
Appeal Decision

Inquiry Held on 13-16 July 2021

Site visit made on 19 July 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/T3725/W/21/3270663

Land south of Chesterton Gardens, Leamington Spa

- 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 A. C. Lloyd (Homes) Ltd against the decision of Warwick District Council.
 - The application Ref W/20/0617, dated 22 April 2020, was refused by notice dated 12 February 2021.
 - The development proposed is an outline planning application for a residential development of up to 200 dwellings with associated access, landscaping and public open space (all matters reserved apart from access).
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for a residential development of up to 200 dwellings with associated access, landscaping and public open space (all matters reserved apart from access) on land south of Chesterton Gardens, Leamington Spa in accordance with the terms of the application, Ref APP/T3725/W/21/3270663, dated 22 April 2020, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Application for costs

2. At the Inquiry an application for an award of costs was made by the Appellant A. C. Lloyd (Homes) Ltd against the Warwick District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal follows the refusal of the Council to grant planning permission for development on land south of Chesterton Gardens, Leamington Spa on 12 February 2021 against the Planning Officer's advice. There were two reasons for refusal set out in the decision notice.¹ The application was supported by a number of plans, reports, and technical information. A full list of the supporting documents is set out in the Core Documents List (CD List) and is not repeated here.
4. It was agreed by the parties at the outset of the Inquiry that the appeal should be determined on the following plans:

¹ CD34

- Location Plan AAH5485-18 Rev. A
 - Existing Site Plan AAH5485-07 Rev. C
 - Land Use Parameters Plan Phase 1 AAH5485-14 Rev. B
 - Illustrative Masterplan AAH5485-13 Rev. B
 - Illustrative Street Scenes AAH5485-15 Rev. A
 - Illustrative Perspectives AAH5485-16 Rev. A
 - Phase 1 and 2 Illustrative Parameters Plan AAH5485-17 Rev. B
 - Proposed Narrowing and Bridleway Crossing 20376-01 Rev. E
5. I held a Case Management Conference (CMC) on 27 May 2021. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. In the weeks following the CMC the main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters was minimised at the Inquiry. A Statement of Common Ground (SoCG) between A.C. Lloyd and Warwick District Council was agreed on 14 June 2021. The SoCG sets out the agreed areas of common ground between the Council and the Appellant in respect of this appeal. The SoCG cross references to the CD List.
6. At the Inquiry a Planning Obligation was submitted.² The Planning Obligation is made by way of a Deed of Agreement under s106 of the Town and Country Planning Act 1990 between (1) A. C. Lloyd Homes Limited (2) Ann Richardson, Janet Stallard and Robert McGregor (3) Warwick District Council and (4) Warwickshire County Council. The s106 Agreement secures a number of planning obligations in the event that planning permission is granted including such matters as affordable housing provision (40%), an education contribution and a highway infrastructure contribution. The s106 Agreement is signed and dated 22 July 2021 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement³ was also submitted in support of the Planning Obligation. I return to the Planning Obligation later in this decision.
7. The application was screened for Environmental Impact Assessment (EIA) prior to submission of the application and the Council determined that no formal EIA was required on 21 November 2018.⁴ I agree with the negative screening that was undertaken by the Council.
8. A re-submission of the application was submitted to the Council on 29 March 2021 under Ref. W/21/0590. Additional information was included with this application to address the reasons for refusal on the appeal application and included: an Updated Transport Assessment providing additional information on road safety,⁵ a draft traffic calming scheme for St. Fremund Way,⁶ a Road Safety Audit of the proposed access and bridleway crossing off Brimstone End⁷ and consequential minor adjustments to the access design. A Road Safety Audit of the draft traffic calming scheme for St Fremund Way,⁸ an updated

² ID APP6

³ ID LPA1

⁴ CD73

⁵ CD74

⁶ CD75

⁷ CD76

⁸ CD77

Noise Assessment,⁹ a Construction Traffic Management Plan¹⁰ and an updated Sustainability Statement¹¹ were also submitted. This second application was refused planning permission on 28 May 2021 against the Planning Officer's advice with two reasons for refusal set out in the decision notice.¹²

9. On 25 May 2021, the Council wrote to the Planning Inspectorate to advise that the Council would not be defending its decision to refuse planning permission or present evidence in relation to the current appeal.¹³ Thus, the Council now considers the appeal proposals to be acceptable and that planning permission should be granted.

Main Issues

10. In the light of the above I consider the main issues are:

- (i) *Whether the provision of a single vehicular access to the site would be detrimental to the safety of pedestrians, cyclists and drivers;*
- (ii) *Whether the provision of single vehicular access to the development would provide acceptable living conditions for existing and future occupants, with particular reference to noise and disturbance.*

Reasons

Planning Policy context

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the purposes of this appeal comprises the Warwick District Local Plan (WDLP) adopted in 2017 and the Whitnash Neighbourhood Plan (WNP) which was Made in August 2015.
12. The WDLP 2017 covers the period 2011-2029. The policies in the WDLP are fully up-to-date and in line with the NPPF. It follows that I give them full weight in my consideration of this appeal. A full resume of the relevant policies is set out in the Planning Officer's Report to Committee¹⁴ and in the Planning Statement¹⁵ submitted with the appeal proposals. There is no need for me to repeat all of these policies here.
13. Policy H1 the WDLP sets out a strategy for the distribution of new housing development. The strategy seeks to focus the majority of new housing towards the main urban areas which include Leamington Spa and Whitnash where the site is located. The appeal site is shown as falling within the wider area of Leamington Spa as defined on Proposals Map 2¹⁶ and is specifically allocated within a wider site referenced as Site H03: East of Whitnash/south

⁹ CD78

¹⁰ CD80

¹¹ CD81

¹² CD86

¹³ CD103

¹⁴ CD31

¹⁵ CD11

¹⁶ CD52

of Sydenham for 500 houses as shown on the Proposals Map and as listed under Policy DS11.¹⁷ Policy DS11 provides a column where specific infrastructure requirements for each allocation are itemised. In the case of Site H03 there is nothing listed.

14. The supporting text to Policy DS11 states at paragraph 2.47 that the site at Whitnash East provides an extension to the site located off St. Fremund Way. It says the site will deliver an estimated 500 homes along with an ecology and landscape corridor adjacent to Whitnash Brook and a partial rebuild and extension of Campion School that will enable access to be provided.
15. Aside from the above, the other key WDLP policies of relevance to this appeal given the reasons for refusal are Policy TR1 relating to access and Policy BE3 relating to residential amenity. Policy TR1 requires development to provide safe, suitable and attractive access routes for all users and modes of transport. Policy BE3 prohibits development which would result in an unacceptable adverse impact on the amenity of nearby uses and residents and/or does not provide acceptable standards of amenity for future users and occupiers of the development.
16. The WNP was Made in August 2015. At the time it was prepared and Made the WDLP was still in draft form. Notwithstanding this, the emerging H03 allocation for the land East of Whitnash/South of Sydenham was acknowledged and effectively incorporated into the WNP and policies were included to safeguard and enhance the Whitnash Brook Valley along the eastern part of this allocation and to improve connectivity within the area.
17. Specifically, Policy W6 of the WNP requires that any development of the H03 allocation protects the Whitnash Brook Nature Reserve, includes a 700-yard strip Wildlife Buffer, and supports enhancements to the area including improved pedestrian and cycle connections. Furthermore, Policy W7 designates Whitnash Brook Valley as a Local Green Space and states that new development which impacts adversely on the openness of this designated green space or adversely affects the attributes for which it was designated will not be acceptable other than in very special circumstances.
18. The NPPF was revised on 20 July 2021 and it replaces the previous version published in February 2019. The NPPF represents the Government's up-to-date planning policies for England. The NPPF is an important material consideration in planning decision making. I have taken into account the policies contained within the NPPF 2021 in coming to my decision in this case.

Principle of residential development

19. Some objectors, notably Matt Western MP and the CPRE, sought to cast doubt on the housing requirement in the WDLP. It is argued that housing delivery is going to exceed WDLP requirements and also that housing numbers should be altered down because of a debate relating to the Office for National Statistics (ONS) housing calculation methodology in Coventry, which is in the same housing market area as Warwick. I note that the Office for Statistics Regulation (OSR) has undertaken a review in response to concerns about the

¹⁷ See page 22 of the WDLP

population projections and mid-year population estimates for Coventry. The OSR has reviewed the methods and approaches used by the ONS. I am aware of the current debate about Coventry's housing requirements. This Coventry debate will no doubt continue but it is not a matter for this appeal process to resolve. It is not for me to re-run the housing need debate as suggested by Matt Western MP nor the site selection process as suggested by CPRE.

20. The WDLP provides the main statutory policy context against which the appeal proposal has to be determined. The WDLP was adopted in 2017 and covers the period 2011-2029. Plainly the site is allocated for housing in the WDLP. The WDLP is up-to-date and in line with the NPPF. The appeal proposal is in outline for up to 200 dwellings on a site allocated for residential development within the WDLP which falls within the allocation set out within HO3 for 500 dwellings. The Council's Annual Monitoring Report (AMR) demonstrates that there is a 5.63 year Housing Land Supply.¹⁸ It is agreed that the published 2020 trajectory figures include a contribution of 130 dwellings from the appeal site in the Five Year Housing Land Supply calculation, with 50 dwellings per year added thereafter until 2032.¹⁹
21. In my view the appeal proposal demonstrates that up to 200 dwellings could be comfortably accommodated on the appeal site and could achieve a very high level of quality together with a level of public and other open space that exceeds all the thresholds for a scheme of this scale. The site has also been master planned to demonstrate that this first phase of development is acceptable in its own right but could be appropriately assimilated with the wider allocation at the point a further application comes forward with the provision of a secondary access being provided adjacent to Campion School to allow the facilitation of further development on the wider allocation. Taking all these matters into account I consider that the appeal proposal is acceptable in principle having regard to Policies H1 and DS11 of the WDLP.

First Issue - Whether the provision of a single vehicular access to the site would be detrimental to the safety of pedestrians, cyclists and drivers

22. Policy TR1 of the WDLP states that development will only be permitted that provides safe, suitable and attractive access routes for pedestrians, cyclists, public transport users, emergency vehicles, refuse vehicles and other users of motor vehicles. The Council, in its reason for refusal, is of the view that the provision of a single vehicular access to the site via an existing residential area would result in a substandard form of development which would be detrimental to highway safety and therefore contrary to Policy TR1. A number of objectors, including Matt Western MP and the CPRE, questioned whether the proposed access would comply with the WDLP.
23. The only technical evidence on highways submitted as part of the appeal was that produced by Mr Neale on behalf of the Appellant, which was agreed by Warwickshire County Council as the Local Highway Authority (LHA). Having undertaken a full assessment of the development proposals, the LHA raised no objections to the proposals subject to conditions and s106 obligations.²⁰ Mr Neale's technical evidence deals with highway safety and capacity and

¹⁸ CD56 WDC Annual Monitoring Report 2019-2020

¹⁹ CD55 and SoCG paragraph 6.7

²⁰ CD36

accessibility. The LHA is content that the proposals are acceptable in highway terms, and that is important, because the LHA is the statutory consultee, and the body charged with maintaining the safety of the highways. Independent road safety audits have also been undertaken in respect of the access arrangements,²¹ and the proposed traffic calming scheme,²² and have made some minor recommendations that can be incorporated in the final detailed designs. In summary, every expert highway and transport professional who has looked at the proposals agree they are safe.

24. The CPRE (Mr Sullivan) suggests that less weight should be given to the LHA's response because it did not refer to the WDLP and it was not taken to Councillors or a Committee or Panel for approval. However, it is normal for specialist officers to provide a response on behalf of the LHA. The LHA is a technical consultee who are the independent body that manage/maintain and look after the safe operation of the local road network including footways and cycleways. The role of the LHA is to provide expert opinion to assist in the determining of planning applications. Moreover, I am not clear what difference it would make if the technical consultation had referred to the WDLP. There is no suggestion that there is any conflict between the WDLP and the NPPF.
25. The submitted Transport Assessment,²³ demonstrates that the local road network has significant residual capacity to accommodate vehicle movements arising from the appeal proposals. Suitable visibility can be achieved at the site access, and emergency access is to be provided via Church Lane, as shown on the appeal plans. The precise location where the emergency access goes into the site would be an issue for reserved matters, but there can be no question marks over the ability of the Appellant to deliver that access. The proposals would generate approximately 100 additional vehicle movements in the AM peak and 114 in the PM peak period. At worst, that is just less than 2 vehicles per minute which would not materially affect the operation of the local or wider highway network given the spare capacity on those roads.
26. I now turn to the two main points raised by the objectors in relation to highways and access matters: the first point is that the Inspector in an appeal decision in 2013 concerning land south of St. Fremund Way and north of the appeal site²⁴ commented at paragraph 20 that further land to the south would not be dependent on access via that site which would not be suitable for accessing additional development to the south "*due to the limited capacity in the Sydenham road network.*" The second point that the objectors rely on is the explanatory text contained within the WDLP at paragraph 2.47 which says that the allocation will deliver 500 dwellings and a rebuild and extension to Campion School to enable access.
27. With regard to the 2013 appeal that is cited by the objectors there are several points that are noteworthy:
 - (a) I accept that consistency in the planning process is important and like cases should be decided in a like manner. A previous appeal decision is capable of being a material consideration where the previous decision is sufficiently closely related to the issues that regard should be had to it.

²¹ CD76

²² CD75 and CD77

²³ CD28 and updated at CD74

²⁴ CD67

However, an Inspector is entitled to disagree with an earlier decision (whether on the same site or elsewhere) if there are sound reasons for so doing. Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it.²⁵

- (b) Importantly, the Inspector in the 2013 appeal was assessing a different scheme, and he did not have the benefit of the detailed technical evidence that supports it which is before this Inquiry. It is hard to know what evidence was before him since none of the experts or participants in this Inquiry were there. Indeed, there is no evidence that I have seen that was provided to that Inspector to support the conclusion arrived at. The evidence of Mr Neale confirms this. Even if such evidence had been provided, the comment was given in the context of the evidence, and presumably his view, on highway capacity that the Inspector had available at that time (2013). It is difficult to see how any weight can be attributed to his comment about the road network having limited capacity for any future access to the south in that context because, it is demonstrably wrong given that there is capacity on the network to accommodate traffic arising from the appeal proposals.
 - (c) In my view the 2013 decision cannot bind my decision in this case as I am making the decision on the basis of different evidence, and in a vastly changed planning context. Most fundamentally, the development plan context has changed with the adoption of the WDLP in 2017 and the site is now allocated for residential purposes. It was not allocated in 2013 when the previous appeal was determined. Furthermore, the up-to-date highway assessment by Mr Neale demonstrates that St Fremund Way, Chesterton Drive and connecting roads have a significant residual capacity to safely accommodate the appeal proposals. This position is agreed by the LHA who have raised no objections to this appeal subject to mitigation through conditions and s106 obligations.²⁶
28. With regard to the second point raised by the objectors there are also several points to note:
- (i) Having read the supporting text to Policy DS11 at paragraph 2.47 of the WDLP, it seems to me that there is no requirement within that paragraph or anywhere in the WDLP to deliver the Campion School access. The paragraph presents an idea or an aspiration of how access might be achieved but it does not make it a prerequisite of planning consent. It could have said that explicitly.
 - (ii) Further, the paragraph refers to the development of the whole allocation and it is only the first phase of the wider allocation that is proposed through this appeal. The suitability of the access for this scheme has been determined through the Transport Assessment and it is agreed as being acceptable by the LHA. As Mr Green explained, if and when a second access does come forward, it would still be desirable to have two accesses including the Brimstone End access to offer full permeability through the wider development.

²⁵ See *N Wiltshire DC v SSE* (1993) 65 P. & C.R. 137

²⁶ CD36

- (iii) As a matter of law, the explanatory text is not policy, does not have the force of policy, and cannot trump the policy. As the Court of Appeal held in the Cherkley case,²⁷ a development that accords with the policies in a local plan cannot be said to not conform with the plan if it fails to satisfy an additional criterion referred to only in the supporting text. The CPRE (Mr Sullivan) was in error to suggest accordance with the development plan was contingent on a second access being delivered, there is nothing in the Court of Appeal's judgement to support that approach.
 - (iv) Neither Manual for Streets (MfS) and Manual for Streets 2 (MfS2) indicates limits on the numbers of dwellings from a single point of access. Rather, as MfS states²⁸ the Fire Service considers each application based on a risk assessment for the site, and response time requirements. I note that the Warwickshire Fire and Rescue Service has formally raised no objection to the appeal proposal on consultation at the application stage.
29. The CPRE also made reference to the evolution of the WDLP and made reference to extraneous material including the Local Plan Inspector's Report. However, the appeal decision is to be made in accordance with the development plan itself, having regard to the words of the policies informed by the explanatory text. It is rarely appropriate to go behind the plan, which doesn't in any event move matters on here. As Mr Green explained in evidence, the position at the time of the WDLP Examination was as set out in ID CPRE2. Negotiations with the Campion School have been protracted, and there has been a significant amount of correspondence between the relevant parties. It is still the Appellant's desire to secure that access, but that is not an issue that can, or needs to be resolved as part of this appeal.
30. It is proposed to provide vehicular access to the development off the existing highway network via the Chesterton Gardens development to the north. The access point is proposed to be from Brimstone End. Brimstone End is some 6.7m wide with footways either side. The access design includes a crossing point with an existing east-west bridleway and is designed as a one-way priority for vehicles entering the site. In respect of the proposals to cross the bridleway, there is nothing unusual or difficult about that process. Public rights of way (PROW) are often incorporated into new development and this would still be the case if access were coming from Campion School and/or Brimstone End as anticipated. The Local Plan Inspector would have been aware of the bridleway when allocating the site and nothing has changed in that respect.
31. An independent Stage 1 Road Safety Audit (RSA) was undertaken of the proposal.²⁹ The audit highlighted minor issues regarding the priority arrangement and interaction between users of the bridleway and the site access and accordingly the access detail has been revised to respond to those recommendations. The final scheme, shown on plan reference 20376-01Rev E, is contained within the updated Transport Assessment.³⁰ The proposed access has been agreed as being acceptable and safe by the LHA.

²⁷ CD68 Cherkley Campaign Ltd v Mole Valley Dc [2014] EWCA Civ 567

²⁸ CD65 page 75 paragraph 6.7.3 third bullet

²⁹ CD76

³⁰ CD74

32. Throughout the course of the Inquiry the CPRE (Mrs Cooper) developed a case that the access to the site was unacceptable because of harm to equestrian activities. However, I cannot agree with her view for several reasons. First, the response from the PROW Officer raised no objections to the scheme.³¹ Secondly, the RSA made recommendations, having particular regard to equestrians,³² and found that the access would be safe. Thirdly, the bridleway leads to the wider road network in any event which Mrs Cooper expressed was a positive thing, so unless horse riders are simply going to go up and down the bridleway (which seems unlikely), they will encounter surfaced roads, and other road users at some point. Fourthly, equestrians use roads up and down the country daily. In my view, the access has been designed to accommodate a range of different users and there would be no adverse safety impacts.
33. It is noteworthy that as part of the appeal proposals, a traffic calming scheme together with a number of other highways related measures are proposed to mitigate the impacts of the proposed scheme. The detail of that calming scheme has been progressed through the second application/appeal process and would be secured by conditions. The scheme is to be secured by condition because that is the preferred mechanism as set out in national policy and guidance. CPRE has made a point about the unsuitability of the roads to accommodate development traffic as well as the existing traffic, and buses. However, the straightforward point is that there is nothing at all that is unacceptable or unusual about the local road network, and all the evidence (including personal injury collisions data) demonstrates that it is operating safely. Neither the roads, nor the footpath is narrow as alleged by CPRE.
34. Drawing all of these threads together, I consider that there are no policy or technical grounds as to why the access as submitted would be substandard, unattractive or unsafe and there is therefore no conflict with Policy TR1 of the WDLP. The NPPF advises that "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*"³³ In this case neither of these situations apply as has been confirmed by the LHA. In my view, the proposal would accord with all local and national transport planning policies. I conclude on the first issue that there is no reason to withhold permission on the grounds that the provision of a single vehicular access to the site would be detrimental to the safety of pedestrians, cyclists and drivers.

Second Issue - Whether the provision of single vehicular access to the development would provide acceptable living conditions for existing and future occupants, with particular reference to noise and disturbance

35. Policy BE3 of the WDLP states that development will not be permitted that has an unacceptable adverse impact on the amenity of nearby uses and residents and/or does not provide acceptable standards of amenity for future users and occupiers of the development. The Council's second reason for refusal alleges that the provision of a single vehicular access to the new development from an existing substantial cul-de-sac would direct significant movements onto the existing development access which would lead to an unacceptable impact on

³¹ CD44

³² CD76

³³ NPPF paragraph 111

- the amenity of local residents through increased noise and disturbance. The Council considers that the appeal proposal is contrary to Policy BE3. The CPRE, Local Councillors and interested persons submitted objections to the proposal as they consider it would cause noise pollution along the access route during the construction and occupation periods.
36. The NPPF requires that planning decisions should prevent unacceptable levels of noise pollution,³⁴ and that decisions should ensure that new development should mitigate and reduce to a minimum, potential adverse impacts resulting from noise, and avoid noise giving rise to significant adverse impacts on health and quality of life.³⁵
37. The Planning Practice Guidance (PPG) and the Noise Policy Statement for England (NPSE) refer to observed noise effect levels, including the Significant Observed Adverse Effect Level (SOAEL) above which significant adverse effects on health and quality of life occur, and the Lowest Observed Adverse Effect Level (LOAEL) above which adverse effects on health and quality of life can be detected. There are no defined numerical thresholds for LOAEL and SOAEL, and various guidance documents introduce different figures for different times of day, different locations and different noise sources, as well as scales of risk and impact depending on the change in noise over different periods.
38. It is important to note that the only expert evidence on noise submitted to the Inquiry was that provided by the Appellant's acoustic consultant Mr Metcalfe. With regard to the impact of noise on existing residents Mr Metcalfe has agreed with the Council's Environmental Health Officer (EHO), that the effects of the appeal proposals would sit between the LOAEL and the SOAEL. The most up-to-date acoustic evidence is set out in Mr Metcalfe's Noise and Vibration Assessment dated March 2021.³⁶ In my view, this is a robust and comprehensive assessment that thoroughly explores the proposed noise impacts around the site, and the wider road network having regard to the plethora of guidance summarised at Section 3 of the Assessment.
39. The CPRE does not agree with Mr Metcalfe's Assessment claiming that constant noise "spikes" from construction traffic and increases in local traffic noise as a result of the proposed development would be unacceptable. However, there is no law, policy or guidance that recommends noise is measured in the way the CPRE advocates. Moreover, as Mr Metcalfe explained the predicted change in road traffic noise using the L10, T noise level index³⁷ captures the noise which is exceeded for 10% of the time over the relevant period and can be considered to encompass 'spike' events from passing vehicles. In effect, the "spikes" have been taken into account.
40. Neither the policy nor the guidance defines a consistent numerical limit for noise or requires development to avoid all noise. The Noise Assessment provided by the Appellant's acoustic consultant sets out the thresholds adopted for the appeal site.³⁸ In my view these thresholds are entirely appropriate to assess the suitability of the site for this scheme, and they show that no unacceptable effects would be brought about by the scheme.

³⁴ NPPF paragraph 174

³⁵ NPPF paragraph 185

³⁶ CD78

³⁷ CD78 Table 5.6 and Table 5.8

³⁸ CD78 Page 17 Table 3.7

41. Sound and vibration surveys were undertaken to establish typical sound and vibration levels at the appeal site. Measurements were carried out at two positions: one on the western site boundary and the other on the north-eastern corner of the site. The noise survey results are summarised in Table 4.1 and 4.2 of the Assessment.³⁹ In order to assess site suitability, the measured noise levels were then compared against the criteria set out in Table 3.7 of the Assessment.⁴⁰
42. From the evidence submitted, in terms of the level of noise risk, I consider that overall, the appeal site is a medium risk. The eastern part of the site tends towards a low to medium risk with noise levels below the LOAEL during the day and in the lower range of values above LOAEL but below the SOAEL during the night. The western part of the site, close to the railway is considered to tend to be a medium to high risk, with noise levels in the upper range of values above LOAEL but below the SOAEL during the daytime, and above SOAEL but below the level at which an unacceptable effect occurs during the night-time. On this basis, I consider the site is suitable for residential use, subject to incorporation of appropriate mitigation.
43. With regard to off-site road traffic noise, I accept that the traffic associated with the development has the potential to lead to changes in road traffic noise levels on the local road network surrounding the site. Road traffic data for roads around the site was supplied by David Tucker Associates, the traffic consultant for the scheme. Three locations were considered: (i) Chesterton Drive and to the north and west; (ii) Withy Bank junction and (ii) Brimstone End. The predicted change in road traffic noise at these locations is set out at Tables 5.4, 5.6 and 5.8 of the Assessment.⁴¹
44. In the case of most locations assessed, it is noteworthy that the predicted noise increase would be below +3dB as a result of traffic associated with the proposed development. In my view, increases of up to +3dB would be classed as minor magnitudes of change in the short term and negligible change in the long term. That applies at Chesterton Drive north of St Fremund Way, Prospect Road, Sydenham Drive, Withy Bank and Emperor Boulevard. The exception to that is Brimstone End, where the absolute change could be as high as +9dB, which would be classed as a "moderate" magnitude of change in the long term by the Design Manual for Roads and Bridges, but which would still meet guideline values for internal noise levels most of the time. For periods where windows are open, the internal noise levels within 1 to 4 Brimstone End are likely to be just above the 40dB guidelines value for a 'reasonable' internal daytime noise climate within living rooms and bedrooms. In all cases, the noise levels are shown to be less than 45dB, which is the internal daytime guideline noise value for dining areas.⁴²
45. As Mr Metcalfe explained in evidence, the assessment is likely to be pessimistic, but in any event, the exceedances are relatively limited, and within the 3dB range (over the guideline value) which is regarded as the smallest change in noise that is perceptible in the long term.⁴³ Furthermore,

³⁹ CD78 Page 20

⁴⁰ CD78 Page 22

⁴¹ CD78 Pages 25-28

⁴² CD78 Table 5.9 It can be seen From Table 5.9 that when windows are closed, but vents are open, which is the normal method of complying with ADF and is likely to be the situation for large parts of the year, the internal noise levels are expected to meet all of the guideline values in BS8233:2014

⁴³ CD78 Table 3.4

as set out in BS8233, where development is considered necessary or desirable, which is relevant in this case as the proposed development forms part of a site allocated in the WDLP, the levels can be relaxed by up to 5dB.

46. The NPSE seeks to provide a clear description of desired outcomes from noise management of a particular situation. Where the predicted noise impacts lie somewhere between the LOAEL and SOAEL the aim is to mitigate adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise. Reasonable steps should be taken to mitigate and minimise the effects of that noise, but it does not mean that such adverse effects can never be acceptable, particularly where development is desirable. The guidelines should be applied with flexibility.
47. The mitigation that is proposed in this case involves traffic calming measures to reduce vehicles speeds, encouraging people to travel via sustainable modes of transport, and to provide high speed internet to support working from home. Each house with a dedicated parking space would be equipped with an external wall plug for charging electrical vehicles. The Appellant also offers additional measures to the affected occupiers of Brimstone End should they choose to accept them, which would assist in controlling noise ingress further.
48. It is not anticipated that there would be any issue in respect of night-time noise when general noise levels are lower and traffic movements considerably lower. I note that in the SoCG that it is agreed that an appropriate mitigation scheme can be secured for noise attenuation from the adjacent railway line by means of a suitably worded planning condition. Furthermore, with regard to the impact on existing residents, the Council has agreed that the site has been assessed in detail in the submitted Noise Assessment and that any adverse impact on residential amenity can be mitigated through a suite of mitigation measures. The Council's EHO has raised no technical objection to the scheme on the grounds of adverse impacts to residential amenity in terms of noise. No points have been taken about vibration which is also assessed in CD78. Overall, I consider that the proposed development is acceptable having regard to Policy BE3 of the WDLP and the NPPF.
49. Mrs White appeared at the Inquiry and provided evidence of a mobile phone application (ID White 1) showing noise from an inside room with a closed window of up to 89dB. The evidence is simply not credible, and no weight can be placed on it for a number of reasons, which Mr Metcalfe explained in evidence to the Inquiry.
50. For all of the above reasons I conclude that there is no reasonable basis to resist permission on the second main issue.

Planning Obligation

51. A Planning Obligation by Deed of Agreement under s106 of the Town and Country Planning Act was submitted at the Inquiry.⁴⁴ Paragraph 57 of the NPPF and Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 (CIL) (as amended) set out the tests that apply to planning obligations. Planning obligations must only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms;

⁴⁴ ID APP6

- Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
52. A CIL Compliance Statement⁴⁵ was submitted on behalf of Warwick District Council and it sets out the development plan policies which support the case that the proposed planning obligations meet the CIL tests. It also sets out the Supplementary Planning Documents (SPDs) which are relevant to the proposal planning obligations.⁴⁶ There is no need for me to repeat these policies here.
53. The s106 Agreement is between (1) AC Lloyd Homes Limited (2) Ann Richardson, Janet Stallard & Robert McGregor (3) Warwick District Council and (4) Warwickshire County Council. The proposed planning obligations within the s106 Agreement are as follows:
- Affordable Housing: The development will be required to provide affordable housing at 40% of the total on-site dwellings.
 - Air Quality Contribution: £67,405 will be required towards the provision of air quality equipment and/or provision of other assistance or support in respect of projects relating to air quality monitoring and management within Warwick District.
 - Artificial Pitch Contribution: £14,093 towards the provision of artificial sports pitches at Newbold Comyn, Leamington Spa.
 - Bus Stop Maintenance and Real Time Information Display Contribution: £11,500 for each of the two bus stops nearest to the development towards the upgrading and maintenance of the stops and the provision of real time information displays in order to encourage the use of public transport.
 - Cycleway Contribution: £200,000 towards off-site cycling network improvements between the development, the existing cycling network and Leamington Town Centre.
 - Education Contribution: Financial contribution calculated in accordance with the Education Authority's formula to provide school places, SEN support and facilities for pupils from the development.
 - GP Services Contribution: £43,947 towards the improvement and/or extension of the Croft Medical Centre in order to provide GP care for residents of the development.
 - Grass Pitch Contribution: £61,068 towards the improvement of grass pitches at Harbury Lane, St Nicholas Park, St Mary's Lands and Newbold Comyn as identified in the Council's Playing Pitch Strategy.
 - Highway Infrastructure Contribution: £645,000 towards mitigating the impact of the development on the existing highway network by implementing schemes identified in the Infrastructure Delivery Plan and traffic calming.

⁴⁵ ID LPA1

⁴⁶ Ibid

- Indoor Sports Contribution: £157,316 towards swimming and sports hall provision within Warwick District.
 - Open Space: Provision of open space for use by the residents of the development.
 - Libraries Contribution: £4,378 towards the improvement of library facilities.
 - Local Labour Agreement: An agreement between the Council and the Owner relating to the employment of local people and opportunities for local businesses.
 - Noise Mitigation: An obligation to offer and provide appropriate mitigation to the occupiers of 1-6 Brimstone End.
 - Police Contribution: £33,645 towards the recruitment and equipping of police staff, the provision of police vehicles and the provision of police office accommodation.
 - Road Safety Contribution: £50 per dwelling towards road safety initiatives within the development and the local community.
 - South Warwickshire NHS Foundation Trust Contribution: £194,396.07 towards the NHS Trust services.
 - Sustainable Travel Pack Contribution: £10 per dwelling towards information packs for the owners and occupiers of the dwellings to promote sustainable transport and road safety in the local area.
 - Sustainable Urban Drainage (SUDS): Provision of a sustainable urban drainage system to serve the development.
54. The tables in section 6 of the CIL Compliance Statement explain how the above planning obligations comply with the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the NPPF.
55. The s106 Agreement also contains obligations to pay sums to both Warwick District Council and Warwickshire County Council in respect of the costs of monitoring. These sums will be calculated in accordance with the formulas as set out in the Agreement. The obligations are compliant with Regulation 122 of the CIL Regulations in that they are fair and reasonably related to the development in scale and kind and the sums to be paid do not exceed the costs of monitoring over the lifetime of the planning obligations that relate to the development.
56. In my view, all of the obligations in the s106 Agreement are 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. Therefore, they all meet the tests within Regulation 122 (2) of the CIL Regulations and should be taken into account in the decision. The development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.

Other Matters

57. I have taken into account all other matters raised including the concerns raised by Matt Western MP, Local Councillors, representations made by interested persons including those who gave evidence at the Inquiry, the petition submitted on behalf of local residents and those who provided written submissions. I have also considered the representations submitted by the British Horse Society. I have already dealt with many of the points raised in the main issues.
58. Concerns about air quality impacts have been raised by the CPRE and local residents. In this regard an Air Quality Assessment was undertaken and submitted in support of the proposal.⁴⁷ The Assessment shows that the absolute concentrations of NO₂, PM₁₀ and PM_{2.5} are predicted to be below the relevant long-term and short-term Air Quality Standards at all existing local receptors. The proposed development would not have a significant impact on local air quality. Nevertheless, pollutant concentrations are predicted to increase at all identified receptors as a result of the proposed development. Type 1, 2 and 3 mitigation in accordance with the WDLP and the Council's SPD are secured by conditions and the s106 Agreement⁴⁸ and there are no objections from the EHO.⁴⁹ The appeal proposal satisfies the requirements of the Air Quality SPD and the Council's Air Quality Action Plan and Low Emissions Strategy Guidance as well as relevant WDLP policies.
59. The CPRE raised concerns about the ecological surveys and information provided with the appeal proposals. However, I note that the submitted ecology reports were considered by the County Ecologist who was satisfied with the submitted information and did not raise any objections to the proposals subject to various conditions.⁵⁰ In addition to the ecology reports, a Biodiversity Impact Assessment has been undertaken and submitted in support of the planning application. This shows that the development would result in a net increase in biodiversity. Given that the site would not affect any designated ecology sites, the habitats of greatest ecological value would be largely retained and enhanced through the provision of new landscaping and the development would result in net biodiversity gain, I consider that the proposals accord with Policy DS3, SC0 and NE3 of the WDLP and the NPPF.
60. Notwithstanding that there was no objection from the Environment Agency or the Lead Local Flood Authority (LLFA) to the appeal proposals,⁵¹ the CPRE raised concerns about the effect of the development on flooding. I note that a Flood Risk Assessment and Drainage Strategy⁵² was submitted in support of the proposals. The report has been informed by discussions with the LLFA. It shows that the proposed new homes are located entirely outside any areas considered at risk of flooding and that surface water drainage can be managed on site to ensure that the development would not increase the risk of flooding elsewhere. I consider that the proposals meet the requirements of Policies CC1, FW1 and FW2 of the WDLP and Policies W15, W16 and W17 of the WNP.

⁴⁷ See CD24

⁴⁸ See CD25 Emissions Mitigation Statement

⁴⁹ See CD35

⁵⁰ See CD38

⁵¹ See CD37

⁵² See CD17

61. The NPPF places a greater emphasis on creating high quality, beautiful and sustainable buildings and introduces further measures to improve design quality, including a new requirement for Councils to produce design codes or guides. Since this is an outline proposal the design quality would therefore form part of any subsequent reserved matters application. However, the proposal was accompanied by a comprehensive Landscape and Design Statement⁵³ which establishes the key development principles on design and layout. The appeal proposals satisfy the NPPF's emphasis on using trees in new developments and the requirement for new developments to integrate biodiversity as part of the design. Allotments, car parking, cycle storage, contamination, energy saving, external lighting, housing mix and landscaping are all matters which can be dealt with by means of planning conditions. There are no infrastructure or other impacts that cannot be mitigated by planning conditions or by the s106 Agreement.
62. The CPRE argues that the Human Rights of existing residents will be breached if the appeal is allowed. It is claimed that both Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights incorporated within the Human Rights Act 1998 are engaged and offended by the proposals. Article 1 of the First Protocol prevents people from being deprived of their possessions except in the public interest. This qualified right is often referred to alongside Article 8 where a refusal of permission might lead to the loss of a home. The development proposals would not deprive any person of his or her possessions. Article 8 states that everyone has the right to respect for private and family life, home, and correspondence. Article 8 is potentially engaged where development gives rise to adverse impacts on amenity, but the right is not absolute, and is qualified in the following way:
- "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*
63. There is a balance to be struck between competing rights of the community, and an individual's amenity. That balance in this context is the planning balance, and if properly carried out, having regard to national and local policies, will ensure that the decision taker is acting compatibly with Convention rights.⁵⁴

Planning Balance

64. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material planning considerations indicate otherwise. There are no outstanding technical issues between the Appellant and the Council. The proposed development represents a plan led development entirely in accordance with the development plan that would deliver the first phase of one of the WDLP's strategic housing allocations contributing to the delivery of the Council's five year housing land supply. There is no conflict with any of the relevant policies of the development plan which is up-to-date. Paragraph 11c of the NPPF provides that proposals which

⁵³ CD10

⁵⁴ See R (oao RLT Built Environment Limited) -v- The Cornwall Council [2016] EWHC 2817 (Admin)

accord with an up-to-date development plan should be approved without delay. I conclude that the appeal proposal is in overall accordance with the development plan and that there are no material considerations weighing against the proposal.

65. Furthermore, I have examined the benefits of the scheme and I have found that these would be significant. They cover all three dimensions of sustainable development. In terms of economic benefits, they include direct and indirect job creation through the building of the site and household expenditure of new residents that would support the local economy, and the local businesses in the surrounding area.⁵⁵ The social dimension of sustainability would be fulfilled not just by the provision of market housing, but also affordable housing, for which there is a clear need. There is a significant need for affordable housing which the CPRE accepted was "important" and a benefit of the scheme. The WDLP sets out that 374 affordable dwellings are required per annum⁵⁶ and the Council has not been delivering the levels of affordable housing need that are required. The AMR states that whilst delivery of affordable housing has steadily improved, low levels of delivery in the early years of the WDLP mean that cumulative delivery remains some way below the cumulative requirement.⁵⁷ The provision of up to 200 dwellings, including both market and 40% affordable housing is a clear benefit. The proposal would provide a mix of housing in terms of type and size of property catering for a variety of needs. Significant weight should be given to this benefit.
66. The appeal scheme would provide environmental benefits through proposed green infrastructure and planting. The habitats of greatest ecological value on site would be retained and enhanced, and there is potential for biodiversity improvements that are to be secured by planning conditions. The ecological information includes a Preliminary Ecological Appraisal, a Mammal Survey, Bat Report, Local Wildlife Site Impact Assessment, and a Biodiversity Impact Assessment.⁵⁸ The ecology information submitted indicates that the habitats of greatest ecological value would be largely retained and enhanced through the provision of new landscaping. The development would result in a net biodiversity gain and this can be achieved alongside an extension to the Local Nature Reserve, together with a lower risk of pollutants entering the Whitnash Brook.⁵⁹ The environmental benefits of the scheme attract moderate weight.
67. In conclusion, it is abundantly clear to me that there are only limited impacts to be weighed against a number of significant benefits – chief among them, but certainly not exclusively, is the provision of market and affordable housing. There are benefits in all three dimensions of sustainability, and the site is entirely suitable to accommodate residential development, in principle and of this scale. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

⁵⁵ NPPF paragraph 81

⁵⁶ CD56 paragraph 4.16

⁵⁷ CD56 paragraph 4.19

⁵⁸ CD12-CD16

⁵⁹ CD12 paragraph 3.1

Planning Conditions

68. The Council submitted a list of conditions.⁶⁰ The Appellant has agreed to all of the suggested conditions. I have considered these in the light of the advice in paragraphs 55 and 56 of the NPPF and the Government's PPG on the Use of Planning Conditions. Conditions 1, 2 and 3 refer to the submission of reserved matters and to required time limits. Conditions 4 and 5 are necessary to determine the scope of the application and for the avoidance of doubt. Condition 6 is required to ensure that the development is developed in a comprehensive manner. Conditions 7 and 9 are necessary to ensure that protected species and important habits are not harmed by the development. Conditions 8 and 10 are necessary to protect, enhance and/or restore habitat biodiversity. Condition 11 is required to safeguard health, safety and the environment in the event that contamination is found.
69. Condition 12 is necessary to ensure that the development is not unneighbourly. Condition 13 is required in the interests of highway safety and to protect the occupants of nearby residential properties from noise disturbance. Condition 14 is necessary to ensure high standards of sustainable design and construction. Condition 15 is required to ensure that a satisfactory means of drainage is provided, and Condition 16 is required to prevent the increased risk of flooding. Condition 17 is necessary to ensure the future maintenance of the sustainable drainage structures. Condition 18 is necessary to protect trees and other features during construction. Condition 19 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Conditions 20, 21 and 29 are required in the interests of visual amenity.
70. Condition 22 is necessary in the interests of fire safety and protection of public safety. Conditions 23 and 24 are necessary to ensure a satisfactory appearance of the development. Condition 25 is necessary to ensure that the housing meets the needs of the District. Condition 26 is necessary to ensure the creation of well-designed and sustainable dwellings. Condition 27 is necessary to ensure the balance of sustainable communities. Condition 28 is necessary to ensure adequate infrastructure is provided and in the interests of sustainable development. Conditions 30 and 31 are necessary in the interests of highway safety. Condition 32 is necessary in the interests of supporting sustainable modes of travel. Condition 33 is necessary in the interests of securing safe and secure car parking. Condition 34 is necessary to ensure appropriate mitigation against air quality impacts and protect the health and wellbeing of people in the area. Condition 35 is necessary to protect residents of the development from the adverse effects of noise.

Overall conclusion

71. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

⁶⁰ INQ LPA2

SCHEDULE OF PLANNING CONDITIONS (1-35)

Reserved Matters

- 1) Details of the appearance, landscaping, layout and scale of the development (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out in strict accordance with these reserved matters as approved.

Submission of Reserved Matters Timescale

- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

Commencement of Development

- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the final approval of the reserved matters, whichever is the later.

Approved Plans

- 4) The development hereby approved shall be carried out in accordance with the details shown on the following plans:
 - Location Plan AAH5485/18 Rev. A
 - Land Use Parameters Plan Phase 1 AAH5485-14 Rev. B
 - Access Drawing 20376-01 Rev E.

Illustrative Plans

- 5) The development hereby approved shall be carried out in general accordance with the details shown on the additional plans and documents:
 - Illustrative Masterplan Phase 1 AAH5485/13 Rev. B
 - Illustrative Parameters Plan Phase 1 and 2 AAH5485/17 Rev. B
 - Layout and Design Statement Rev B – RPS April 2020

Infrastructure Phasing Plan

- 6) Prior to the commencement of development, a strategy for the phasing of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The phasing strategy shall define: (a) the development to be delivered within each phase of the development; (b) indicative timescales; and (c) details of the coordination of housing and infrastructure delivery, including triggers for delivery of infrastructure and the arrangements to prevent interruption of delivery across phase and phase boundaries to include the provision of the spine road, accesses, public open space including SUDS, allotment provision, and acoustic screening of the development. Thereafter, the development shall be carried out in strict accordance with the phases established in the phasing strategy as approved by the Local Planning Authority.

Construction Environmental Management Plan (CEMP)

- 7) The development hereby permitted shall not commence on any phase of development until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority for that phase of development. The CEMP shall be compliant with the British Standard on Biodiversity BS 42020:2013 published in August 2013. In discharging this condition, the Local Planning Authority expect to see details concerning pre-commencement checks and monitoring for protected and notable species, and habitats as deemed appropriate. In addition, appropriate working practices and safeguards for other wildlife that are to be employed whilst works are taking place on site should be included. The CEMP shall include a timetable for the implementation of measures stated. The agreed Construction and Environmental Management Plan shall thereafter be implemented in full.

Landscape and Ecological Management Plan (LEMP)

- 8) No phase of development hereby permitted shall commence until a detailed Landscape and Ecological Management Plan (LEMP) for that phase of development has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include details of planting and maintenance of all new planting. Details of species used, and sourcing of plants should be included. The plan shall also include details of tree and hedgerow retention; habitat enhancement/creation measures and management, such as ponds, wildflower grasslands; and the provision of habitat for protected species. The LEMP shall also include details on soil management to make best use of the high quality soils on site - detailed guidance to inform this matter is available in Defra 'Construction Code of Practice for the Sustainable Use of Soils on Construction Sites'. Such approved measures shall thereafter be implemented in full.

Protected Species Contingency and Local Wildlife Site Protection

- 9) Prior to the submission of reserved matters, a scheme for the protection of the Local Wildlife Site shall be submitted to and approved in writing by the Local Planning Authority. The Local Wildlife Protection scheme shall include:
- Adequate measures to protect existing trees, scrub and ground flora of the adjacent Local Wildlife Sites during development.
 - Details of an appropriate barrier(s), such as a wire fence, to be erected before works start.

This area should include a sufficient buffer zone between the development/associated works and the boundary of the Local Wildlife Site. Thereafter, the approved protection scheme shall be implemented in full prior to any construction works on site and shall remain for the duration of the development.

Biodiversity Net Gain

- 10) No development shall commence unless and until a scheme ("the scheme") to ensure that there is a net biodiversity gain as a result of the development has been submitted to and agreed in writing by the Local Planning Authority. The net biodiversity impact of the development shall be measured in accordance

with the DEFRA biodiversity offsetting metric as applied in the area in which the site is situated at the relevant time and the scheme shall include:

(a) Proposals for on-site mitigation (full details of which will be provided in relation to each phase of development in accordance with Condition 6 of these conditions)

(b) A management and monitoring plan.

The scheme shall be implemented in full accordance with the requirements of the scheme.

Contamination not Previously Discovered

- 11) 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, and where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. 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.

Construction Management Plan

- 12) No development shall commence on site until a Construction Method Statement, which shall include the following:

(a) the parking of vehicles of site operatives and visitors;

(b) loading and unloading of plant and materials;

(c) storage of plant and materials used in constructing the development;

(d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

(e) wheel washing facilities;

(f) measures to control the emission of dust and dirt during construction;

(g) a scheme for recycling/disposing of waste resulting from demolition and construction works;

(h) details of measures for the control of noise during construction works;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction methods.

Construction hours

- 13) The hours of operation for construction works and deliveries shall be restricted to 07:30-17:00 Monday to Friday and 08:00-13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written permission of the Local Planning Authority. Furthermore, during term time delivery vehicles shall not be allowed to arrive on site between 08:30-09:30 or between 15:00 and 16.30 Monday to Friday.

Energy Statement

- 14) Prior to the commencement of each phase of development, an Energy Statement demonstrating how the development within that phase will achieve at least a 40% reduction in carbon emissions compared with code L 2013 Building Regulations, and details of how this will be monitored, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Site Wide Drainage Strategy

- 15) No development shall take place until a detailed surface water drainage scheme for the site, based on the principles contained within Flood Risk Assessment and Drainage Strategy revision B dated July 2020 by A.C. Lloyd, and based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority in consultation with the LLFA. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall include the following information:
- Demonstrate that the surface water drainage system(s) are designed in accordance with 'The SuDS Manual', CIRIA Report C753 through the submission of plans and cross sections of all SuDS features.
 - Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 40% (allowance for climate change) critical rainstorm to the Q Bar Greenfield runoff rate of 28.5 l/s.
 - Demonstrate the provisions of surface water run-off attenuation storage are provided in accordance with the requirements specified in 'Science Report SC030219 Rainfall Runoff Management for Developments'.
 - Demonstrate detailed design (plans, network details and calculations) of the surface water drainage scheme including details of all attenuation and outfall arrangements. Calculations should demonstrate the performance of the designed system for the critical storm duration for at least the 1 in 1 year, 1 in 30 year and 1 in 100 year plus climate change return periods. The calculations should be supported by a plan of the drainage network with all manholes and pipes labelled accordingly.
 - Provide plans and details showing the allowance for exceedance flow and overland flow routing. Water must not be directed toward properties nor flow onto third party land. Overland flow routing should look to reduce the impact of an exceedance event. Thereafter, each reserved matters phase submitted shall include a compliance statement together with appropriate detailed methodology to demonstrate that the drainage for that phase is in accordance with the overarching drainage strategy for the site.

Hydrological Model of Whitnash Brook

- 16) No development shall take place until a hydrological/hydraulic model of the Whitnash Brook adjacent to the development, and an independent review of this model, has been undertaken. The findings of the model and review should

be submitted to the Local Planning Authority and LLFA for approval to provide the appropriate level of confidence that the proposed attenuation basins will be located outside of the 1 in 1,000 year return period fluvial flood extent.

Drainage Maintenance Plan

- 17) No occupation and subsequent use of the development shall take place until a detailed maintenance plan, written in accordance with CIRIA C753, is implemented and provided to the Local Planning Authority giving details on how surface water systems shall be maintained and managed for the lifetime of the development. The name of the party responsible, including contact name and details, shall be provided to the Local Planning Authority and LLFA within the maintenance plan.

Tree Protection Scheme

- 18) No phase of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on that phase has been submitted to and approved in writing by the Local Planning Authority and has been put in place. The scheme must include details of the erection of stout protective fencing and be in accordance with British Standard BS5837: 2012 Trees in Relation to Design, Demolition and Construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the grounds levels be altered, or any excavation take place without the prior consent in writing of the Local Planning Authority. The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.

Details of External Lighting

- 19) Prior to its installation, a detailed lighting scheme (including street and pathway lighting) for each phase, including a programme for its delivery, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme. The scheme should follow the Institute of Lighting Professionals' Guidance Note 01/20: Guidance notes for the reduction of obtrusive light. The lighting shall be installed according to the approved details.

Sample Materials

- 20) No phase of development shall be carried out above slab level unless and until a schedule of the external facing materials to be used in that phase has been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.

Site Levels/Finished Floor Levels

- 21) No development other than site clearance and preparation works shall take place on any phase of the development until details of the finished floor levels of all buildings, together with details of existing and proposed site levels on that phase and the relationship with adjacent phases have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with these approved details.

Provision of Hydrants

- 22) No phase of development hereby permitted shall be occupied unless and until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire-fighting purposes for that phase of the site has been submitted to and approved in writing by the Local Planning Authority and the approved scheme has been implemented in full in strict accordance with the approved details.

Landscape Replacement Planting

- 23) The landscaping approved under Condition 1, shall be completed in all respects for that phase of development within the first planting season following the first use of the dwellings within that phase. Any tree(s) or shrub(s) removed, dying, or becoming in the opinion of the Local Planning Authority seriously damaged, defective or diseased within five years from the substantial completion of the scheme shall be replaced within the next planting season by tree(s) or shrub(s) of similar size and species to those originally required to be planted. All hedging, tree(s) and shrub(s) shall be planted in strict accordance with British 9 Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations.

Retention of Existing Trees/Hedges

- 24) The existing tree(s), hedges and shrub(s) indicated to be retained on the plans approved under Condition 1 shall not be cut down, grubbed out, topped, lopped or uprooted without the written consent of the Local Planning Authority. Any tree(s), hedge(s) or shrub(s) removed without such consent or dying, or being severely damaged or diseased or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, within five years from the substantial completion of development shall be replaced, as soon as practicable with tree(s), hedge(s) and shrub(s) of such size and species details of which must be submitted to and approved by the Local Planning Authority. All tree(s), hedge(s) and shrub(s) shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations (excluding hard surfaces).

Housing Mix

- 25) The type and size of dwellings submitted as part of any reserved matters application shall broadly accord with the following mix:

	One Bed	Two Bed	Three Bed	Four Bed +
Market mix	5-10%	25-30%	40-45%	20-25%
Affordable mix	30-35%	25-30%	30-35%	2-5%

Water Efficiency

- 26) No phase of development shall be carried out above slab level unless and until a scheme for that phase demonstrating how water efficiency measures have been incorporated into the development and shall demonstrate how, consideration has been given to the incorporation of grey water and rainwater recycling measures, shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved measures have been completed in strict accordance with the approved details.

Removal of Permitted Development Rights C3 to C4

- 27) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no permitted changes from C3 dwelling house to C4 Houses in Multiple Occupation shall be enacted within the development hereby permitted.

Provision of Allotments

- 28) Prior to the occupation of 50% of the dwellings, the allotments and associated infrastructure shall be laid out in full accordance with an Allotment Delivery and Management Plan that shall first have been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the location of the allotments, laying out of individual plots, infrastructure, boundary fencing, car parking areas and any proposed storage structures. Once laid out the allotments shall be appropriately managed, maintained and kept in a tidy condition for use as allotments for the lifetime of the development as set out within the Management Plan.

Boundary Treatment

- 29) The development hereby permitted shall only be undertaken in strict accordance with details of boundary treatment design and materials, which have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in full accordance with the approved details within three months of the first occupation of the development hereby permitted.

Site Access

- 30) Prior to first occupation of the first dwelling in the development, the site access shall be delivered in general accordance with drawing 20376-01 Rev E.

Traffic Management Scheme

- 31) Prior to first occupation of the first dwelling in the development, the proposed Traffic Management Scheme shall be delivered in general accordance with drawing 20376-02A.

Cycle Parking

- 32) Prior to the commencement of each phase of development, details of cycle storage, for that phase shall be submitted to and approved in writing by the Local Planning Authority. The agreed cycle parking shall be provided before first occupation of that part of the site and be retained as such thereafter.

Car Parking Plans

- 33) As part of any reserved matters applications submitted under Condition 1, plans showing car parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the agreed car parking provision shall be provided before first occupation of that part of the site and be retained as such thereafter.

Type 1 and 2 Air Quality Mitigation Measures

- 34) Prior to submission of any reserved matters application an appropriate scheme of Type 1 and 2 mitigation in accordance with Warwick District Council's Air Quality Supplementary Planning Document (January 2019) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented in full in accordance with the approved details.

Railway Noise Mitigation Measures

- 35) As part of the submission of any reserved matters relating to the layout of the dwellings adjacent to the railway line hereby permitted, a detailed scheme for the proposed means of noise attenuation from the adjacent railway line shall be submitted to and approved in writing by the Local Planning Authority in consultation with Network Rail. The scheme should ensure that proposed measures whilst acoustically effective are designed to minimise visual impacts and impacts upon ecological features and trees. The scheme shall be implemented in accordance with the approved details prior to the first occupation of any dwelling and shall be retained thereafter in perpetuity and any approved mitigation measures shall be implemented in accordance with the approved programme.

APPEARANCES

FOR THE APPELLANT:

Ms Thea Osmund-Smith of Counsel	Instructed by A. C. Lloyd (Homes) Ltd
<i>She called</i>	
Mr Keith Metcalfe BSc (Hons) MIOA	Director and Acoustic Consultant Sharps Redmore
Mr Dave Neale FIHE	Associate of DTA Transportation Ltd,
Mr David Green BSc (Hons) MRICS MRTPI	Director of Delta Planning

FOR THE LOCAL PLANNING AUTHORITY:

*Mrs Caroline Gutteridge LLB	Senior Solicitor, Warwick Legal Services
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** Participating in the Planning Obligation and Planning Conditions sessions only*

FOR THE RULE 6 PARTY: CPRE Warwickshire

Mrs S Cooper	Volunteer and Committee Member
Mr M Sullivan MRTPI CMILT	Technical Secretary

Interested Persons

Mr Matt Western MP	MP for Warwick and Leamington
Councillor Will Roberts	County and District Councillor
Councillor Terry Morris	Town and District Councillor
Councillor Neale Murphy	Town and District Councillor
Ms Dawn Cowgill	Local Resident
Ms Elaine Duffy	Local Resident
Captain Kenneth Thomas	Local Resident
Mrs Elizabeth White	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

Appellant Documents

ID APP1 Opening Statement
ID APP2 Email from Dave Pilcher to Dave Neale dated 17 July 2020
ID APP3 Closing Submissions
ID APP4 Appellant's Costs Application
ID APP5 Appellant's Reply to WDC Costs Response
ID APP6 Executed Section 106 Agreement dated 22 July 2021
ID APP7 Comments on the Revised NPPF dated 30 July 2021

Local Planning Authority Documents

ID LPA1 CIL Compliance Statement
ID LPA2 Costs Application Response
ID LPA3 Conditions

R6 Party Documents

ID CPRE1 Opening Statement
ID CPRE2 Examination Hearing Statement by Framptons Planning Ltd
ID CPRE3 Email from Heather Timms dated 17 June 2020
ID CPRE4 Planning Committee Report dated 16 July 2019 re application W 19/0691
ID CPRE5 Closing Submissions

Interested Persons Documents

IP1 Statement by Mr Matt Western MP
IP2 Statement by Councillor Will Roberts
IP3 Statement by Councillor Terry Morris
IP4 Statement by Councillor Neale Murphy
IP5 Statement by Ms Dawn Cowgill
IP6 Statement by Ms Elaine Duffy
IP7 Statement by Captain Kenneth Thomas
IP8 Statement by Mrs Elizabeth White and
ID White 1 Sound Meter Readings