approved plan shall be implemented in accordance with the approved details.

8. No development shall take place until: a) a Written Scheme of Investigation for a program of archaeological evaluative work has been submitted to and approved in writing by the local planning authority. b) the programme of archaeological evaluative work and associated post-excavation analysis, report production and archive deposition detailed within the approved written scheme of investigation has been undertaken. A report detailing the results of this fieldwork shall be submitted to the Council. c) An Archaeological Mitigation Strategy document (including a written scheme of investigation for any archaeological fieldwork proposed) has been submitted to and approved in writing by the local planning authority. This should detail a strategy to mitigate the archaeological impact of the proposed development and should be informed by the results of the archaeological evaluation. The development, and any archaeological fieldwork post-excavation analysis, publication of results and archive deposition detailed in the Mitigation Strategy document, shall be undertaken in accordance with the approved Mitigation Strategy document.

9. No development shall take place until a detailed surface water drainage scheme for the site based on sustainable drainage principles, the approved Flood Risk Assessment, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

10. The site shall not be occupied until a secondary access has been provided and is available for use to link the site to the local road network; or details of a maximum of 52 dwellings that are to be fitted with a sprinkler system, in the event that a secondary access is not provided, have been submitted to and approved in writing by the local planning authority. Only the agreed details shall be implemented on site and shall be retained until there is a secondary access to link the dwellings to the local road network.

11. No development shall commence until details of the appearance of the foul sewerage pumping station have been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved details.

12. No development shall commence, including any site clearance, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to through the construction period. The approved statement shall provide for: i) the routing and parking of vehicles of HGVs, site operatives and visitors; ii) hours of work; iii) Loading and unloading of plant/materials. iv) Storage of plant and materials used in constructing the development. v) The erection and maintenance of security hoarding. vi) Wheel washing facilities. vii) Measures to control the emission of dust and dirt during construction. viii) A scheme for recycling/disposing of waste resulting from construction works.

13. No construction shall be undertaken until a Communication Strategy has been developed which sets out the points of contact with residents in terms of ensuring access for all residents and to the development site. The Communication Strategy shall be submitted to and approved in writing by the local planning authority before the development commences.

14. No construction shall be undertaken until a dust management plan (to include details within the Air Quality Assessment table 12 pages 28 to 30) has been submitted and approved in writing by the local planning authority. The approved management plan shall be adhered to throughout the construction period.
15. No development above ground shall commence until details of the specification for bird bricks and bat bricks and their precise locations within buildings, has been submitted to and approved in writing by the local planning authority. The approved bricks shall be installed before the occupation of that plot.
16. No deliveries shall take place during the construction phases, Monday to Friday during the time periods 0730 to 0915 and 1630 to 1830.
17. No development and subsequent use of the development shall take place until a management strategy to prevent any construction materials from entering or silting up the ditch network has been submitted to and approved in writing by the local planning authority. Details to ensure that no silt or chemicals can leave the construction site shall have been provided and any detrimental impact to the ditch network shall be repaired in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
18. There shall be no occupation of any dwellings until a management plan providing the proposed details of the private maintenance of the green areas including the easement buffer and hedgerows has been submitted to and approved in writing by the local planning authority. The approved management plan shall be implemented in full in perpetuity.
19. No development shall commence until full details of the location of 1 electric vehicle charging point for every dwelling house has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the agreed details for that dwelling have been implemented on site and are available for use.
20. Prior to the occupation of any dwelling a detailed maintenance plan shall be submitted to and approved in writing by the local planning authority giving details on how surface water systems shall be maintained and managed for the lifetime of the development. The name of the party responsible, including contact name and details shall be provided to the local planning authority within the maintenance plan. Maintenance of the retained land drainage and ditch courses shall be included within the submitted plan. No occupation and subsequent use of the development shall take place until the approved detailed maintenance plan is implemented and that maintenance plan shall be implemented in perpetuity.
21. No dwelling shall be occupied until details of Sustainable Welcome Packs (including public transport information) has been submitted to and approved in writing by the local planning authority for each phase. The approved packs shall be provided prior to the occupation that dwelling.
22. No dwelling shall be occupied until the proposed cycle route amendments required to connect the site to the existing hammerhead junction and cycle route to the south of the site has been submitted to and approved in writing by the local

planning authority. The approved work shall be carried out prior to the occupation of any dwellings.

23. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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