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## Appeal Decision

Inquiry held on 23 - 25 March 2021

Site visit made on 26 March 2021

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 12<sup>th</sup> May 2021**

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**Appeal Ref: APP/K3415/W/20/3264280**

**Land at Hay End Lane, Fradley, Lichfield WS13 8NW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by J T Leavesley Limited against Lichfield District Council.
  - The application Ref 20/01031/OUTM, is dated 31 July 2020.
  - The development proposed is a residential-led mixed use development comprising C2 care and assisted living, C3 residential, including self-build and bespoke, neighbourhood centre including community facilities, open space and landscaping (resubmission of application 18/00078/OUTMEI).
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### Decision

1. The appeal is allowed and planning permission is granted for a residential-led mixed use development comprising C2 care and assisted living, C3 residential, including self-build and bespoke, neighbourhood centre including community facilities, open space and landscaping on land at Hay End Lane, Fradley, Lichfield WS13 8NW in accordance with the terms of the application, Ref 20/01031/OUTM, dated 31 July 2020, subject to the conditions set out in the Schedule attached to this decision.

### Procedural Matters

2. The application was made in outline, with all detailed matters apart from access reserved for later consideration. The appeal has been dealt with on the same basis. The supplementary details provided, including the masterplan layout<sup>1</sup>, have been considered as indicative only. Notwithstanding this, these details show the intended proportion of units meeting the needs of older people and those wishing to self-build, as well as the neighbourhood centre, and are integral to the case made in support of the proposal. The main parties were agreed that a condition to secure later approval over the quantum and phasing of these various parts of the scheme would be necessary for their benefits to be afforded weight, as these are not firmly established in the outline application.

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<sup>1</sup> IPD-16-348-130d Masterplan layout 1:1000@A1L

3. A draft Unilateral Undertaking (UU) made by the appellant to Lichfield District Council and Staffordshire County Council was considered at the Inquiry. The completed UU was provided shortly after the event and I deal with its provisions later in this decision.
4. The proposal is a resubmission of an outline planning application<sup>2</sup>, previously refused on 2 September 2019 for three reasons. These three reasons had initially all been putative ones in this appeal, given this is a failure to determine case. However, the Council is no longer defending reasons over the less than substantial harm to the setting of the adjacent Coventry Canal and the failure to submit a sequential test to demonstrate that the main town centre uses proposed are acceptable here.
5. Accordingly, the Council's sole putative reason for refusal relates to the proposal's conflict with the development plan, in respect of the site lying in the open countryside, outside of the settlement boundaries for the village of Fradley and on land not allocated for development.

### **Main Issue**

6. In the light of the foregoing, the main issue in this case is whether the proposal would be acceptable in this location in the context of the development plan and other material planning considerations.

### **Background**

7. In summary, the proposal provides for a mixed use development of 184 Class C3<sup>3</sup> residential units (including self-build and independent living), 122 Class C2<sup>4</sup> units for care and assisted living and a neighbourhood centre with convenience store, health club, medical centre/pharmacy, children's day nursery and community centre. Except for 77 family homes and 12 affordable apartments, the scheme intends all the remaining C3 dwellings to be restricted to occupation by those aged 55 years or more. Therefore, in total, 217 units of accommodation would help serve the varying needs of an ageing population.
8. The appeal site comprises some 10 hectares of mainly undeveloped agricultural land, last used for pig keeping and containing some farm buildings and two bungalows. The latter are to be retained as part of the overall housing development. The land is on the edge of the settlement of Fradley, which is identified as a focus for employment and a significant amount of housing growth in the current development plan.
9. The site extends from just beyond the existing built edge of the village along one side of Hay End Lane, which defines a long, straight edge to the development. It continues up to the junction with Gorse Lane, which provides the outward edge. The long side opposite to Hay End Lane is defined by the curved alignment of the adjacent Coventry Canal.
10. Fradley is situated alongside the main A38, a short distance outside the city of Lichfield. Most recent development has occupied former airfield land. The

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<sup>2</sup> Council reference 18/00078/OUTMEI.

<sup>3</sup> Town and Country Planning (Use Classes) Order 1987 (UCO) Class C3 Dwellinghouses

<sup>4</sup> In the UCO Class C2 includes residential institutions used for the provision of residential accommodation and care to people in need other than a Class C3 dwellinghouse

largest built-up area contains employment premises, mainly storage and distribution uses, which are accessed from a junction onto the A38. Fradley's two main residential areas lie beyond this, the more recently built of which is between the employment park and the Coventry Canal. This newer housing area, Fradley South, is expanding alongside the Coventry Canal opposite to the appeal site. The original Fradley village lies to the other side of the canal and has access to a further junction onto the A38. Whilst a slightly smaller extent of housing, this older part of the village is also expanding, in broadly the same direction as Fradley South.

11. The adopted development plan includes the Lichfield District Local Plan Strategy 2008-2029 (LPS), adopted on 17 February 2015, the Local Plan Allocations (LPA), adopted on 16 July 2019, and the Fradley Neighbourhood Plan (FNP), made on 12 February 2019. The Fradley settlement boundaries are shown in inset map 12 of the LPS. These encompass a Strategic Development Allocation (SDA), which includes the two main housing sites to each side of the Coventry Canal.
12. The farmland just west of the original village, to either side of Hay End Lane and including the appeal site, falls outside of the settlement boundary and is not currently allocated for development. However, the Council is progressing the emerging Local Plan 2040<sup>5</sup> (LP2040). Regulation 19 consultation on the publication version of this is planned for later this year, with the aim of submission for Examination by the end of 2021. The emerging LP2040 identifies the currently unallocated land each side of Hay End Lane, including the appeal site, as a further strategic housing allocation (SHA3<sup>6</sup>), seeking to provide approximately 500 additional dwellings at Fradley.

## **Reasons**

### ***Conflict with current development plan policy and resulting harm***

13. Core Policy (CP) 1 of the LPS provides a spatial strategy to deliver a minimum of 10,030 dwellings between 2008 and 2029 within the District's most sustainable locations, as set out in the settlement hierarchy and indicated within the key diagram. As well as remaining a focus for employment, Fradley is to play a major role in meeting housing need under CP 1, through an expansion within the SDA. The Fradley SDA will meet approximately 12% of the District's housing need for the plan period.
14. LPS CP 6 sets out where the planned 10,030 dwellings will be delivered, including the 1,250 focused within the Fradley SDA. Crucially, this policy sets out the criteria for permitting development outside of village settlement boundaries, the terms of which would preclude this proposal. LPS Policy Frad4 confirms that Fradley will play a significant role in meeting housing need within the SDA, but itself specifies no restriction on development beyond this.
15. The subsequently adopted LPA makes only the one further Fradley allocation for 80 dwellings at site F1 (Bridge Farm) and otherwise establishes the

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<sup>5</sup> Lichfield District Local Plan 2040 Proposed Submission Plan February 2021

<sup>6</sup> LP2040 Inset 12 Fradley

village settlement boundary<sup>7</sup>, incorporating the parts of the SDA either side of the Coventry Canal, which the appeal site lies outside of.

16. FNP Policy FRANP1 states that development within the settlement boundary set out within the plan will be supported. The FNP adopts the same settlement boundaries as established in the LPS/LPA, but Policy FRANP1 is silent on development outside of these.
17. The proposal is explicitly contrary to LPS CP 6, in not meeting the criteria for development outside of village settlement boundaries. This policy executes the spatial strategy of LPS CP 1 to provide for the 1,250 homes contributed within Fradley. The spatial strategy of LPS CP 1 and 6 provides for the amount and extent of planned new housing development, which for Fradley is to be accommodated mainly within its SDA and is otherwise restricted beyond the defined settlement boundaries. I find the proposal therefore to conflict with these specific policies and their spatial intent.
18. The proposal would exceed the growth planned for Fradley in the current plan period 2008-2029, which is accommodated mainly in the SDA. The statutory plan-led system provides both transparency and some certainty over the amount, location and timescale of new development coming forward. It provides a basis upon which to coordinate underpinning infrastructure and for providers to programme the investment required to support future development needs. There is thus intrinsic harm from any proposal which might undermine the primacy given in law to a plan-led approach to development decisions.
19. However, the amount of planned growth for the District is defined as a minimum. This is in the process of being rolled forward 10 plus years, with the emerging LP2040. Paragraph 48 of the National Planning Policy Framework (the Framework) provides that weight may be given to relevant policies in emerging plans according to a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
20. The Council argue that only limited weight should be attached to the emerging LP2040, given that the Regulation 19 consultation has yet to take place. This stage will gauge the extent to which there are any unresolved objections to relevant policies. However, being mindful of the case law cited by the Council<sup>8</sup>, the weight to be given to LP2040 is a matter of judgement, based on the factors in this particular case. In respect of this proposal, whilst the extent of further unresolved objections to relevant policies is a 'known unknown', the Council has clearly reached a settled view<sup>9</sup> over the strategic

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<sup>7</sup> Lichfield District Local Plan 2008-2029 Policies Maps - Inset 12 Fradley

<sup>8</sup> *West Oxfordshire District Council v The Secretary of State for Communities and Local Government* [2018] EWHC 3065 (Admin).

<sup>9</sup> The Council report – CD 5.10 - which received approval in February 2021 made it clear at 3.3 that 'The publication version of the Local Plan 2040 should be seen as the Council's settled view of the contents of the plan it intends to submit for examination. All responses received during consultation are in effect made to the Inspector for consideration.

housing allocations in LP2040, including SHA3 within which the appeal site lies.

21. The appeal proposal provides for less than 2% of the planned housing provision of LP2040. It was not put to me in this regard, that this scheme was so substantial, or that its cumulative effect would be so significant, that to allow the appeal would materially undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to LP2040. The Council is not relying on grounds of prematurity, which paragraph 50 of the Framework advises will seldom be justified where, as here, the draft plan has yet to be submitted for Examination.
22. The Council made particular reference, should any weight be given to LP2040 Strategic Policy SHA3, to the harm arising from pre-empting its requirement for a comprehensive masterplan addressing the entire allocation. This is to ensure development of the highest quality and to accommodate the correct infrastructure provision/improvement, both on and off site, in the right places.
23. However, I find little material harm in respect of this scheme coming forward in advance of any masterplan. Were the appeal to succeed, conditions could require submission of a site masterplan to inform subsequent reserved matters for this part of the future allocation, which would adequately govern the quality of detailed design. In addition, the UU would help ensure adequate infrastructure provision. Furthermore, the appellant has previously liaised with the other SHA3 allocation land owners, the Parish Council, the Council and other key stakeholders over a suitable concept layout for the entire allocation, incorporating this proposal, and over which no specific shortcomings were highlighted. I do, however, recognise that that was an informal process and is not binding on the respective parties.
24. In respect of the further criteria in paragraph 48, the stage reached in the preparation of LP2040 and lack of evidence over its inconsistency with the Framework, suggests that moderate weight can be given to the proposal forming part of an emerging allocation. As a material consideration, this tempers the degree of harm arising from the conflict found with LPS CP 1 and 6 of the current development plan.
25. Drawing these considerations together, I have found that the development proposed would conflict with LPS CP 1 and 6 and there would be harm as a consequence. However, this harm would be moderate in degree, given that the appeal scheme conforms with an emerging allocation which, whilst not having the weight of adopted policy, nonetheless gains traction as going forward as part of the Regulation 19 consultation.

### ***Any other harms***

26. The Council finds harm to arise in principle only through conflict with the spatial policies in the current development plan. No site-specific harm is identified, with agreement that the location is generally sustainable in terms of accessibility to regularly required services and facilities without undue reliance on the private car. As to any potential additional harms, I have taken account of other concerns raised by interested parties to the planning

application, the appeal and at the Inquiry. These are addressed under the following headings.

*Highway matters*

27. Regarding interested party concerns over increased traffic and the capacity of surrounding roads, including the junction onto the A38, I have had regard to the Transport Assessment<sup>10</sup> provided. On this basis, the local highway authority (LHA) has no objection to the proposal, subject to various requirements being met. These include Hay End Lane, currently a narrow, unclassified road, being widened and provided with street lighting and a revised speed limit. Although a new footway cannot be provided along Hay End Lane, due to issues with existing trees, there is intended to be a continuous adoptable footway through the development, linking to Gorse Lane, which could be secured through a planning condition.
28. The development would be accessed at three points from Hay End Lane, with the LHA requiring final junction details be conditioned. Agreements with the LHA would be necessary for the works at all three access points, the Hay End Lane improvements and signalling at Gorse Lane canal bridge. The latter would make passage over this narrow humpback bridge one-way, via a shuttle operation, helping to avoid any future harm to this structure from vehicle strikes and combined weight pressure, as well as providing safety benefits to all highway users.
29. To promote sustainable traffic modes, the LHA requires adherence to an agreed Travel Plan. That can be secured by condition.
30. Because access is not a reserved matter, as the application includes the three site entrances along Hay End Lane, conditions would also need to address the details of the internal road layout to ensure it is safe and otherwise suitable. The UU commits to payment of a sustainable transport sum and an internal layout allowing the passage of buses, thus ensuring that the development would be served adequately by public transport.
31. An approval could be conditional upon adherence to an agreed Construction Method Plan (CMP). Amongst other concerns addressed, this could govern traffic management measures and lorry routing during the construction phases.
32. Taking all of the above into account, I consider that the proposal would give rise to no material harm in respect of either highway safety or capacity.

*Character and appearance, heritage and countryside*

33. Interested parties are concerned over further development in a village where, in recent years, significant growth has taken place. They highlight the incursion of more housing into the countryside, alongside Hay End Lane and the Coventry Canal, which would harm its rural character and the amenity this provides. Users of this area, including walkers, runners and cyclists, would have to venture further from the settlement to enjoy the rural experience currently provided along these routes. However, loss of undeveloped countryside is often inevitable with the expansion of any rural

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<sup>10</sup> Canalside, Hay End Lane, Fradley Transport Assessment by Infrastructure Planning and Design Ltd. 16 July 2020.

settlement. Through the UU, the appellant has agreed to fund towpath improvement works along the adjacent stretch of the Coventry Canal to enhance its usability. This would provide some compensation for the changes effected upon the character of this area.

34. The Canal and River Trust, in its most recent response, is content to leave a decision over the proposal's effects on the canal and its setting to this appeal. This is on the understanding that reserved matters approval, or conditions, could secure suitable details of layout and set back from the canal, design of the buildings, points of connection to the towpath, landscaping and external lighting. Given this, I am satisfied also that the scale of any harm to the Coventry Canal would be limited. Similarly, subject to satisfactory details, the same finding of a limited scale of harm would apply to the general character and appearance of the area and the rural amenities provided. Consequently, I find no overriding conflict with LPS CP 1, 13 and 14, LPA policies BE1 and BE2 or the Framework in respect of these considerations.

#### *Biodiversity*

35. In regard to interested party concerns over harm to wildlife, these would mainly centre upon the need to preserve surrounding trees and vegetation and to avoid any impact on the canal, since the site is otherwise mainly farmland. Various conditions are suggested in the event of approval, which could support a net gain to the natural environment, including agreed details of tree/hedge protection, landscaping and green infrastructure, biodiversity offsetting, habitat creation and suitable drainage arrangements. Subject to these, I find no material degree of harm to biodiversity would arise, with the potential for net gains, and consequently no conflict with relevant policies LPS NR3 and FNP FRANP8.

#### *Supporting service capacity, further matters and conclusion over any other harm*

36. Interested parties have referred to the inadequacy of supporting services in Fradley. Developer contributions towards primary and secondary education could be secured to mitigate for the added demand on local schools. The neighbourhood centre facilities would support the additional population, as well as complementing the existing services in Fradley. Regarding the views expressed over a lack of need for a further care home, these are not supported by the evidence. In all, the proposal is not shown to exceed the capacity of supporting infrastructure, resulting in no harm in this regard.
37. Although only a small proportion of the site is previously developed land, growth in Fradley now relies on expansion beyond the brownfield areas provided by the former airfield. In response to the comments made, there would now be little additional harm through the proposal occupying mainly a greenfield site.
38. The proposal would prolong and exacerbate the noise and disturbance already experienced from the housing construction currently underway in Fradley. Such harm is an inevitable consequence of further development and would be temporary. That said, effects could be mitigated by adherence to an approved CMP, including this limiting the days and hours for building works, to address the effects on residential living conditions and other impacts of construction activity.

39. Taking all these additional interested party concerns into consideration, there would be a limited amount of further harm caused by this proposal, in addition to the moderate degree already identified from the conflict with LPS CP 1 and CP 6.

***Other considerations that might amount to benefits***

40. The scheme would provide 184 Class C3 and 122 Class C2 units, making a significant contribution in this District towards meeting the Government's objective of significantly boosting the supply of homes. The requirements of paragraph 73 of the Framework are satisfied by the Council currently demonstrating a 12.8-year housing land supply. Furthermore, the Government's Housing Delivery Test is met in Lichfield. Satisfying these supply and delivery requirements is not intended to place a ceiling on the provision of further housing. Nevertheless, the housing land and delivery situation in Lichfield means the benefits of the scheme's housing offer gain no significant premium in addressing any five-year supply shortfall. The overall benefits of this scheme to general housing supply are therefore given only moderate weight.

41. The Council's evidence base for the current development plan included the 2012 Southern Staffordshire Districts Housing Needs Study<sup>11</sup> (SHMA). The more recent November 2020 Housing and Economic Development Need Assessment<sup>12</sup> (HEDNA) provides the current evidence base for residential requirements and informs the emerging LP2040.

42. The HEDNA shows that, compared to both England and the West Midlands region, Lichfield has a relatively high proportion of people over 65 years old. This evidence shows that both the numbers and proportion of this age group will increase significantly in future years. The HEDNA reveals a current unmet need for 1,076 care and support units (C2) for older people in Lichfield, as well as a need for an additional 1,939 homes with either support or care by 2036. The current development plan provides no specific allocations to meet this current and future housing need. The benefits of this scheme include providing 122 Class C2 units for care and assisted living, helping to meet a growing unmet need, along with the minimum of 217 dwellings reserved for occupiers aged over 55 years. These benefits are afforded significant weight in response to the recent HEDNA evidence of a significant uplift in demand for accommodation suited to serve the varying needs of an ageing population, as well as the current unmet need for C2 units.

43. LPS Policy H2 sets an upper limit requirement of 40% affordable housing, with the level of contribution from a scheme established using a model of dynamic viability. This model currently identifies a requirement of 38% affordable housing from this proposal. Subject to an appropriate planning condition governing this, the development would provide a policy compliant proportion of affordable housing. The evidence shows the Council to have under-delivered by 360 units in affordable housing over the last five years<sup>13</sup>.

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<sup>11</sup> Southern Staffordshire Districts Housing Needs Study and SHMA Update by Nathaniel Lichfield & Partners Ltd dated 10 May 2012

<sup>12</sup> Housing and Economic Development Need Assessment – Update (HEDNA) Lichfield District Council and Tamworth Borough Council September 2019 Update: November 2020 Prepared by GL Hearn

<sup>13</sup> Lichfield District Council Authority Monitoring Report August 2020 (AMR)



A significantly lower proportion of 20% affordable housing might eventually be required for this site under the emerging policy of LP2040. On this basis, delaying any consent could result in less affordable dwellings than might currently be secured. On the basis of the above, significant weight may be given to this scheme's benefits in respect of addressing a particular need for affordable housing in this District.

44. The sequential test<sup>14</sup> shows the main town centre uses proposed are acceptable here, and that there are no other sequentially preferable sites in the area. The neighbourhood centre with convenience store, health club, medical centre/pharmacy, children's day nursery and community centre would help meet the needs of the scheme's future occupiers, as well as benefitting existing Fradley residents by adding to the range of village facilities. The neighbourhood centre would thus offer a further significant benefit.
45. The Council is required to maintain and update a register of those individuals who are interested in building their own homes. The latest evidence shows only four individuals on the Council's register, with a significantly greater number of plots granted with self-build relief exemption from the Community Infrastructure Levy (CIL) since 2016<sup>15</sup>. The appellant's evidence<sup>16</sup> indicates a strong unmet demand in the Lichfield area that is not reflected in the Council's register, as well as an active interest in managing the cluster of 17 bespoke dwellings proposed for self-build-occupiers. The evidence suggests this proposal would benefit a stronger latent demand for people wishing to commission or build their own homes than as indicated by the Lichfield register. I give this moderate weight in favour of the scheme overall.
46. The construction phase and the spend by future occupiers will clearly be of both temporary as well as more permanent benefit to the local economy. This benefit is afforded significant weight, in accordance with Framework paragraph 80.
47. The other benefits of the scheme, including the canal towpath improvements and a potential net-gain in biodiversity, all generally assist in off-setting the harm from developing this area of countryside, but will also benefit existing residents. That consideration adds limited further positive weight in favour of the scheme

***Whether the proposal would conflict with the development plan as a whole***

48. Development plan policies may pull in varying directions and, depending on the nature of the proposal under consideration, can provide differing degrees of either resistance or support.
49. CP 1 of the LPS is one of the most important policies in this appeal, being central to the main issue, as it provides the Council's spatial strategy for growth. It provides Fradley a major role in meeting the District's housing need by directing growth to its SDA. This policy is given a significant degree

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<sup>14</sup> Hay End Lane Fradley: Note on Sequential Test - DPP Planning 16 February 2021

<sup>15</sup> AMR op. cit

<sup>16</sup> Czero letter dated 1 February 2021

of weight through being consistent with the Framework's general aim for securing sustainable development through a plan-led approach to growth.

50. The proposal conflicts with LPS CP 6 in failing the criteria for residential development permissible in rural areas outside the Fradley settlement boundaries. There is no evidence to suggest the Fradley SDA is insufficient to provide the 1,250 homes provided through this policy. Without the restrictions this policy provides over the spatial extent of new development in Fradley, such growth might be unfettered. This could override the role that paragraph 9 of the Framework seeks for development plan policies. This is to guide development towards sustainable solutions, taking local circumstances into account and reflecting the character, needs and opportunities of each area. CP 6 is also central to this appeal decision, in relation to the locational factors of the main issue.
51. By being geared to meet the varying needs of an elderly population, this proposal complies with LPS Policy H1, which promotes the delivery of supported housing and care homes to reflect the needs of the changing demographic profile of the District's population to 2029. The proposal also satisfies LPS Policy H2 in providing a policy compliant amount of affordable housing. Whilst the benefits of compliance with these policies is accounted for, and they are afforded full weight in consistency with the Framework, neither is central to the main issue over whether this proposal is acceptable in locational terms.
52. LPS Policy Frad4 describes the role Fradley has in providing 12% of the District's housing growth to 2029, stating that the around 1,250 dwellings will be accommodated in the SDA. The proposal complies with the residential mix required under this policy, in respect of affordable housing and in meeting ageing population needs, but leaves the restrictions imposed on development outside the SDA/settlement boundaries to CP 6.
53. LPS CP 3 is a cross-cutting policy setting out criteria for delivering sustainable development and is thus consistent with the Framework. The site is in a generally accessible location and, as the proposal is in outline, many of the further policy criteria could be met by reserved matters, conditions or planning obligations. As a generic policy, CP 3 is capable of being satisfied, but is not central to a decision over the appropriateness of this location for development.
54. The more recent LPA Policy F1 establishes the settlement boundaries for Fradley, introducing the F1 Bridge Farm allocation, but adds no further restrictions to those already applied by LPS CP 6.
55. Under FNP Policy FRANP4, proposals for a new community hub within or adjacent to village settlement boundaries will be supported. This therefore supports the community facilities proposed as part of this scheme. However, as the FNP is silent on other development outside the Fradley settlement boundaries, this policy is peripheral to the assessment of the scheme as a whole.
56. LPS CP 6 executes the restrictions over housing outside the settlement boundaries. Along with CP 1, this provides the spatial strategy the proposal is in conflict with. Other than the community facilities, which FNP Policy FRANP4 might accept adjacent to Fradley's village settlement boundaries,

there is nothing in the other supporting policies to encourage a scheme of this nature being delivered on land not allocated for development. On this basis, I consider the proposal would conflict with the development plan as a whole, insofar as this establishes a spatial strategy for meeting development needs in specified amounts directed to the places most sustainable.

***Whether the proposal benefits from the presumption in favour of sustainable development provided by the Framework***

57. The proposal conflicts with an adopted development plan which was examined against the 2012 version of the Framework. The revised Framework of February 2019 introduced the requirements set out in its paragraph 61. This is in the context of the Framework's objectives for delivering a sufficient supply of homes, with an amount and variety of land coming forward where needed to address the needs of groups with specific housing requirements.
58. Framework paragraph 61 requires the size, type and tenure of housing needed for different groups in the community to be assessed and reflected in planning policies. These groups include those who require affordable housing, older people and people wishing to commission or build their own homes.
59. Regarding the housing needs of older people, the Planning Practice Guidance (PPG) addresses these in a section published on 26 June 2019<sup>17</sup>. Reflecting the critical housing requirements of an ageing population nationally, the PPG seeks that local planning authorities set clear policies to address the needs of this older age group. This could be by providing indicative figures or a range for the number of units of specialist housing for older people needed in an area throughout the plan period<sup>18</sup>. The PPG advises that it may be appropriate to allocate sites where there is an identified unmet need for specialist housing<sup>19</sup>.
60. As noted, LPS policies H1 and Frad4 promote the delivery of housing to meet the needs of an ageing population. However, whilst providing a statement to this effect, these policies fall short of actually assessing and then reflecting these needs, such as through indicative figures or allocations. These policies were based on the 2012 SHMA. This had not highlighted Lichfield's current unmet need for C2 units nor its comparatively high and growing proportion of older people, more recently revealed by the 2020 HEDNA.
61. As the policies most important for determining an appeal relating to a scheme geared to serve the varying needs of an ageing population, neither LPS CP 1 or 6 reflect the Framework paragraph 61 requirement to assess and reflect this housing need. In the context of this particular proposal, these development plan policies are thus shown to be out-of-date. This is sufficient to engage the so-called 'tilted balance' of Framework paragraph 11d)ii, to ascertain whether the presumption in favour of sustainable development applies.

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<sup>17</sup> Housing for older and disabled people - guidance in preparing planning policies on housing for older and disabled people. Published 26 June 2019. Ministry of Housing, Communities & Local Government

<sup>18</sup> Paragraph: 006 Reference ID: 63-006-20190626 Revision date: 26 June 2019

<sup>19</sup> Paragraph: 013 Reference ID: 63-013-20190626 Revision date: 26 June 2019

62. Having established the Framework's tilted balance is engaged for this reason, it is unnecessary to go into detail over any inconsistency with paragraph 61 in respect of the need for self-build dwellings, as the scheme's benefits in this regard have been accounted for.
63. The adverse impacts of this proposal relate mainly to the conflict in principle with the development plan as a whole. Tempered by the progress on LP2040, and the inclusion of the appeal site within the emerging SHA3 allocation, this factor amounts to the proposal causing a moderate degree of harm. The further harms, including those pursuant to developing further countryside alongside the Coventry Canal, would not add significantly to this. In combination, these adverse impacts do not significantly and demonstrably outweigh the benefits of this proposal. These benefits carry significant weight, particularly in respect to Framework policy for sufficient land to come forward where needed to address specific housing requirements, in this case for older age groups and those wishing to self-build, without an unnecessary delay in development.
64. For the reasons set out above, the proposal benefits from the Framework's presumption in favour of sustainable development. This provides a material consideration of sufficient weight to indicate this appeal be determined otherwise than in accordance with the development plan.

### **Habitats Regulations Assessment**

65. The River Mease is approximately 3.8km away from the proposal and is a Special Area of Conservation (SAC), designated under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Council has provided a screening matrix and appropriate assessment statement for my benefit, as the competent authority under the Habitats Regulations.
66. The appeal site is a sufficient distance away from, and outside the fluvial catchment of, the River Mease, such that I am able to conclude that this proposal would have no likely significant effect on the internationally important interest features of the SAC, either by itself or in combination with other plans and projects, and therefore satisfies the Habitats Regulations.

### **Unilateral Undertaking**

67. The UU provides for various measures. There is the laying out and maintenance of common amenity areas for each phase of the development. The funding and implementation of a framework of Travel Plans for the entire development is secured. The UU also provides for the funding and implementation of sustainable transport measures, including a highway loop within the development to permit a bus service through-route. Included in the highway matters is a commitment to provide traffic lights at the Gorse Lane canal bridge. The UU covenants to pay the primary and secondary education contributions sought by the County Council. I am satisfied these sums be paid in stages, linked to commencement of development and the occupancy of various numbers of dwellings. The funding sought by the Canal and River Trust for towpath improvement works along the adjacent stretch of the Coventry Canal is also provided for.

68. I have considered the UU against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the CIL Regulations. These require that such planning obligations only be accepted where they are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to it. I am content that the UU satisfies these tests.

### **Planning Conditions**

69. The planning conditions suggested by the main parties were discussed at the Inquiry. I have considered these against the tests provided in paragraph 55 of the Framework and the advice on the use of planning conditions set out in the PPG. With those conditions found necessary I have in some cases made amendments, mainly for brevity, clarity, enforceability and in ordering.
70. The requirement for submission of the outstanding reserved matters for the phases of the development, the timescale for this and the resulting time limit for commencement are standard conditions (1-3).
71. A plan compliance condition is necessary for certainty, including the details of the site accesses, although I have not specified the masterplans, layouts, parameters and built out plans as these were illustrative only and relate to details covered in later conditions (4).
72. Certain details are required prior to the submission of reserved matters. As a basis for what these reserved matters and other conditions should provide, these include approval of an overall masterplan. This requires, amongst other matters, the quantum for the varying land uses/housing categories proposed and the phasing by which these come forward to be approved. This is necessary to secure the benefits of the shops and community facilities and differing use classes of housing, including those intended to meet the varying needs of older occupiers, upon which the decision was based (5). Conditions required prior to reserved matters are also necessary to secure an approved scheme for biodiversity offsetting and a Construction Environment Management Plan and Habitat Management Plan for the development (6, 7). These are all in the interests of enhancing biodiversity and the natural environment.
73. A number of conditions are necessarily worded as pre-commencement, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measures which could be used. The first of these deals with the provision of affordable housing, which is fundamental to the development being acceptable (8). I am satisfied this meets the required six tests and permits this phased scheme of varying types of housing to progress.
74. Another is needed to secure the age restricted housing intended, similarly fundamental to the acceptability of the overall scheme (9). It is necessary that the development takes place in accordance with a CMP (10), in the general interests of environmental health and the living conditions of existing residents of the area. This covers details of construction waste management, obviating the need for a separate condition.

75. Further pre-commencement conditions are required to secure the necessary off-site highway improvements, cover the revised access details required by the LHA and ensure the internal road and footway details are all delivered to an appropriate timescale (11 - 13). Other conditions are required to cover site contamination, archaeology, surface water drainage and tree protection (14 - 17). Given that a satisfactory noise assessment for the proposal as a whole was provided with the application, it is not necessary to condition commencement of each phase to approval of further of these. Regarding boundary treatments, these might be matters provided for through reserved matters, again avoiding the specific condition suggested. The same applies to a landscape management plan for each phase of the development.
76. Further conditions are necessary prior to occupancy, including the provision of electric vehicle charging points (18), car parking and cycle storage for all dwellings and other buildings (19) and external lighting arrangements (20). Ensuring each dwelling is connected to a means of sewage disposal does not seem to be a matter requiring a planning condition. The condition requiring the quantum of each land use to be approved through a masterplan means there is not the necessity for a further condition setting floorspace levels within the neighbourhood centre, nor adequate justification for this also restricting permitted development rights. The same applies to conditions specifying the maximum numbers of C2 and C3 units. Finally, a condition is needed to ensure the development proceeds in accordance with the recommendations in the Preliminary Ecological Appraisal, in the interests of avoiding unnecessary harm to natural habitat and wildlife (21).

### **Conclusion**

77. Subject to these conditions, and for the reasons set out in preceding paragraphs, I conclude on balance that the appeal be allowed.

*Jonathan Price*

Inspector

## **APPEARANCES**

### **For the local planning authority:**

Mr Freddie Humphreys of  
Counsel

He called

Mrs Sarah Matile BA (Hons), MPlan, MRTPI - Spatial Policy and Delivery Officer

Glen Baker-Adams - Senior Planning Officer

### **For the appellant:**

Mr Killian Garvey of Counsel  
He called

Stephen Stoney BA (Hons) MRTPI DMS - Technical Director, Wardell Armstrong  
LLP

David R. Hardy – Partner, Squire Patton Boggs (UK) LLP

### **Interested person:**

Mr Stuart Green

Local resident

## **INQUIRY DOCUMENTS**

The following documents were submitted and accepted by the Inquiry:

### **On behalf of the local planning authority:**

Opening submissions by Mr Humphreys

*Gladman Developments Limited v SSHCLG, Corby Borough Council, Uttlesford District Council* [2021] EWCA Civ 104

Appeal Ref: APP/K3415/W/17/3188253 Westwood School, Blithbury Road, Blithbury, Rugeley

Appeal Ref: APP/K3415/W/17/3178356 Land adjacent to The Crown Inn/East of Uttoxeter Road, Handsacre, Staffordshire

Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

Town and Country Planning (Environmental Impact Assessment) Regulations 2017 Screening Opinion for Canalside, Hay End Lane, Fradley, Lichfield June 2020

Canal and River Trust response to appeal proposal 24 March 2021

Closing submissions by Mr Humphreys

### **On behalf of the appellant:**

Opening submissions by Mr Garvey

*R v Rochdale* 2000 WL 1151364

*R (oao William Corbett) v Cornwall Council & Stephen Taverner* [2020] EWCA Civ 508

*Tesco Stores v Dundee* [2012] UKSC 13

*Chichester District Council v SSHCLG* [2019] EWCA Civ 1640

*Verdin v SSCLG & Cheshire West and Chester BC & Winsford Town Council* [2017] EWHC 2079

Consent order CO/4776/2020 *Greystoke Land Limited v SSHCLG/Wiltshire Council*

PPG Housing for older and disabled people - 26 June 2019

PPG Self-build and custom housebuilding - 8 February 2021

Southern Staffordshire Districts Housing Needs Study and SHMA Update by Nathaniel Lichfield & Partners Ltd dated 10 May 2012

Closing submissions by Mr Garvey

### **Jointly on behalf of the local planning authority and appellant:**

Jointly signed Statement of Common Ground - 23 March 2021

Draft Unilateral Undertaking with Council's comments.

Lichfield District Local Plan 2040 Proposed Submission Plan - February 2021



## **SCHEDULE OF CONDITIONS**

### *Standard time limit conditions for commencement with outline permission*

- 1) Details of the appearance, landscaping, layout and scale for each phase of the development hereby permitted (hereinafter referred to as 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before development of that phase begins and the development shall thereafter be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than five years from the date of this permission.
- 3) The development hereby approved shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

### *The details and drawings subject to which the outline planning permission is granted*

- 4) The development hereby approved shall be carried out in accordance with the following approved plans, except insofar as may otherwise be required by other conditions to which this permission is subject:
  - IPD-15-348-100a - site location plan
  - IPD-16-348-110n - off site highway layout
  - IPD-16-348-111e - 1-250 off site highway layout 1 of 5
  - IPD-16-348-112d - 1-250 off site highway layout 2 of 5
  - IPD-16-348-113e - 1-250 off site highway layout 3 of 5
  - IPD-16-348-114d - 1-250 off site highway layout 4 of 5
  - IPD-16-348-115d - 1-250 off site highway layout 5 of 5
  - IPD-16-348-116c - on site highway layout
  - IPD-16-348-120d - Gorse Lane highway layout
  - IPD-16-348-500e - outline drainage strategy
  - IPD-16-348-501 - drainage catchments

### *Conditions required to be complied with prior to submission of reserved matters*

- 5) Prior to the submission of any of the reserved matters, a masterplan for the site (hereinafter referred to as 'the masterplan') shall be submitted to and approved in writing by the local planning authority.

The masterplan shall include the following:

- i. land uses, including the quantum of those falling within Use Class C2, Use Class C3 (including custom and self-build dwellings) and the neighbourhood centre including community hub (Use Classes E(a), E(d), E(e), E(f) and F2);
- ii. a design and access parameter plan;
- iii. a movement framework for all transport modes, including the layout and hierarchy of street types;
- iv. the phasing of the development and land uses across the site;
- v. a design code to include character areas, principles of building forms and heights and their visual relationship with the Coventry Canal;
- vi. details of key green infrastructure elements.

The development hereby permitted, and details of reserved matters and for the discharge of further conditions, shall thereafter be in accordance

with the approved masterplan, including in respect of the uses permitted, the quantum of these and the phasing of their delivery.

- 6) Prior to the submission of reserved matters, a scheme providing for the offsetting of biodiversity impacts in the respective phase ('the biodiversity offsetting scheme') shall have been submitted to and approved in writing by the local planning authority. Across the entirety of the development hereby permitted, a total value of not less than 18.29 Biodiversity Units shall be offset. The biodiversity offsetting scheme shall include:
- i. identification of receptor site or sites, which accord to the requirements of the Lichfield District Council Biodiversity and Development SPD;
  - ii. details of the offsetting requirements of the development in accordance with Biodiversity Metric 2.0, which has been calculated at 18.29 Biodiversity Units post intervention for the entirety of the development hereby permitted;
  - iii. the provision of evidence of arrangements to secure the delivery of offsetting measures, including a timetable of delivery; and
  - iv. a management and monitoring plan, to include the provision and future maintenance of the offsetting measures.

The biodiversity offsetting scheme, including its timetable for delivery, shall thereafter be implemented as approved.

- 7) Prior to the submission of reserved matters, a Construction Environment Management Plan (CEMP) and Habitat Management Plan (HMP) for that phase shall have been submitted and approved in writing by the local planning authority, detailing in full the future habitat creation works and sustained good management thereof. The development shall thereafter be implemented in accordance with the approved CEMP/HMP.

*Pre-commencement conditions*

- 8) No development within any phase shall commence until a scheme for the provision of affordable housing (as defined in Annex 2 to the National Planning Policy Framework and any successor document) for that phase has been submitted to and approved in writing by the local planning authority.

Across the development hereby permitted as a whole, a maximum provision of 38% affordable housing shall be made (the final figure to be confirmed in the approved affordable housing scheme and calculated at all times in accordance with (1) the Authority Monitoring Report and (2) relevant principles set out in the Lichfield District Council Supplementary Document: Developer Contributions (2016) or successor document) with a tenure split of 65% affordable housing for rent/35% other routes to affordable home ownership.

The affordable housing scheme shall also include:

- i. the numbers, type, tenure, mix and location of the affordable housing provision to be made within each phase hereby permitted;
- ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of market housing;

- iii. the arrangements for the transfer of the affordable housing to an affordable housing provider;
- iv. the mechanism to ensure that the affordable housing is affordable to both first and all subsequent occupants; and
- v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria will be enforced.

Thereafter the approved affordable housing scheme shall be implemented in full and retained for the lifetime of the development.

- 9) No development within any phase shall commence until a scheme for the provision of age-restricted dwellings within that phase, providing a minimum of 217 dwellings across the entire development where occupancy is eligible only for those aged 55 years or over, has been submitted to and approved in writing by the local planning authority. No dwelling in any phase forming part of this provision shall be occupied other than in accordance with the approved scheme.
- 10) No development in any phase shall commence (including any works of demolition) until a Construction Method Plan (CMP) for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CMP. The CMP for each phase shall include, but is not confined to, details of:
  - i. the method to be used and undertaken to control the emission of dust, noise and vibration from works;
  - ii. a scheme for dust deposition monitoring;
  - iii. measures (including wheel wash facilities) to control the deposit of mud and similar debris on adjoining public roads;
  - iv. recorded daily inspections of the condition of the highway adjacent to site access points;
  - v. site management arrangements, including on-site storage of materials, plant and machinery, temporary offices, contractor's compounds and other facilities, on-site parking and turning provision for site operatives, staff, visitors and construction vehicles and provision for the loading/unloading of plant and materials within the site;
  - vi. site fencing and security;
  - vii. details of the use of generators;
  - viii. a program of works (including measures of traffic management);
  - ix. routes for construction traffic and proposed temporary traffic restrictions;
  - x. pedestrian and cyclist protection;
  - xi. delivery and construction working hours;
  - xii. a construction waste management plan that identifies the main waste materials expected to be generated by the development during construction, including vegetation, together with measures for dealing with such materials so as to minimise waste and to maximise re-use and recycling; and
  - xiii. arrangements for the control of surface water.
- 11) No development in any phase shall commence until detailed schemes, including details for the timing of implementation, for the following off-site

highway improvements have been submitted to and approved in writing by the local planning authority:

- i. junctions of development access points with Hay End Lane;
- ii. highway improvements to Hay End Lane including street lighting and amended speed limit;
- iii. new traffic signals scheme to Gorse Lane canal bridge.

The approved schemes shall thereafter be fully implemented in accordance with the agreed details and timescales.

12) Notwithstanding the submitted highway details, no development hereby permitted shall commence until a revised access plan, indicating a priority junction for the western access point on to Hay End Lane, has been submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the agreed revised access plan.

13) No development in any phase shall commence until a scheme providing for the following internal highways details for that phase has been submitted to and approved in writing by the local planning authority:

- i. street layout, surface treatments, visibility splays and measures to restrain vehicle speeds to 20mph;
- ii. turning and servicing provision for all dwellings/units including a swept path analysis to cater for a 11.9m long refuse vehicle;
- iii. adoptable pedestrian footway through the development linking Hay End Lane to Gorse Lane;
- iv. clear delineation of streets and footways to be offered for adoption; and
- v. a timetable for implementation.

The development shall thereafter be carried out in accordance with the approved scheme.

14) No development in any phase shall commence until a detailed scheme for the investigation and recording of any contamination in that phase has been submitted to and approved in writing by the local planning authority. The contamination scheme shall identify any contamination on the site in that phase, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation shall thereafter be carried out and a validation report submitted to and approved in writing by the local planning authority within one month of the approved remediation being completed.

15) No development in any phase shall commence until a written scheme of archaeological investigation for that phase has been submitted to and approved in writing by the local planning authority. The archaeological scheme shall provide details of the programme of archaeological works to be carried out within that phase on the site, including post-excavation reporting and appropriate publication. The archaeological site work shall thereafter be implemented in full in accordance with the approved archaeological scheme. No part of the development in any phase shall be

occupied until the site investigation and post-excavation assessment for that phase has been completed in accordance with the archaeological scheme and provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

- 16) No development in any phase shall commence until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall be maintained thereafter for the lifetime of the development hereby permitted. The surface water drainage details shall include the following:
- i. Details of appropriate soakaway testing to demonstrate feasibility of infiltration across parts of the site to BRE365 standards and taking into account local temporal variations in any groundwater conditions;
  - ii. Limiting any discharge rate generated by all rainfall events up to the 100 year plus climate change critical storm to greenfield equivalent rates of runoff;
  - iii. Provision of sufficient surface water run-off attenuation storage;
  - iv. Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
  - v. The provision of surface water treatment in accordance with CIRIA C753 Simple Index Approach;
  - vi. Provision of a management and maintenance plan for surface water drainage to ensure that the surface water drainage systems are maintained and managed for the lifetime of the development; and
  - vii. Opening up of a culvert across site.
- 17) No development in any phase shall take place until a scheme providing for tree/hedge protection in that phase in accordance with BS5837:2012 has been submitted to and approved in writing by the local planning authority. The approved tree/hedge protection scheme shall be kept in place until all parts of that phase have been completed, and all equipment; machinery and surplus materials have been removed for that phase.

*Pre-occupancy conditions*

- 18) No commercial unit in any phase hereby permitted shall be occupied until details of a minimum of four electric vehicle charging car parking spaces with infrastructure (cabling etc) have been submitted to and approved in writing by the local planning authority. The electric vehicle charging car parking spaces shall thereafter be provided in accordance with the approved details and shall be retained for the life of the development.
- 19) No dwelling or other building in any phase hereby approved shall be occupied until car parking and turning areas and cycle storage for that dwelling or other building have been provided in accordance with details

that shall have had the prior written approval of the local planning authority. The car parking and turning areas and cycle storage shall thereafter be retained for duration of occupancy.

- 20) No dwelling, commercial or other building in any phase shall be occupied until a scheme for external lighting has been submitted to and approved in writing by the local planning authority. The lighting scheme shall thereafter be implemented as approved and retained for the lifetime of the development.

*Other conditions*

- 21) Each phase of the development hereby permitted shall be carried out in accordance with the recommended methods of working set out in the Preliminary Ecological Appraisal reference ST18093 003 dated June 2020.

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