



## Appeal Decision

Inquiry Held on 24-26 March 2021

Site visit made on 22 March 2021

**by D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

**Decision date: 17 June 2021**

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**Appeal Ref: APP/B3030/W/20/3260970**

**Land at Flowserve Pump Division, Hawton Lane, Balderton, Notts NG24 3BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by C B Collier NK Limited against the decision of Newark and Sherwood District Council.
  - The application Ref: 19/00854/OUTM, dated 18 April 2019, was refused by notice dated 6 August 2020.
  - The development proposed is an outline application with all matters reserved except access for up to 322-unit residential development.
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### Decision

1. The appeal is allowed and outline planning permission with all matters reserved except access is granted for a residential development of up to 322 units at land at Flowserve Pump Division, Hawton Lane, Balderton, Notts NG24 3BU in accordance with the terms of the application, Ref 19/00854/OUTM, dated 18 April 2019, subject to the conditions set out in the schedule to this decision.

### Procedural Matters

2. The Inquiry sat for 3 days between 24 and 26 March 2021 and due to Covid-19 restrictions, was conducted virtually. An unaccompanied site visit was carried out on 22 March 2021 in accordance with an itinerary agreed with the Appellant and Council. With agreement of the same, a second site inspection was not deemed necessary.
3. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by a suite of indicative drawings and supporting technical documentation in relation to highways, ecology, noise, air quality and surface water drainage. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation.
4. A signed and dated agreement under s106 of the Town and Country Planning Act 1990 (s106) was submitted after the close of the Inquiry. This contains two obligations relating to on-site public open space and parking for the Sports and Social Club (SSC). The proposed obligations need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I return to later.

5. A Statement of Common Ground (SoCG) was submitted prior to the Inquiry and I have had regard to this in reaching my decision.
6. I held a pre-Inquiry Case Management Conference on 12 February 2021 to discuss the arrangements for the Inquiry. A summary of the conference was subsequently sent to the main parties.
7. After the close of the Inquiry, the Royal Institution of Chartered Surveyors published a new guidance note, "*Assessing viability in planning under the National Planning Policy Framework 2019*". I wrote to the main parties seeking comments on whether the new guidance would give them cause to revisit, amend or add to their evidence presented to the Inquiry. In response, the main parties agree that matters of relevance raised in the guidance were dealt with at the application stage and as a consequence, the guidance has no material effect on the determination of the appeal.

### **Main Issues and Background**

8. The appeal site is described in section 2 of the SoCG. Put briefly, the site comprises a large swathe of former industrial land approximately 12.6 hectares in size which surrounds the existing Flowserve premises and the SSC, both of which are to be retained.
9. The site which is previously developed and widely contaminated is included on the Council's brownfield register<sup>1</sup>. It is also shown on the Proposals Map as a housing site within the Newark Urban Area. Moreover, it is identified as having residential potential in the Council's Strategic Housing Land Availability Assessment (SHLAA)<sup>2</sup>. Permission was granted on part of the appeal site in 2007 for the erection of a new factory, relocation of sports facilities and erection of up to 210 new dwellings together with associated works<sup>3</sup>. This scheme was never implemented, and the permission has now expired.
10. An application to remediate the appeal site including flood alleviation works was approved in 2018<sup>4</sup>. The purpose of the scheme was to prepare the appeal site for redevelopment. The 2018 permission has now been partly implemented at a cost of £2.15m but works ceased following the Council's decision to refuse the appeal scheme in August 2020. The outstanding works are costed at approximately £1.7m<sup>5</sup> and amongst other things, include the delivery of the flood prevention scheme to Middle Beck and completion of the land contamination remediation strategy.
11. The Appellant sought pre-application advice from the Council<sup>6</sup>. The response to that request set out the anticipated developer contributions and highlighted the need for a Viability Appraisal (VA) and the requirement for it to be independently assessed by the Council.
12. The VA<sup>7</sup> submitted with the application concluded:

*"The financial appraisals demonstrate that the development will not support affordable housing or further Section 106 Contributions on the assumption that*

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<sup>1</sup> CD: B7 site ref BF0001

<sup>2</sup> CD: B8 site ref 08\_0434

<sup>3</sup> LPA Ref: 07/01840/OUTM

<sup>4</sup> LPA Ref: 18/01235/FULM CDs: G10, E36 and G11

<sup>5</sup> See Appendix 5, Downes PoE

<sup>6</sup> CD: L2

<sup>7</sup> CD: D18

*a reasonable market profit for a developer would be in the order of 20% on revenue (25% on costs) for private sale units in the present market and taking into account the high risks associated with this brownfield site."*

13. The SoCG confirms that the VA has "been reviewed by the Council's [independent] consultant who confirms that the viability of the scheme is such that the Appeal Scheme cannot viably meet requests". Consequently, there is no dispute that the appeal scheme would be unviable if affordable housing and infrastructure contributions were to be provided.
14. In refusing planning permission, contrary to the recommendation of its professional officers, the Council was concerned that the absence of affordable housing and infrastructure contributions would result in an unsustainable form of development conflicting with the development plan.
15. In light of the above, the main issue is whether the development would comply with the development plan and if so, do any material considerations indicate that the appeal should be dismissed. I deal first with the issue of development plan compliance before turning to look at other material considerations.

## **Reasons**

### *Relevant Policy and Guidance*

16. At the national level, paragraph 57 of the National Planning Policy Framework (the Framework) states the following about viability:  
  
*"Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force".*
17. In respect of affordable housing, paragraph 64 of the Framework states:  
  
*"Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups".*
18. Although a number of exemptions to the 10% requirement are set out in paragraph 64, it is no part of the Appellant's case that the appeal scheme would meet any of these.
19. At paragraph 118 the Framework states that planning decisions should, amongst other things, "give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land".
20. The Planning Practice Guidance (PPG) confirms that a viability assessment is a process of assessing whether a scheme is financially viable by looking at whether the value generated by the development is more than the cost of

developing it. The PPG aims to achieve a standardised approach to viability and to ensure that a balance is struck between the aspirations of developers and landowners in terms of return against risk, and the aims of the planning system to secure the maximum benefits in the public interest through the granting of planning permission. The key elements to consider include Gross Development Value, costs, land value, landowner premium and developer return.

21. The Council has an up-to-date development plan which comprises the "Amended Core Strategy 2019"<sup>8</sup> (CS) and an "Allocations and Development Management DPD 2013"<sup>9</sup> (ADMP). CS Spatial Policy 6 (SP6) states that:  
  
*"Local Infrastructure, including facilities and services that are essential for development to take place on individual sites, or which are needed to mitigate the impact of development at the site or neighbourhood level, will be secured through Planning Obligations in line with the Policies of the Core Strategy, Policy DM3 Developer Contributions and Planning Obligations and supported by a Developer Contributions & Planning Obligations Supplementary Planning Document (the obligations SPD)".*
22. It is clear from the wording above, that infrastructure contributions must be 'essential' and 'mitigate the impact of development'. It is also clear that Policy SP6 effectively defers to ADMP Policy DM3 on the matter of contributions which in turn defers to the Contributions SPD<sup>10</sup>. Although the policies need to be read alongside the SPD, as the Council pointed out, it is in fact the SPD rather than the policies which sets out the finer detail of the Council's approach to developer contributions.
23. At paragraph 7.6, the supporting text to Policy DM3 states: *"In facilitating the delivery of new development it will be necessary to ensure that new development is not made unviable because of infrastructure and planning obligation requirements"*. That approach is entirely consistent with the Contributions SPD which uses almost identical language in its paragraph 5.4. The flow diagram (Figure 1) to the SPD explains the general process to be followed. This includes establishing the viability of the proposal before finalising an agreement on developer contributions.
24. In relation to viability, paragraph 6.17 of the SPD makes clear that the Council will seek an independent assessment of VAs on sites where the developer has raised issues of viability. The results of the assessment will indicate the level of affordable housing and other planning obligation contributions that the proposed development may reasonably accommodate without becoming economically unviable. At paragraph 6.19 it states that where an otherwise desirable development cannot be fully policy compliant and remain viable, a reduced package of planning obligations may be recommended based on the VA. The SPD does not set out a moratorium on development (of any size) in circumstances where the scheme cannot sustain contributions or affordable housing.
25. At paragraph 2.7 the SPD states: *"In accordance with the NPPF, no proposals should be subject to such a scale of obligation and policy burden that its ability*

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<sup>8</sup> CD: B1

<sup>9</sup> CD: B2

<sup>10</sup> CD: C2

- to be developed viably is threatened*". This is again consistent with the supporting text to Policy DM3.
26. In relation to the contributions themselves, the highlighted box of page 3 of the SPD states that *"contributions will not be requested as a per dwelling payment as a matter of course. It is the impact of each individual proposal that will need to be assessed on a site by site basis to identify what contributions may be needed to make development acceptable"*. Such an approach is entirely consistent with paragraph 56 of the Framework which sets out the three statutory tests for planning obligations.
27. The Council suggested that the SPD is not applicable to the appeal scheme because it is a windfall rather than an allocated site. However, as paragraph 2.6 refers to allocated and *"other sites/development"*, I do not consider the SPD was ever intended to relate solely to allocated sites.
28. In relation to affordable housing, Core Policy 1 (CP1) of the CS states:
- "The District Council will seek to secure 30% of new housing development on qualifying sites as Affordable Housing, but in doing so will consider the nature of the housing need in the local housing market; the cost of developing the site; and the impact of this on the viability of any proposed scheme. In circumstances where the viability of the scheme is in question, the developer will be required to demonstrate, to the satisfaction of the District Council, that this is the case. Viability will be assessed in accordance with Policy DM3 – Developer Contributions and Planning Obligations"*
29. At page 14, the Council's Affordable Housing Supplementary Planning Document<sup>11</sup> (AHSPD) refers back to Policy CP1. The AHSPD takes much the same approach to viability as the Contributions SPD. At paragraph 5.1 it is said that *"the Council will carefully consider local housing need and market conditions on each site and provide flexibility in the application of the Council's affordable housing policy"*. At paragraph 5.2 it goes on to set out the process where viability is an issue and states: *"The onus will be on the developer to produce a financial assessment showing the maximum number of affordable homes that could be achieved"*. In assessing applications, it is made clear that issues such as economic viability and site costs will be taken into account.
30. Relevant to NCC's contributions (libraries and public transport) is paragraph 3.15 of the Planning Obligations Strategy January 2021<sup>12</sup> which states:
- "There may be certain circumstances, e.g. due to viability, where a developer may put forward a case for reduced or zero contributions. This will have a significant impact on the delivery of infrastructure, especially where there are no other funding sources available which could lead to a shortfall in monies to fund infrastructure projects. Where there is clear justification for a reduced contribution the County Council will not object to a proposal."* (my emphasis)
31. The Council confirmed that its SPD's are up to date, consistent with the approach advocated in the Framework and should carry full statutory weight. I see no reason to disagree. Based on the wording of Policies SP6, DM3 and CP1, the supporting justification and the more detailed guidance contained in the SPDs, the following salient principles emerge:

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<sup>11</sup> CD: C1

<sup>12</sup> CD: B14

- The need for flexibility, taking account of an agreed VA, is central to the Council's approach,
- The level of affordable housing and developer contributions a development can sustain without becoming economically unviable will be informed by a VA,
- Contributions should be based upon a careful assessment of impact and need rather than a slavish adherence to formulas,
- Viability is not a trump card, nonetheless, it is capable of being a significant material consideration and the weight to be applied to a VA is a matter for the decision maker,
- There is no lower threshold for affordable housing or financial contributions beyond which a development will be refused,
- Similarly, advice in the SPDs applies to all residential development irrespective of scale,
- Development proposals should not be subject to planning obligations that would prevent otherwise acceptable development coming forward, and
- Policies SP6, DM3 and CP1 as well as the accompanying SPDs all countenance reduced obligations in circumstances where the viability of the scheme is in question.

#### *Conclusions on Policy*

32. In this case, the VA is unequivocal that the development cannot afford to provide affordable housing or financial contributions. The Council accepts that conclusion and takes no issue with any part of the VA. On that basis alone, the VA must carry significant weight. Given that its own development plan permits reduced obligations where supported by an agreed VA, the Council's stance in relation to the appeal scheme is difficult to comprehend. The main argument offered by the Council is that it has never approved a strategic-scale development where no planning obligations were offered.
33. With respect, that argument is entirely misplaced. Whilst I accept the development is strategic in size, there is no qualification in Policies DM3 and CP1 nor the SPDs that there is, or should be, a threshold above which the general provisions of these policies cease to apply. There is also no support in the Framework for such an approach.
34. The Council has accepted, as a matter of principle, that reduced contributions are acceptable when supported by an agreed VA. The Council's issue is therefore concerned with the scale of the reduction and not the principle. However, those concerns fail to engage with the Council's own policies and guidance which do not set a lower threshold beyond which a development should be deemed unsustainable.
35. The Appellant's planning witness confirmed to the Inquiry that he has personally been involved in brownfield regeneration schemes where the issue of viability has led to the removal of all S106 obligations in order to ensure that a viable scheme is brought forward. It seems to me that such an approach should apply here.

36. Despite the Council's reference to 'allocated sites' and 'planned growth', on any plain reading, there is no support in the development plan for the approach taken by the Council in this case. Nowhere in the development plan, is it stated that development should be refused in cases where the viability of a scheme indicates that no obligations can be made. On the contrary, read as a whole, the development plan is clear that planning obligations should not adversely affect the viability of a scheme and prevent otherwise acceptable development from coming forward.
37. In support of its case, the Council drew my attention to ADMP Figure 2. However, that flow diagram is not policy, and, in any event, it says that 'deferred obligations' and 'alternative methods of funding' should be explored where viability is a major issue. As I understand it, both of these options have been considered and discounted. The Council can therefore garner no significant support from Figure 2. I therefore conclude that the non-provision of affordable housing and infrastructure contributions would not conflict with Policies SP6, DM3 and CP1.
38. On that basis and given that no other policy conflicts are alleged by the Council, I conclude that there would be compliance with the development plan taken as a whole. Accordingly, the development should be approved unless material considerations indicate otherwise<sup>13</sup>. To enable the planning balance to be properly calibrated, I consider below whether there are any 'material considerations' indicating a decision otherwise in accordance with the development plan.

#### *Other Material Considerations*

##### *Affordable Housing*

39. There is no dispute that the provision of affordable housing is an important planning objective at a national and local level. The matter in this case is rather what harm would arise in this case from the failure to provide affordable housing and whether this would outweigh the benefits of the scheme.
40. The Council contend that the harm would be real, and that the Government is clear that the provision of affordable housing is important to securing mixed and inclusive communities. I do not disagree. However, the issue at hand is whether those objectives would be harmed to a greater degree by leaving the site undeveloped in its part-remediated condition for an extended period of time, which according to the Appellant would be the inevitable consequence if I were to dismiss the appeal.
41. In my view, it is unarguable that the interests of those seeking to own a home, would be better served by the delivery of up to 322 houses as opposed to no houses on a site which the parties readily agree is acceptable in all other respects. In my view, allowing the site to remain vacant, perhaps for decades, rather than providing homes would be a retrograde step in the context of a national housing crisis, notwithstanding that the Council can demonstrate a healthy 5-year housing land supply position.
42. The Council made the understandable point that without an appropriate level of affordable housing many people would simply be unable to afford the houses.

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<sup>13</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

However, this is a site with specific remediation costs and associated viability issues. In line with CS Policy CP3, the indicative housing mix<sup>14</sup> is heavily orientated towards smaller units comprising 198 (60%) 2-bed terrace properties and apartments. There is no suggestion from the Council that an alternative mix could better meet local needs or that the units are likely to remain empty due to local affordability issues.

43. The Council also argued that the dismissal of the appeal would not necessarily result in the site remaining vacant for a prolonged period of time, since other options could be pursued by the Appellant. These in turn might bring forward a development which could provide the requisite level of affordable housing and financial contributions. However, the Council did not suggest what other options could be pursued by the Appellant beyond those already explored and discounted at the application stage as set out in the Committee Report<sup>15</sup>. As the Appellant explained, its efforts in this regard have proved 'fruitless' because an impasse was reached and remains. The Council has not suggested a credible way forward and therefore claims that the site might be brought forward on more favourable terms in the future is nothing more than hopeful speculation. If anything, the evidence before the Inquiry suggests the opposite - the viability position of the site has deteriorated significantly in recent years and this is likely to continue in the absence of a grant of planning permission.

#### *Transport Contributions*

44. The requested transport contributions consist of:

- £225,000.00 to support the provision of a bus service to serve the development,
- £50,000 for bus stop infrastructure to serve the site, and
- £9,000 for Bus Taster Tickets Contribution to provide new occupants with a 2-week smartcard bus pass for use on the local bus network, to encourage use of sustainable modes of travel.

45. The contributions are supported by a consultation response from NCC's Transport and Travel Services team<sup>16</sup>. This explains that the level of contribution sought will vary according to the specific characteristics of each development but is likely to take into account, amongst other things, the current network capacity, existing routes and access to key services; the expected number of trips that would be generated; and the likely modal split in terms of transport usage, taking account of the Transport Assessment.

46. In this case, the closest served bus stops are situated on Lansbury Road, approximately 850 metres from the centre of the site. According to NCC, this is substantially in excess of the maximum walking distance referred to in its Highway Design Guidance and therefore, without appropriate mitigation, the development would not be considered sustainable for public transport access. Therefore £50,000 would be spent on a new pair of bus stops closer to the site entrance. The £225,000 contribution would be used to increase capacity on local bus services in order to serve the aforementioned stops. NCC's witness<sup>17</sup>

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<sup>14</sup> Paragraph 3.4 to SoCG

<sup>15</sup> CD: G11

<sup>16</sup> CD: K61

<sup>17</sup> Mr Riley



explained that the route of the existing No 3 service would be extended so that the buses would travel further west along Hawton Lane.

47. Whilst the encouragement of public transport use is clearly a legitimate planning objective, I have a number of concerns with the contributions sought. Firstly, on a procedural point, the case put forward by NCC's Transport and Travel Services team at the Inquiry, was totally at odds with the consultation response from NCC's Principal Development Control Officer<sup>18</sup> which stated:
- "It would be unreasonable to expect a bus service to enter the site, but the less-than-ideal walking distances to a bus stop is not sufficient in itself to justify refusal of the application when walking and cycling links are good, and promote sustainable travel"*.
48. It is evident that there is an internal disagreement. For my part, I consider that the holistic approach to the issue of sustainable transport taken by the Development Control team is more appropriate as it reflects the wider site circumstances, an approach expressly supported by Manual for Streets.
49. Development Control's position is also endorsed in the SoCG which confirms that the site is '*locationally sustainable*'<sup>19</sup>. Moreover, there is further support in the SHLAA entry which identifies that the site has suitable access to services including bus stops. In my view, the existence of a high quality, traffic free, Sustrans walking/cycling route on the site's doorstep giving easy and convenient access to the town centre is a factor that must command significant weight when assessing compliance with Framework paragraphs 91(c), 102 (c) and 103. Public transport whilst an important objective, cannot be considered in isolation.
50. The existing bus stops on Lansbury Road would be well over the recommended 400m in the Highway Authority's Design Guidance. However, as I understand it, that document is guidance not policy. It is also pertinent that the 400m distance is considerably less than the distances cited in the Institution of Highways and Transportation's '*Guidelines for Providing Journeys on Foot*' which sets an 'acceptable' benchmark of between 800-1000m. I note that the Council's SHLAA assessment was similarly based on 800m or 10-minute walk to a bus stop.
51. Putting that matter to one side, it is important to bear in mind that the 850m distance has been measured from the centre of the site and therefore some houses will inevitably be closer whilst others will be further away. For example, those dwellings closest to Hawton Lane would be much closer than 850m to the Lansbury Road stops. This is important because paragraph 2.8 of the Highway Design Guidance, states '*affordable housing, and higher-density residential development should all be located within 400m of a bus stop*' (my emphasis). That is very clearly not the same as saying all houses must be within 400m which was essentially the case NCC advanced at the Inquiry.
52. Dwellings in the southern portion of the site would be able to access stops on London Road via the footpath to Mead Way albeit over the recommended 400m distance. The Inquiry also heard that the adjacent housing site known as 'Middle Beck' will be served by public transport. Given the proximity of that site, there appears scope to provide a bus stop in the vicinity of the pedestrian

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<sup>18</sup> CD: K10

<sup>19</sup> See paragraph 6.1(6)

link to the appeal site. This could potentially bring a significant portion of the application site within or close to 400m of a bus stop. In light of the foregoing and given that 'layout' is reserved for future approval, it might well be possible to locate the higher density housing in the aforementioned areas so that walk distances are minimised.

53. Finally, under cross-examination, NCC's witness conceded that Stagecoach (operators of the No 3 service) rather than agreeing to the route extension had only agreed to discuss the matter. Accordingly, even if I were satisfied that the public transport contribution met the relevant tests, there is no certainty the proposed scheme would be delivered.
54. For the reasons given above, I conclude that the bus service contribution is not required to make the development acceptable. In terms of the bus stop improvements and free passes, further information is required to demonstrate the efficacy of such measures in terms of increasing or encouraging public transport take-up.

#### *Health Contribution*

55. A figure of £316,403.64 is sought from the Nottingham and Nottinghamshire Clinical Commissioning Group (CCG) on the basis that the nearest surgeries to the appeal site are at capacity. The justification for the contribution rests on CCG's consultation response<sup>20</sup> supplemented by an email<sup>21</sup>. These explain that 'at capacity' means the practices have no more space available to them either within their building or the ability to convert space internally.
56. As the Council's planning witness accepted, this does not mean; 1) that the surgeries are unable to accommodate new patients, or 2) that existing or projected appointment wait times would be unacceptably long. There is no dispute that the nearest surgeries are accepting new patients and no evidence of excessive waiting times or any other operational issues was put to the Inquiry.
57. The contribution has been calculated via a standard formula which assumes each unit on the site would be equivalent to the average house size in the Borough. That approach ignores the site-specific housing mix set out above. Based on an average 2.3 people per dwelling, it is then calculated that the appeal scheme would generate an increased patient population of 810. However, in light of the Appellant's evidence on the likely origin of future residents<sup>22</sup>, that assumption is fundamentally flawed.
58. There is nothing in the responses to demonstrate that the CCG has looked at the specific impact of the proposed development on GP practices in the area. Instead it has relied on a standard, per dwelling, approach which fails to accord with the approach to contributions advocated for in the SPD.
59. Finally, the supplementary email draws attention to the CCG's intention to relocate one of the four surgeries to a new building with sufficient space to accommodate one of the other practices. However, there is nothing to suggest that the delivery of this programme, which appears at an advanced stage, is dependent on s106 funding from this development or any others.

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<sup>20</sup> CD: K19

<sup>21</sup> See Appendix C, Kurihara PoE

<sup>22</sup> See Appendix 8, Downes PoE

60. For the reasons set out above, the health contribution does not meet the statutory CIL tests, it is also difficult to identify what harm would arise from the failure to provide it.

#### *Community Facilities Contribution*

61. The Council requests £445,670.54 which it says is necessary in order to improve, extend and expand the existing SSC to provide improved/increased community capacity to meet the demands created primarily by the proposed development and thereby positively contribute to improving the health and wellbeing of the local community.
62. The figure has again been calculated via a standard formula in contravention of the Council's own guidance in the SPD. There has been no analysis done of the club's existing capacity or facilities and no evidence to suggest a deficiency in either area. No analysis has been done to understand the specific impact of the development on the SSC. Finally, there are no details of what the money would be spent on and no evidence of any engagement with the SCC.
63. As a consequence, the contribution does not meet the statutory tests. Moreover, there is no basis on which to conclude that the failure to provide this contribution would result in any material planning harm.

#### *Open Space Contribution*

64. As there would be a shortfall in on-site open space<sup>23</sup>, the Council requests a contribution of £197,836.80 towards off-site provision for children and young people, £237,545.84 towards outdoor sports facilities and £39,644.64 towards allotments and community gardens.
65. Whilst the Appellant accepts there would be an on-site shortfall and therefore under normal circumstances, a need for a financial contribution, it is pointed out that there a number of existing play areas nearby which future residents would be able to access.
66. The children and young people contribution would be spent on the improvement of the Mead Way, Grove Street and Stafford Avenue play areas. Whilst I accept the development is likely to generate some increased demand for these facilities, the improvements identified by the Council appear to have little to do with creating additional capacity but rather the resolution of on-going maintenance issues. It is not clear for example how, inter alia, resurfacing, moss removal, a new bin and the replacement of outdated play equipment is necessary to make the development acceptable in planning terms.
67. Information about the proposed improvements at Grove Street and Stafford Avenue Playing Fields is scant but appears to involve capacity improvements along with the resolution of historic maintenance issues<sup>24</sup>. There has again been a failure to identify what the specific impact of the development would be on these facilities. In addition, no costings for the works have been provided. Without this information, I cannot conclude the contribution is essential and necessary to mitigate the specific impact of the development.

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<sup>23</sup> 3,840m<sup>2</sup>

<sup>24</sup> See paragraphs 3.65-3.68 Kurihara PoE

68. According to the Council, the outdoor sports facilities contribution would be spent on the refurbishment of the existing artificial grass pitch at the Magnus Academy in line with its Playing Pitch Strategy. From the limited information available, this again appears to relate to the resolution of an existing maintenance issue rather than mitigating the specific impact of the development.
69. Finally, in terms of the allotment contribution the Council confirms<sup>25</sup> that the monies would be spent on 1) qualitative improvements to the Glebe and St Giles Community allotment sites, and 2) the provision of new allotments at Stafford Avenue Playing Fields.
70. According to the Council's evidence, both existing allotment sites are at 100% occupancy with a combined waiting list of 16 local residents. On that basis, there would appear to be little imminent prospect of any additional demand for allotments from the appeal scheme being met at either the Glebe or Giles Community sites. Accordingly, I do not consider it reasonable to expect the developer to pay for upgrades to existing facilities, which future residents of the development would have no access to.
71. The provision of new allotments at the Stafford Avenue Playing Fields site would be entirely reasonable given the current deficit. The non-provision of this contribution would therefore cause some harm to future residents who might have allotment owning aspirations. However, without any further information about the number of new allotments to be created versus the demand likely to be generated from the appeal scheme, I cannot be sure that the contribution would be reasonably related in scale and kind to the development.

#### *Libraries Contribution*

72. To ensure the development does not place stock levels at Balderton Library under further pressure, NCC seeks £11,352. The amount is calculated on the basis of 2.3 persons per dwelling or 741 new residents and is supported by Appendix 4 to NCC's Obligations Strategy. This states that where a library building is able to accommodate the extra demand created due to a new development but it is known that the stock levels are only adequate to meet the needs of the existing catchment population, a "stock only" contribution will be sought.
73. I need not re-iterate my earlier concerns about the use of per dwelling assumptions. The development patently would not result in 741 new people joining the library given a significant proportion are likely to move from within the local area. Nonetheless, the failure to provide a library contribution would contribute to the on-going optimum stock shortfall at Balderton library and this weighs against the development in the overall planning balance.

#### **Other Matters**

74. Local residents voiced strong concerns about the use of Lowfield Lane as an emergency access. As I saw on my site visit, the road is a narrow, lightly trafficked, rural lane popular with pedestrians and cyclists. It is clearly unsuited in its current condition to accommodate any material increase in vehicular traffic. However, the concerns of local residents are based on a

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<sup>25</sup> See paragraph 3.72, Kurihara PoE

fundamental misunderstanding of what is proposed in terms of the 'emergency access'.

75. As NCC's Highway Development Control Officer<sup>26</sup> made clear, Lowfield Lane would only ever be used in the event that; 1) the main site access is completely blocked to traffic and at the same time, 2) there was a genuine emergency on site that required the attendance of the emergency services. As established at the Inquiry, the probability of these two events occurring individually let alone simultaneously is extremely low. Accordingly, I have no concerns with the proposed use of Lowfield Lane as an emergency access.
76. Local residents have expressed a wide range of concerns which are set out on page 6 of the Council's Committee Report. Whilst I can understand some of these concerns, it is evident from the Committee Report that the matters raised have been carefully considered by the Council and there is no compelling evidence before me which would lead me to conclude differently.

### **Conclusions and Planning Balance**

77. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore the development plan.
78. I have found that the development would not conflict with CS Policies SP6, CP1 and CP9, ADMP Policy DM3, advice and guidance in the SPDs, the PPG or the Framework. No other policy conflicts have been alleged or identified.
79. As to whether other considerations indicate a decision otherwise in accordance with the development plan, I have found that the majority of the obligations sought by the Council do not meet the statutory CIL tests nor do they comply with the approach in the SPDs. Referring back to the wording of Policy SP6 the Council has not adduced sufficient evidence to demonstrate how the contributions 'are essential for development to take place' or necessary to 'mitigate the impact of development'.
80. Nonetheless, there would be harm attached to the non-provision of affordable housing. However, the weight given to that harm carries only limited weight in the overall planning balance given that there would be no breach of Policy CP1. I have also identified limited harm from the failure to provide a library contribution in accordance with NCC's adopted Obligations Strategy. However, that again must be viewed through the lens of paragraph 3.15 of the same. These limited harms must be weighed against the very significant regenerative benefits of bringing a contaminated, brownfield site with excellent accessibility back into active use, along with a raft of flood alleviation, ecology, housing delivery, visual amenity and economic benefits.
81. Collectively these benefits must carry very substantial weight even in a Borough with a 5-year supply of deliverable housing sites. Even, if I had found a breach of Policies SP6, CP1, CP9 and DM3, the substantial benefits of the scheme would clearly be sufficient to outweigh the limited harm arising from that policy conflict.
82. Accordingly, the proposal passes the section 38(6) test and in accordance with ADMP Policy DM12 and NPPF paragraph 11(c), should be approved without

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<sup>26</sup> Mr Witco

delay. I therefore conclude that the proposed development would be sustainable and should be allowed, subject to the imposition of a number of conditions and planning obligations, as discussed at the Inquiry and as set out below.

### **Planning Obligations**

83. A signed and dated s106 Agreement was submitted after the close of the Inquiry. A draft version of the document was discussed at the Inquiry.
84. The Framework sets out policy tests for planning obligations; obligations must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in regulation 122 of the CIL regulations.
85. The s106 Agreement contains two obligations; the first relates to parking for the SCC and essentially seeks to ensure an adequate level parking is safeguarded in order to ensure the viability of the club in line with the requirements of CS Policy SP8. The second obligation concerns the provision and future management of the on-site open space which includes a Local Equipped Area for Play.
86. In both cases I am satisfied that the obligations meet the statutory tests.

### **Conditions**

87. The parties have suggested a number of planning conditions which I have considered against the advice in the PPG. In some instances, I have amended the conditions in the interests of brevity or to ensure compliance with the PPG.
88. Conditions covering time limits and the reserved matters are necessary to provide certainty and in the interests of proper planning [conditions 1-3]. A site-wide phasing plan is necessary to ensure the development comes forward in a coherent and planned manner [condition 4]. Drainage and flood prevention conditions are necessary to ensure satisfactory drainage and future maintenance of the site in the interests of flood prevention [conditions 5-6].
89. Conditions relating to the access onto Hawton Lane as well as an extension to the existing 30mph zone are necessary to ensure a suitable and safe access [conditions 7-9]. A Travel Plan is necessary to promote sustainable modes of transport [condition 10]. A condition requiring details of the emergency access onto Lowfield Lane to be submitted and agreed with the Council is necessary to ensure the development does not give rise to a material increase in traffic on an unsuitable route [condition 11].
90. Ecology conditions are necessary to ensure the development delivers a net-gain for biodiversity [conditions 12-15]. Conditions relating to trees and landscaping are necessary to protect existing trees and to ensure that the visual amenity benefits of the scheme are maximised [conditions 16-18]. Noise and land remediation conditions are necessary to ensure the land is suitable for its intended use and to safeguard the amenity of future residents [19-23]. Finally, a Construction Method Statement is necessary to ensure all aspects of the construction adhere to best practice and do not adversely affect the amenity of local residents [condition 24].

91. Conditions 5, 8, 9, 13, 17, 19, 22 and 24 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.

**Conclusion**

92. For the reasons set out above I conclude that the appeal should succeed, and outline planning permission allowed subject to the conditions set out below.

*D. M. Young*

Inspector

## **APPEARANCES**

Wayne Beglan of Counsel, he called:

Melissa Kurihara <sup>MLPM, MRTPI</sup>

Associate Director of Planning at Land Use Consultants

Robin Riley

Development and Funding Officer for Transport & Travel Services, NCC

Honor Whitfield

Planning Officer at NSDC

Jan Witko

Highway Development Control Team Leader  
NCC

### Appellant

Ian Ponter of Counsel he called:

Patrick Downes <sup>BSc (Hons) MRICS</sup>

Director, Harris Lamb Planning Consultancy

### Interested Parties

Cllr Roger Blaney

Chair of NSDC Planning Committee

Des Kay

Local Resident



## **SCHEDULE OF CONDITIONS**

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The first reserved matters application should be accompanied by a Phasing Plan detailing how the development is to come forward in each phase of the development. The Phasing Plan shall be submitted to and approved in writing by the Local Planning Authority before development begins and the development shall be carried out as approved. The plan should be re-submitted and updated where necessary through subsequent reserved matters applications.
5. No development shall be commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. No drainage systems for the infiltration of surface water to the ground are permitted. Any proposals for such systems must be supported by an assessment of the risks to controlled waters and shall be submitted to the Local Planning Authority for approval in writing. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
6. The development shall be carried out in accordance with the submitted flood risk assessment (FRA for Land at Hawton Lane, Newark, March 2019, JBA Consulting, C.B.Collier, V7) and the following mitigation measures it details:
  - The finished floor levels shall be set no lower than the greatest height of the following;
    - 1 in 100 year fluvial flood event (0.1% annual exceedance event) with 30% climate change from the Middle Beck plus 600mm freeboard.
    - 1 in 100 year fluvial flood event (0.1% annual exceedance event) with 50% climate change from the Middle Beck.
    - 1 in 100 year fluvial flood event (0.1% annual exceedance event) with 30% climate change from the Middle Beck plus 75% blockage at the Lowfield Lane Culvert (Found within section 5.1 of the FRA).
  - No development may commence on site until the proposed realignment and deculverting of the Middle Beck has been completed.
  - No development may commence on site until the construction of the 10,408.50m<sup>3</sup> flood storage pond which contains a 60m lateral spill/inlet with a crest set at 13.2mAOD. This will have a finished bed level of 12m AoD or 12m AoD permanent water level. The Local Planning Authority will need to be re-consulted if any alterations are made to the proposed flood storage pond.

- The culvert diameter must be maintained to a size of 1.04m at the Lowfield Lane crossing.
- No development may commence on site until the applicant has demonstrated that no development other than that of water compactible development will be within Flood Zone 3b.

These mitigation measures shall be fully implemented in accordance with the above stated timescales relevant to each phase or sub phase pursuant to Condition 4. All mitigation measures must be fully implemented prior to occupation and shall be retained and maintained thereafter throughout the lifetime of the development.

7. Prior to first occupation of any dwelling, access shall be provided onto Hawton Lane in accordance with the details shown on drawing A18361-209-P1.
8. No part of the development hereby permitted shall be commenced until the visibility splays of 2.4m x 120m at the new junction with Hawton Lane are provided in accordance with drawing A18361-209-P1 (page 61 of the Transport Assessment V.7 reference A18361C dated May 2020). The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.6m in height (with the exception of the existing culvert wall parapet to the east of the access).
9. No development shall commence until details of the measures to reduce the speed limit on Hawton Lane, including a timeframe for implementation have been submitted to and agreed by the Local Planning Authority. The approved scheme to be implemented as approved and in accordance with the approved timetable.
10. No part of the development hereby permitted shall be occupied until a revised Travel Plan in general accordance with the Framework Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes which are acceptable to the Local Planning Authority and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.
11. Prior to first occupation of any dwelling details of a emergency link with Lowfield Lane shall be provided in accordance with details that have first been submitted to an agreed in writing with the Local Planning Authority.
12. Any subsequent reserved matters application shall be accompanied by an updated ecological survey carried out by a qualified ecologist within the relevant appropriate timeframes outlining the ecological potential of the site at that time. The development approved as part of that Reserved Matters shall thereafter be carried out in accordance with any recommended mitigation measures incorporated within the results of such survey.
13. Notwithstanding the requirements of Condition 11, no development shall take place within any phase or sub phase pursuant to Condition 4 until a scheme for ecological mitigation, management and enhancement ('the Ecological Scheme') for that phase or sub phase has been submitted to and approved in writing by the Local Planning Authority. The Ecological Scheme shall include:

**Part A:**

Recommendations relating to amphibians, reptiles, aquatic habitats, birds, badgers, bats and invasive species, as set out in the Mitigation Measures outlined at Section 4 of the Preliminary Ecological Appraisal at: Lowfield Works, Hawton Lane, Balderton. Reference: PE00022 prepared by Dr Holly Smith, Harris Lamb dated 13th May 2019.

**Part B:**

An Ecological Management Plan which shall include:

- a) description and evaluation of the features species to be managed,
- b) ecological trends and constraints on site that may influence management,
- c) aims and objectives of management,
- d) appropriate management options for achieving aims and objectives,
- e) prescriptions for management actions,
- f) preparation of a work schedule (including a 5-year project register, an annual work plan and the means by which the plan will be rolled forward annually),
- g) personnel responsible for the implementation of the plan, and
- h) monitoring and remedial/contingency measures triggered by monitoring.

**Part C:**

A Habitat Creation and Landscape Management Plan to provide mitigation measures for the partial loss of the Local Wildlife Site (LWS) and scrub habitat which shall include:

- a) purpose, aims and objectives of the scheme,
- b) a review of the site's ecological potential and any constraints,
- c) description of target habitats and range of species appropriate for the site,
- d) selection of appropriate strategies for creating/restoring target habitats and introducing target species either on site or elsewhere to adequately compensate for loss of onsite habitats ensuring there is a net gain in habitat provision,
- e) selection of specific techniques and practices for establishing vegetation,
- f) sources of habitat materials (e.g. plant stock) or species individuals,
- g) method statement for site preparation and establishment of target features,
- h) extent and location of proposed works,
- i) aftercare and long-term management,
- j) the personnel responsible for the work,
- k) timing of the works,

- l) monitoring, and
- m) disposal of wastes arising from the works.

The agreed schemes shall be implemented in full in accordance with an approved phasing timetable and prior to the occupation of any dwellings within that phase.

14. No works shall take place within a 10 metre buffer around the Local Wildlife Site (Balderton Scrubby Grassland Local Wildlife Site LWS 5/332) to the north-west of the site until a scheme for the protection of the Local Wildlife Site has been submitted to and agreed in writing with the Local Planning Authority. This scheme shall include:

- a) A plan showing details and positions of the ground protection areas.
- b) Details and position of protection barriers.
- c) Details of working methods to be employed for any groundwork within or adjacent to the Local Wildlife Site.
- d) Details of any scaffolding erection and associated ground protection within the Local Wildlife Site
- e) Details of timing for the various phases of works or development in the context of the Local Wildlife Site protection measures.

All works/development shall be carried out in full accordance with the approved Local Wildlife Site protection scheme. The protection measures shall be retained during the development of the site.

15. Prior to the clearance of any land within the Local Wildlife Site, an investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of contamination within the Local Wildlife Site (whether or not it originates on the site). The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination,
- ii. an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - ground waters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments,
- iii. an appraisal of remedial options, and proposal of the preferred option(s).

The report must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', or any subsequent adaptation, and shall be submitted to and approved in writing by the Local Planning Authority. All

works/development must be carried out in full accordance with the approved report.

16. Any details submitted in relation to reserved matters for landscaping within any phase or sub phase pursuant to Condition 4 shall include a schedule (including planting plans and written specifications, cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species and shall include details of a management plan (including long term objectives, management responsibilities and maintenance schedule for all landscape areas, other than privately owned, domestic gardens). All of which should integrate with the Habitat Creation and Landscape Management Plan and Ecological Management Plans required by Condition 11. The landscaping works shall thereafter be carried out in accordance with the approved details. If within a period of 5 years from the date of planting any tree, shrub, hedgerow or replacement is removed, uprooted, destroyed or dies then another of the same species and size of the original shall be planted at the same place.
17. No development shall be commenced within any phase or sub phase pursuant to Condition 4 until the scheme for protection of the retained trees/hedgerows has been agreed in writing with the Local Planning Authority. This scheme shall include:
  - a) A plan showing details and positions of the ground protection areas,
  - b) Details and position of protection barriers,
  - c) Details and position of underground service/drainage runs/soakways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site,
  - d) Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing),
  - e) Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site,
  - f) Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root protection areas of any retained tree/hedgerow on or adjacent to the application site,
  - g) Details of any scaffolding erection and associated ground protection within the root protection areas, and,
  - h) Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.
18. All works/development shall be carried out in full accordance with the approved tree/hedgerow protection scheme. For the avoidance of doubt, the following activities must not be carried out under any circumstances:

- a) No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site,
  - b) No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site,
  - c) No temporary access within designated root protection areas without the prior written approval of the District Planning Authority,
  - d) No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site,
  - e) No soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site,
  - f) No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site, and,
  - g) No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
19. Development other than that required to be carried out as part of an approved scheme of remediation must not commence within any phase or sub phase pursuant to Condition 4 until Parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Part D has been complied with in relation to that contamination.

#### **Part A: Site Characterisation**

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination (including all previous uses and contaminants associated with those uses);
- ii. a conceptual model of the site indicating sources, pathways and receptors;
- iii. an assessment of the potential risks to:
  - human health;
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
  - adjoining land;
  - ground waters and surface waters;

- ecological systems; and,
  - archaeological sites and ancient monuments;
- iv. an appraisal of remedial options, and proposal of the preferred option(s).

#### **Part B: Submission of Remediation Scheme**

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

#### **Part C: Implementation of Approved Remediation Scheme**

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

#### **Part D: Reporting of Unexpected Contamination**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B, which is subject to the approval in writing of the Local Planning Authority.

20. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part C.
21. No occupation of the dwellings pursuant to each relevant phase or sub phase pursuant to Condition 4 shall occur until a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to, and approved in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
22. No development shall take place within any phase or sub phase pursuant to Condition 4 until a scheme for noise mitigation ('the Noise Mitigation Scheme') for that phase or sub phase has been submitted to and approved

in writing by the Local Planning Authority. The Noise Mitigation Scheme shall include the recommended noise mitigation measures set out within the Noise Impact Assessments ('Assessment of Noise Impact on a Proposed Residential Development' Report No: P18-035-R01-V3 dated July 2019, 'Sports and Social Club Noise Assessment' Report No: P18-035-R02v2 dated September 2019 and 'Further Assessment of Potential Impact from Flowserve Generator Noise on a Proposed Residential Development' Report No: P18-035-R02v1 dated July 2020) submitted to accompany this application. The agreed scheme shall be implemented in full prior to occupation of any of the dwellings approved in that phase.

23. Prior to first occupation of any dwelling, a noise mitigation of the Flowserve Factory Generator (as identified in the 'Further Assessment of Potential Impact from Flowserve Generator Noise on a Proposed Residential Development' noise assessment, Report No: P18-035-R02v1 dated July 2020) ('the Generator Noise Mitigation Scheme') shall be implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The Generator Noise Mitigation Scheme shall incorporate the recommended noise mitigation measures set out at points 4.5 and 4.7 of the aforementioned noise assessment submitted to accompany this application. The agreed scheme shall be implemented in full prior to the commencement of development and retained in perpetuity.
24. No development shall take place within any phase or sub phase pursuant to Condition 4 until a Construction Method Statement which incorporates the Construction Mitigation Measures contained within Appendix D of the Air Quality Assessment (for that phase or sub phase has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide consideration of the need for the following and details the measures required;
- a) access and parking of vehicles of site operatives and visitors,
  - b) lorry routing,
  - c) loading and unloading of plant and materials,
  - d) storage of plant and materials used in constructing the development,
  - e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate,
  - f) wheel washing facilities,
  - g) measures to control the emission of noise, dust and dirt during construction,
  - h) a scheme for recycling/disposing of waste resulting from construction works,
  - i) hours of operation, and,
  - j) a scheme to treat and remove suspended solids from surface water run-off during construction.

The approved Statement shall be adhered to throughout the construction period.