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## Appeal Decision

Inquiry held on 16–18 May and 23–25 May 2023

Site visit made on 23 May 2023

**by Philip Mileham BA(Hons) MA MRTPI**

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

**Decision date: 12<sup>th</sup> July 2023**

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**Appeal Ref: APP/P3420/W/23/3314808**

**Land at Baldwins Gate Farm, Newcastle Road, Baldwins Gate, Newcastle Under Lyme ST5 5ES**

- 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 Richborough Estates against the decision of Newcastle-under-Lyme Borough Council.
  - The application Ref 21/01041/OUT, dated 3 November 2021, was refused by notice dated 14 October 2022.
  - The development proposed is the construction of up to 200 dwellings set within a community parkland.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the construction of up to 200 dwellings set within a community parkland at Baldwin's Gate Farm, Newcastle Road, Baldwin's Gate, Newcastle Under Lyme, ST5 5ES in accordance with the terms of the application, Ref 21/01041/OUT, dated 3 November 2021, subject to the conditions set out in the attached schedule at Annex A.

### Preliminary Matters

2. The proposal has been made in outline form with all matters reserved except for access. A parameter plan and an illustrative masterplan have been provided which are indicative and I have determined these on the same basis.
3. A legal undertaking has been submitted along with this appeal which secures a number of planning obligations and I discuss these later in my decision.
4. The final sitting day of the Inquiry was 25 May. It was agreed that the signed planning obligation was to be submitted by not later than 9 June and this was subsequently provided on 5 June.

### Main Issues

5. The main issues are:
  - Whether the proposed development would be in a suitable location for new housing having regard to the availability of public transport;
  - the effect of the proposed development on the character and appearance of the area; and
  - the effect of the proposed development on best and most versatile agricultural land.

6. The decision will also consider the benefits that would arise from the proposed development and this forms part of the planning balance as set out below.

## **Reasons**

### *Suitable location*

7. The appeal site is located on the edge of the village of Baldwin's Gate, outside of the settlement boundary for planning policy purposes. Baldwin's Gate contains a number of existing services and facilities, and my attention was drawn to an appeal decision on an adjacent site known as the 'Meadowbank' site<sup>1</sup> where the Inspector had identified the village as being reasonably well served in terms of facilities and concluded that the village was a sustainable settlement. I concur with the previous Inspector's assessment as the village still contains a range of facilities including a Primary School, petrol filling station, shop, village hall, doctor's surgery and a public house. As such, there is an acceptable level of services available for meeting the majority of day-to-day needs. However, there is no dispute between the parties that the village has limited employment and retail opportunities and therefore future occupiers of the proposed development would need to access these in other higher order settlements, such as Market Drayton and Newcastle Under Lyme.
8. The Council's main concern in terms of the location of the site is with regard to public transport serving the settlement. Baldwin's Gate is principally served by the Number 64 bus service which provides access to the larger nearby settlements of Newcastle Under Lyme and Market Drayton where a range of employment, shopping and leisure opportunities can be found. The bus service provides an opportunity for existing or future residents to access employment and leisure opportunities and other convenience and comparison goods shopping which are not otherwise available in the village.
9. The submitted evidence shows that the Number 64 bus service, in common with many others nationally, has seen services reduce following the coronavirus pandemic because of lower passenger demand. At the Inquiry, it was agreed by the parties that there are 6 buses per day to Newcastle Under Lyme and Market Drayton on weekdays and 5 per day to each location on weekends. The service times indicate that potential users would be able to get the bus to Newcastle Under Lyme before 9am and return after 5pm on weekdays. However, there is currently no service that would enable residents of Baldwin's Gate to reach Market Drayton before 9am on either a weekday or a Saturday. Although there remains a reduction in off-peak services to Newcastle Under Lyme and Market Drayton compared to the pre-pandemic position, the Number 64 service would still allow same-day return trips to these settlements. The Number 64 service would enable opportunities to access employment as well as shopping and leisure facilities in Newcastle Under Lyme which are not available within the village. Although there is no service to Market Drayton before 9am, I do not find this would be harmful due to the extent of employment and services available in Newcastle Under Lyme commensurate with it being the main urban centre in the Borough.
10. The appellant has proposed a financial contribution within the submitted unilateral undertaking towards improving the number of bus services. This would result in a rise to 7 and 8 buses Monday to Friday, and 6 and 7 buses on

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<sup>1</sup> CD11.1 – Appeal reference APP/P3420/A/14/2218530

Saturdays to Newcastle Under Lyme and Market Drayton respectively. Nevertheless, the Number 64 bus service, even with the proposed enhancements, would still not offer the level of services that were available prior to the pandemic. The proposed contribution would enable a Monday to Saturday morning commuter service to Market Drayton where there is not one currently available and this would provide a benefit to existing as well as future residents. However, as there is already the ability to undertake a daily return service to Market Drayton, I consider the extent of existing bus service provision to be acceptable in providing a genuine choice of a non-car mode of transport. As there is already a commutable service available to Newcastle Under Lyme, the contribution would not be necessary to make the development acceptable in planning terms. Furthermore, even if it were necessary, it would only support the enhancements to the service for a period of 5 years and it is unclear what may happen to the additional service beyond this period.

11. Whilst concerns were raised about the future of the bus service, evidence put forward indicates the review of the bus service has been postponed until September 2023. I therefore find no clear evidence of any imminent withdrawal or amendment to the bus timetable. As such, I can only base my findings on the evidence of bus services currently before me. In doing so, I find that future occupiers would have access to an acceptable level of bus provision for employment, shopping and leisure opportunities in Newcastle Under Lyme.
12. Turning to bus services for accessing education, a commercial bus service is available from the village for pupils attending Madeley High School. Whilst there is no evidence before me of the level of patronage of the high school bus service, the fact that it is being operated on a commercial basis would indicate there is currently sufficient patronage for it to remain operational. The appellant's evidence also demonstrates that the Number 64 bus to Newcastle Under Lyme would also allow access to Newcastle Under Lyme School and Blackfriars Academy Secondary school. The Number 64 bus utilises the main bus station as its destination which would be less convenient than a school bus which would take pupils directly to school. Using the Number 64 for schools in Newcastle Under Lyme would also require pupils to walk around 8 mins to and from the bus station. However, I do not find this would be an unreasonable walking distance. As such, this provides a further opportunity to maximise the use of non-car modes of transport to access a key service (secondary education) which is not otherwise available in the village.
13. Paragraph 105 of the National Planning Policy Framework (the Framework) states, amongst other things, that significant development should be focussed on locations which are or can be made sustainable, through offering a genuine choice of transport modes. The services and facilities available within the village would enable future occupiers to purchase a limited range of top-up supplies from the local shop, access the primary school and utilise the bus to higher order settlements. However, the appeal proposal would undoubtedly result in some additional private vehicle trips for employment, larger weekly shopping trips and leisure activities. This is because the bus services would not be able to meet every individual's particular needs nor would a bus taking a pre-defined route be able to stop directly at every conceivable major employment, shopping or leisure facility in the area. It would also be challenging to utilise the bus service to undertake a larger weekly shopping trip.

14. However, paragraph 105 of the Framework goes on to reflect the fact that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The existing bus service would enable acceptable peak-time services, weekend services and sufficient off-peak services to higher order centres. Although this level of service may be less frequent than in a larger urban area such as Newcastle Under Lyme itself, in the context of a rural village the availability of bus services from Baldwin's Gate provides the choice to utilise a non-car mode of transport.
15. The existing level of bus service would therefore provide a genuine choice for future occupiers. The Framework does not require public transport options to be as convenient as private cars, but to offer a genuine choice as well as maximising sustainable transport solutions. I am satisfied that an acceptable level of choice would be available.
16. In light of the above, I conclude that the proposal would be in a suitable location for new housing having regard to the availability of public transport. As such, it would accord with Policy SP3 of the Newcastle Under Lyme and Stoke on Trent Joint Core Spatial Strategy (2009) (the CSS) which seeks to maximise the accessibility of, amongst other things, new residential development. The proposal would also accord with paragraph 105 of the Framework in this regard for the reasons set out above.

#### *Character and appearance*

17. The appeal site is currently a working dairy farm including a farmhouse and courtyard associated with the farmstead. The appeal site also includes a large area of farmland which at the time of my visit was predominantly laid to pasture. A large mature tree is located within the centre of the site and there are several large specimen trees located on or close to the northern and western site boundaries. The site is adjacent to residential development to the east, including the site known as Meadowbanks which I refer to above. The site is bounded to the south by the A53 road which exerts visual and audible influences over the frontage of the site.
18. The Council's Landscape Character Assessment (2022) (the LCA) identifies the site as being within an area defined as settlement fringe. The LCA goes on to subdivide each character area down to a more granular character type level and the appeal site falls within Local Character Area C3 – Whitmore Ancient Redland Farmlands (LCT3). LCT3 has been identified within this assessment as having a 'medium sensitivity' to change, one of 9 character areas which have this designation in the LCA.
19. The site includes a number of features including part of the historic field pattern and a network of hedges separating the field parcels which make a positive contribution to the character of the area. These features along with the pasture land itself, the extensive inward and outward views and the openness of the landscape are features which indicate that the site would be more susceptible to change. However, the poorly integrated settlement edge arising from adjacent residential development, the limited other historic features present on the site along with the condition of hedgerows are factors that would make the landscape less susceptible to the development scenario considered by the LCA.

20. The appeal site is adjacent to residential development at Meadowbanks and Sandyfields which exert a significant visual influence over the eastern part of the site. In particular, the rear gardens, visible roof planes and domestic paraphernalia of the adjacent properties at Meadowbanks visually dominate the land to the east of the main central farm track. I therefore disagree with the Council's position that the site, as a working farm, is wholly rural. I find the eastern part of the site has a clear sense of settlement fringe due to the visual effects of the adjacent residential development and the extent of visibility.
21. The larger area of pasture to the west of the site has a distinctly more open rural character and does not experience the level of dominance resulting from the development at Meadowbanks and Sandyfields as the eastern part of the site. As such, the sense of settlement fringe to the west is lessened and consequently the impact of the proposal on the western extent of the site would be greater than that for the east. The presence of a farm might usually indicate the presence of a strong rural character, however in this specific case, I find that the influence of the adjacent settlement to the east, the A53 road, and the linear development along Madeley Road diminishes the extent of the rural character of the site. As such, I do not ascribe high value to the site within the landscape as the Council does, and I fall closer to the appellant's position of moderate.
22. The Council considers that Baldwin's Gate Farm provides a gateway characteristic to the village contributing to its sensitivity. The farm would be one of the first features visible when travelling along the A53 into Baldwin's Gate from the west. The illustrative masterplan shows that residential development would be sited to the west of the farmhouse, altering the visibility of the farmhouse and courtyard when approaching by road. The parties do not consider the residential development on Madeley Road to the west of the site to be characterised as part of the settlement. However, the linear alignment of residential properties nonetheless frame part of the western extent of the site partially impacting the ability for glimpsed views into the appeal site from the A53. The proposed block of residential development to the west of the site shown on the illustrative masterplan would obscure the farmhouse when arriving from the west. However, the proposed access roundabout in combination with the retention of the farmhouse and courtyard would nonetheless provide a gateway reference point when arriving into the village. As a result, the proposal would still provide a gateway characteristic and therefore there would be no harm in this regard.
23. The Council considers that LCT3<sup>2</sup> identifies farmsteads arranged around a loose or rectangular courtyards as being characteristic of a working rural farm which contributes to its sensitivity. Baldwin's Gate farmhouse is locally listed and the illustrative plan shows that the farmhouse would be retained along with the courtyard. The more modern milking barns and silo on site also provide visual reference points indicating the site's use. Although the appeal development would result in the older milking barns to the east of the farmhouse, the modern barns and the silo being removed, the indicative masterplan shows that the frontage of the site following the removal of these buildings and structures would be more visually open. This would allow views of the farmhouse and courtyard when travelling away from Baldwin's Gate towards the south-west on the A53. The farmhouse and courtyard would still be visually

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<sup>2</sup> CD10.17 landscape proof of evidence - paragraph 4.23

distinct as historic features and thereby able to be read as a former farmstead when appreciated against the context of the proposed development. I do not therefore accept that the appeal development would diminish the legibility of the farmhouse and courtyard as the Council maintains but would still provide some visual reference to its past use. As such, the proposal would not be harmful in this respect.

24. The Council's assessment of the sensitivity of the proposal on LCT3 raised concerns that at years 0 and 15, the proposal would result in the harmful continuation of a harsh straight edge to the settlement by projecting a similar built form as per the Meadowbanks scheme. The illustrative masterplan, which could be subject to a condition for reserved matters to accord with, shows residential development in two distinct parts of the site with landscaped areas and open spaces to the north of the site. Although significant open space would be provided through the central areas of the scheme, this would be interpreted as being open space as part of a housing scheme rather than as an area of undeveloped farmland. However, the open space would nonetheless break up the residential development and would allow some views deeper into the site. Furthermore, the northern edges of the proposed residential block on the illustrative masterplan would not be completely linear, with the western block having a curved northern tip and a significant area of open space up to the site boundary. I find that these measures in combination would not result in the harmful continuation of a straight edge to the settlement. Furthermore, the Council would also have the ability to address matters relating to design and layout as part of the future consideration of reserved matters.
25. The Council considers the magnitude of change on the site from the appeal proposal to be at the highest level on their assessment scale. The proposal would introduce residential development adjacent to existing residential development. Whilst the proposal would significantly alter the character of the site, residential development would over time, experience some reduction in effect. The proposed open space and landscaping on site would become more established and serve to soften the effect of the proposal. Notwithstanding this, over the longer term there would nonetheless remain a residual level of effect by virtue of the presence of the proposed development and the permanent loss of pastureland. As a result, I do not consider the magnitude of change to be at a level of harm commensurate with the highest scale level and would fall closer to a moderate effect.
26. The appeal proposal would undoubtedly result in a significant change to the landscape. I find that the effect on the appeal site would be closer to moderate rather than large (the top of scale used by the Council) due to the existing impacts on the eastern part of the site and the presence of features demonstrating a lower level of susceptibility to change than the Council identifies. However, even a moderate effect on the appeal site at year 0 and the resultant effect at year 15 post-completion would still be at a level that would result in conflict with Policy CSP4 of the CSS which seeks to ensure that development avoids and mitigates the impact on landscape character.
27. In light of the above, the proposal would result in harm to the character and appearance of the area. It would therefore conflict with Policies CSP1 and CSP4 of the CSS, Policies N17 and N21 of the Newcastle Under Lyme Borough Council saved Local Plan (2003) (LP) and Policy NE1 of the Chapel and Hill Chorlton, Maer, Aston and Whitmore Neighbourhood Plan (2019)(NP) which

seek to avoid adverse impacts on landscape character, avoid unacceptable visual harm and the loss of landscape elements that contribute to local distinctiveness. Furthermore, it would fail to support the restoration of the landscape and ensure new development compliments the landscape setting and character of the area.

28. The proposal would also conflict with paragraph 174(b) of the Framework which seeks to recognise the intrinsic character and beauty of the countryside.

*Best and Most Versatile Agricultural Land (BMVAL)*

29. The appeal site is located on an area identified as being comprised of grades 2 and 3a agricultural land. Agricultural land within Grades 1, 2 and 3a are classified as being 'Best and Most Versatile Agricultural Land' (BMVAL) and paragraph 174(b) of the Framework requires recognition of the economic and other benefits of BMVAL when considering development proposals.
30. The BMVAL found at Baldwin's Gate Farm is used for pasture in connection with the existing Dairy Farm business and thereby the growing of grass rather than other crops. The BMVAL is of value to the economy as it is currently supporting the dairy industry which is part of our wider food chain. The BMVAL also performs a visual role in the rural landscape through the pastureland and this would form an 'other' benefit of BMVAL that paragraph 174(b) of the Framework requires consideration of.
31. The BMVAL identified on the Agricultural Land Classification (ALC) Extract Map<sup>3</sup> shows the main area of best grade land (grade 2 – very good) within the holding being focussed on Baldwin's Gate farm. Despite the loss of around 11 hectares of BMVAL that would arise because of the appeal proposal, a further significant amount of land (around 77 hectares) would remain within the same landholding at Baldwin's Gate that could support dairy farming.
32. Evidence presented by the appellant demonstrates that there are parts of the appeal site which are shown on the soil maps as being grade 3 (not subdivided). Following a more detailed classification survey by the appellant, around 84% of the site was found to be consistent with grades 2 and 3a BMVAL. Although much of the land to the west of the Borough including that outside the site boundary is identified on the ALC maps as a mix of grade 2 and grade 3 land, it has not been subject to further survey. Therefore, the evidence does not indicate how much of the remaining landholding might or might not be BMVAL. However, the evidence does indicate that the quality of land found at Baldwin's Gate farm is not unusual for the west of the Borough and that many sites adjacent to communities are likely to contain a proportion of BMVAL.
33. Therefore, I do not find the Council's argument credible in regard to whether all or the bulk of BMVAL within the landholding would be lost as a result of the appeal proposal. The Council has provided no contrary evidence to suggest that the appellant's evidence from its agricultural expert is inaccurate. Furthermore, the Council state in closing submissions at paragraph 59 that they accept there will likely be areas of grade 3(a) land and even grade 2 land not identified in the ALC maps in their general vicinity.

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<sup>3</sup> CD10.11 – Appendix B

34. During the Inquiry the Council raised concerns that the loss of BMVAL would result in the closure of the dairy farm. The appellant has provided evidence to indicate that the dairy farm activity may cease in future for other reasons regardless of the outcome of this appeal. The retention of the farm for dairy uses rather than for the raising of beef cattle or other agricultural uses as a component of landscape character would have limited distinction in terms of its value. In visual terms, raising cattle for beef or for dairy would be difficult to distinguish in terms of the role that the BMVAL plays in maintaining an agricultural landscape.
35. Turning to the harm arising from the loss of BMVAL across the wider Borough, I find this would be more limited. Whilst the loss of BMVAL on the appeal site itself would be significant in isolation, the Council considers that the loss of BMVAL would not be inevitable in delivering the emerging Local Plan's housing strategy. Although the Council presented evidence to demonstrate the potential number of dwellings that could come forward through the emerging Local Plan process on land not identified as BMVAL, this was undertaken on a 'policy off' basis. Therefore, it did not reflect the fact that a number of sites presented as not being BMVAL were also within designated Green Belt or may have other policy reasons for not being appropriate.
36. Despite the extent of BMVAL that may remain in the area, the appeal proposal would nonetheless result in the loss of around 11 hectares of BMVAL (around 8 hectares of grade 2 and 3 hectares of grade 3a) on the site out of a total site area of around 13 hectares. This would represent a significant proportion of the overall site area that would be lost which would not contribute or enhance natural capital, including BMVAL that paragraph 174 of the Framework requires.
37. In light of the above, the proposal would result in some harm arising from the loss of BMVAL. As such, it would fail to accord with Policy HG1 of the NP which indicates that in order to be considered in a sustainable location, development must not, amongst other things, involve the loss of BMVAL.
38. It would also fail to accord with paragraph 174(b) of the Framework due to the effect of the loss of the BMVAL on food production and its contribution to the landscape.

## **Other Matters**

### *Spatial strategy*

39. Baldwin's Gate is identified in the CSS as a village within the settlement hierarchy and the appeal site would be located outside of the village envelope. Policy ASP6 of the CSS sets out the approach to locating new housing in the rural area and identifies a maximum of 900 net additional dwellings to be provided on brownfield land within the village envelopes. However, Baldwin's Gate was not identified as a settlement to accommodate any of these dwellings. Similarly, Policy H1 of the LP indicates that permission for residential development in the countryside will only be given where it is located within one of the village envelopes. Due to the proposal being located outside the village envelope, it would fail to accord with Policy ASP6 of the CSS and Policy H1 of the LP.

40. During the Inquiry the Council sought to exclude consideration of Policy HG1 of the NP as a policy for the supply of housing from the agreed position in the statement of common ground. However, Policy HG1 clearly sets out a list of policy requirements which include that housing would be supported within the village envelope or for infill housing within a built frontage. As such, I do not accept the Council's position in this regard and Policy HG1 is clearly one of the policies for the supply of housing as it provides locational guidance which would restrict residential development to particular locations. The proposal's location outside of the village envelope would therefore contradict Policy HG1 of the NP. However, due to the age of the plan being over 2 years old, the parties agree that paragraph 14 of the Framework is not engaged and the NP is not afforded any greater protection by the Framework.

#### *Housing Land supply*

41. There is agreement between the parties that the Council is currently unable to demonstrate a 5 year housing land supply of deliverable sites as required by paragraph 74 of the Framework. The Council's stated position during the Inquiry is that 4.84 years can be demonstrated. However, there is disagreement as to the extent of the shortfall, which the appellant considers to be closer to 3.66 years as a result of the inclusion of a proportion of student accommodation, the inclusion of sites where the evidence for their deliverability is questioned and the justification for the rate of windfall allowance that the Council has adopted.
42. The Council has included an allowance of 349 dwellings from student accommodation in the Borough and has provided evidence<sup>4</sup> that student numbers at nearby Keele University have been rising since 2013/14. The appellant has provided evidence which indicates that plans by the University expect further rises in student numbers in future. Although the PPG does not explicitly state that it is necessary to take into account the growth in student numbers in calculating the contribution from student accommodation, such information is capable of being a valid component of an assessment of the amount of accommodation remaining or to be released into the general housing market. In the context of a rising student population, any new student accommodation provided could be outpaced by future growth in student numbers.
43. The Council's evidence shows growth in full-time students at Keele University has increased by around 1,400 students between 2013/14 and 2021/22. As such, the increasing number of students would take up the additional capacity created in student accommodation. Whilst this may limit further losses of residential accommodation in Newcastle Under Lyme for student use, in this case there is insufficient evidence to conclude whether new purpose built student accommodation would result in any meaningful contribution to housing being released back into the general housing market.
44. In relation to the disputed sites within the land supply, the proposed Care Home at Langley House, Sandy Lane, accounts for a contribution of 11 homes. I recognise that the site can provide accommodation under Class C2 of the Use Classes Order for residents with long-term need bedspaces as well as short-term respite care. However, there is no clear evidence before me that even the long-term bed spaces indicated would release a resident's home back into the

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<sup>4</sup> CD10.18 - figure 6 – Housing Land Supply proof of evidence

housing market as such residents may have partners or family remaining in their homes.

45. In relation to the redevelopment of the Seabridge Community Education Centre site for 55 dwellings<sup>5</sup>, I note that outline planning permission has been granted, that the site is in public ownership and that demolition has taken place. The existence of pre-application correspondence, whilst giving a positive indication of development aspirations for the site, does not provide sufficient evidence that there is a clear timetable for the submission of reserved matters. Furthermore, there is no indication that any progress has been made in relation to the discharge of any of the pre-commencement conditions or any agreement to confirm the delivery intentions of the development such as anticipated start on site or build-out rates which the PPG<sup>6</sup> suggests.
46. The Council's windfall allowance of 93 dwellings per annum in years 4 and 5 relies upon windfall from 2016 which, according to the appellant and not disputed, included three large-scale office to residential conversions totalling 211 dwellings. However, there is no clear evidence before me that windfalls of such scale have occurred since or are likely to come forward again at a similar rate. If the windfall completions were averaged over the full period they are available (2008-2022)<sup>7</sup>, this would equate to around 60 dwellings per annum. Even with the inclusion of the 2016 year which contained the large office to residential conversions described above, the rate currently relied upon by the Council would be higher than the long-term average for which the completion rate is known.
47. Taking all of these points in the round, whilst there is some evidence which points to the Council's land supply shortfall being greater than their current stated position, there is insufficient evidence to conclude, even if it were necessary, on what the figure should be.

#### *Non-designated heritage asset*

48. Baldwin's Gate Farmhouse is identified as a locally listed building and thereby a non-designated heritage asset. The Farmhouse is being retained along with its courtyard barns. Whilst the proposed access road would remove one of the barns to the east of the site which has previously been altered, there would be sufficient separation between the access and the farmhouse and courtyard to avoid any adverse effect on its setting. In light of these factors, I am satisfied there would be no harm to the significance of non-designated heritage assets.

#### *Other Material Planning Considerations*

49. Concerns have been raised by interested parties that the proposal would place additional pressure on public services including on the local Doctor's surgery and on the availability of pupil places in the local Primary school. Additional school places and primary care capacity would be addressed via contributions secured by the unilateral undertaking.
50. Concerns were also raised that opportunities for wildlife would be lost. However, proposals for biodiversity net gain could be secured by the suggested conditions if I were to allow the appeal.

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<sup>5</sup> Council planning reference 19/00515/OUT

<sup>6</sup> Paragraph: 007 Reference ID: 68-007-20190722

<sup>7</sup> CD10.12 - table 6.2 - appellant's proof of evidence - Housing Land Supply

51. My attention has also been drawn to comments from Severn Trent Water which it is alleged do not relate to the appeal scheme. However, the connection of the proposal's water supply would be a matter for the water utility provider to ensure connection, whilst the approach to wastewater discharge and foul drainage could be addressed through the imposition of a planning condition to secure their details and subsequent agreement. As such, this has not altered my decision.

### **Planning balance**

52. There is common ground between the parties that the Council cannot currently demonstrate a 5 year housing land supply. A significant amount of Inquiry time was spent debating various inclusions within the 5 year land supply. Whilst there is disagreement over the extent of the shortfall, the evidence on the shortfall is inconclusive. However, for the purposes of my decision even if I take the Council's best-case position, only 4.84 years housing land supply can be demonstrated. Where a local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, the policies which are most important for determining the application are deemed out of date for the purposes of paragraph 11 of the Framework. The presumption in favour of sustainable development therefore applies. For decision-taking, this means granting planning permission unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

### *Benefits*

53. The appeal proposal would provide a number of benefits. It would make a significant contribution to meeting housing needs in the Borough where there is currently an identified shortfall. The proposal would also provide 25% of the proposed dwellings as affordable housing in an area where there is significant unmet need for affordable housing. There are around 1,677 households on the Council's waiting list for homes and completions for affordable dwellings have not fully met this need. I therefore afford substantial weight to the provision of both market and affordable housing that would be delivered by the proposal.
54. The proposed Primary School contribution would provide additional school places, which would allow the school to become a full single form entry school rather than the current situation which has mixed age classes and thereby has a wider benefit to the school. The scheme would also provide funding for primary care at Baldwin's Gate surgery. Public open space above policy requirements would also be provided. The scheme would provide highway safety improvements albeit these are of limited weight as ensuring highway safety would be a requirement of all development.
55. The appeal proposal would result in economic benefits by virtue of the jobs created through the construction of the proposed dwellings and in the accompanying materials supply chain, albeit these would last only for the duration of the construction period. Social benefits would occur through future residents contributing to village activities and supporting the existing services within Baldwin's Gate. Environmental benefits would arise through the proposed biodiversity net gain (BNG) which the appellant identifies at around 42% for habitats and 34% for hedgerow units. This would be significantly in

excess of the Government's expectations that development secures at least a 10% increase in BNG which I afford moderate weight. Due to the scale of the proposal, I afford the economic, social and environmental benefits moderate weight.

#### *Adverse effects of the proposed development*

56. Whilst the proposal is acceptable in terms of the opportunities to utilise non-car modes of transport via the local bus service, adverse effects would still arise as a result of future residents of the proposal out-commuting by private vehicles for employment, leisure and shopping which cannot be met within the village. This is because although the use of the bus service remains a choice, there would still be future residents who will choose to use private vehicles for trips regardless of the public transport on offer.
57. As identified in the main issues, the proposal would result in harm to the character and appearance of the area. Further adverse effects would also arise due to the loss of BMVAL on the site, as well as the effect of the loss of BMVAL on the economy and its use as pastureland.
58. There would be further adverse effects as a result of the conflict with policies of the development plan in relation to the supply of housing and the spatial strategy for the area including those of the made Neighbourhood Plan.
59. Collectively, the adverse effects of the proposal are afforded moderate weight.

#### *Conclusion*

60. The appeal proposal would accord with Policy SP3 of the CSS in relation to the suitability of the location in relation to public transport. However, there would be conflict with Policies CSP1 and CSP4 of the CSS, Policies N17 and N21 of the LP and Policy NE1 of the NP in relation to the harm to the character and appearance of the area. Having regard to the findings of the LCA which identifies a moderate capacity for change, the effect of adjacent development and the extent of open space and landscaping proposed, the extent of harm would be moderate. There would also be conflict with Policy HG1 of the NP regarding the loss of BMVAL, and conflict with Policies H1 of the LP, ASP6 of the CSS and HG1 of the NP due to the location of the site outside the village envelope boundary of Baldwin's Gate. As a result, the proposed development would fail to accord with the development plan for the area when read as a whole.
61. However, having regard to the agreed position that that the Council cannot demonstrate a 5 year housing land supply, I find that the conflict with the policies for the supply of housing and the spatial strategy carries limited weight in this instance.
62. Whilst the proposal would not accord with paragraph 174(b) of the Framework in relation to the landscape impacts, it is common ground that the appeal site does not fall within any statutory or local designation relating to landscape quality. Although there would also be conflict with paragraph 174(b) in relation to the loss of BMVAL, the proposal would otherwise accord with the Framework when read as a whole.
63. The Council considers that the shortfall in housing supply will be short-lived and therefore not persistent as a result of the emerging Local Plan seeking to

rectify this position. However, the Council's timetable for the adoption of the plan appears optimistic on the basis that the pre-submission consultation period has not yet commenced and the plan has not been submitted for examination. As such, I afford limited weight to the emerging Local Plan at this time. Furthermore, any sites that may eventually be allocated through the new Local Plan to meet identified housing needs will still require progression through the development management process and thereby take some time to come on-stream. As such, the duration of the shortfall is likely to be more persistent than promoted by the Council.

64. On the other hand, the appeal proposal would result in substantial benefits in terms of the overall contribution that the dwellings would make to addressing the identified shortfall in housing land and from the contribution to meeting affordable housing needs in the Borough. The proposal would also have moderate economic, social and environmental benefits. The proposal would also provide for additional school pupil places which would support the creation of a full single form entry Primary School and is afforded moderate weight. There would also be highway safety improvements and a contribution towards bus passes for future residents, albeit these are afforded limited weight as ensuring highway safety is an expectation for all development, whilst the bus pass scheme will only be of relevance to some future occupiers.
65. Therefore, I find that the adverse effects of the proposal arising from harms to character and appearance of the area, loss of BMVAL, extent of potential out-commuting and the conflict with policies for the supply of housing and the spatial strategy are not sufficient to significantly and demonstrably outweigh the benefits as set out above.
66. I therefore conclude overall that the other material considerations arising from the substantial and other benefits justify a decision not in accordance with the development plan in this case.

### **Legal undertaking**

67. The appeal is accompanied by a unilateral undertaking made under section 106 of the Town and Country Planning Act (1990) that would secure 25% of the dwellings as affordable housing (50 units). A contribution of £620 per dwelling would be made to primary healthcare. Contributions would also be made on a per dwelling basis to primary and secondary education utilising an agreed formula. These are all required in order to provide mitigation towards local infrastructure and are necessary to make the development acceptable.
68. As I find there would be no harm in terms of the suitability of the location having regard to public transport, the proposed sustainable travel obligation to bus service enhancements is not necessary to make the development acceptable in planning terms. The proposed contribution of £3,000 for the County Council to provide a County Monitoring Fee is necessary in order to ensure that the progress of the scheme in relation to the timing of obligations is kept under review. The monitoring fees are necessary to make the development acceptable in planning terms and fairly and reasonably related in scale and kind.
69. The undertaking includes an obligation of £10,000 towards the monitoring of a travel plan. Notwithstanding my findings in relation to the bus contribution, the travel plan is necessary in order to minimise private vehicle usage arising from

the proposal. As a result, the Travel Plan is required by condition and consequently it is necessary for this to be monitored. The travel plan monitoring fee is therefore necessary to make the development acceptable in planning terms and fairly and reasonably related in scale and kind.

70. The obligation would also provide for open space maintenance obligations and land which would accord with adopted planning policy and secure the ongoing management of the proposed open space which is necessary in order to make the development acceptable in planning terms and fairly and reasonably related in scale and kind. A proposed contribution of £100,000 towards an off-site Multi-Use Games Area (MUGA) is necessary in order to mitigate the effects of the development and accords with the Council's Open Space Strategy Supplementary Planning Guidance which reflects the Fields in Trust (FiT) guidance that developments of this scale contribute towards a MUGA.
71. Having regard to the evidence before me, including the Council's Community Infrastructure Levy (CIL) compliance statement, I am satisfied that with the exception of the bus service contributions the submitted legal undertakings are necessary to make the development acceptable, are directly related to the proposal and fairly and reasonably related in scale and kind to the development. As such, they would accord with the requirements of paragraph 57 of the Framework and Regulation 122 of the CIL Regulations (2010).

### **Conditions**

72. I have considered the conditions included in the schedule which were discussed and updated following a round table session during the Inquiry against the tests set out at paragraph 56 of the Framework, only including those which meet those tests subject to any minor amendments for clarity, consistency and enforceability. There are a number of pre-commencement conditions necessary which the appellant has agreed to in writing as required by the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
73. In addition to the standard requirements for the identification of the approved plans, and the timing of commencement of development, a condition requiring the submission of Reserved Matters is necessary in order to provide an acceptable form of development. A condition is also required to provide a phasing plan if there is to be more than one phase of development which is necessary due to the way the site may come forward.
74. Conditions 6, 7 9 are necessary in the interests of pedestrian and highway safety. Having regard to the first main issue above, condition 8 is required in the interests of securing sustainable travel measures.
75. In order to ensure that the proposal does not result in harm to the living conditions of nearby occupiers, conditions 9, 10, 11 and 12 are necessary to secure a Construction Environmental Management Plan, to control the use of machinery and construction traffic, to secure noise and air quality mitigation measures. I have amended condition 11 to include a suitable trigger. I have also amended condition 12 to remove the costs for the requirement for the bus pass as this is not necessary. Whilst I find that the proposal would be in a suitable location having regard to available public transport, the provision of a bus pass is necessary in order to maximise the usage of the existing bus services, and is thereby necessary to make the development acceptable.

76. Conditions 13, 14, 15, 16 and 17 are necessary in the interests of human health in regard to contamination.
77. Condition 18 is required to ensure appropriate infrastructure is provided for electric vehicle charging.
78. Condition 19 is necessary to ensure that foul and surface water drainage details are provided. In the interests of flood risk, condition 20 is necessary to ensure that the proposed development would not result in flooding on or beyond the site.
79. In the interests of archaeology, condition 21 is necessary to secure a scheme of investigation, and depending on results, carry out a programme of works.
80. In the interests of ecology, condition 22 and 23 are necessary to secure a tree protection plan has been provided and approved, and that an arboricultural method statement has been similarly submitted and approved. Condition 26 is also necessary to ensure that biodiversity mitigation measures are secured.
81. Condition 24 is necessary to specify the minimum amount of open space to be provided on the site, whilst condition 25 is necessary to provide the details of the open space.

### **Conclusion**

82. For the reasons given above I conclude that the appeal should be allowed.

*Philip Mileham*

INSPECTOR

## **APPEARANCES**

COUNSEL FOR THE APPELLANT:  
Mr Satnam Choongh

FOR THE APPELLANT:  
Mr Jonathan Berry BA (Hons), DipLA, CMLI, AIEMA, M.Arbor.A  
Mr James Parker – Director – Hub Transport Planning  
Mr Ben Pyecroft – Emery Planning  
Mr Alan Corinaldi-Knott – Senior Associate - Knights  
Ms Louise Thorne BA (Hons) BTP MRTPI – Partner - Knights

COUNSEL FOR THE LOCAL PLANNING AUTHORITY:  
Mr Horatio Waller

FOR THE LOCAL PLANNING AUTHORITY:  
Mr Stuart Ryder BA (Hons) CMLI  
Mr Adam Bennett  
Mr Christopher Whitehouse BSc (Hons) MRICS – Managing Director - NextPhase

INTERESTED PARTIES:  
Councillor Neil Walker – Vice Chairman, Whitmore Parish Council  
Mrs Walker – Resident of Baldwin's Gate

## **DOCUMENTS**

Appellant's opening statement  
Council's opening statement  
Newcastle Under Lyme Borough Council - Rural Area Topic Paper – June 2021  
Copy of Decision Notice - 19/00254/FUL – Langley, Sandy Lane, Newcastle Under Lyme  
Technical note No.5 – Number 64 Bus service provision  
Extract of Map 33 – Proposed village envelope for Baldwin's Gate  
Appellant's closing submissions  
Council's closing submissions  
Schedule of draft conditions – updated  
Signed Unilateral Undertaking

## **Annex A**

### **Schedule of Conditions**

1. Details of the appearance, layout, scale and landscaping of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development hereby approved is commenced and the development shall be carried out as approved.
2. Application for approval of the reserved matters must be made to the Local Planning Authority not later than three years beginning with the date on which this permission is granted.
3. The development hereby permitted shall begin not later than the expiration of two years from the date of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with Drawing RE-BWGT-SLP-01: Site Location Plan. Any reserved matters application(s) pursuant to this outline planning permission shall be in accordance with Drawing RCH101-3502 Rev A: Parameters Plan, Drawing RE-BWGT-BP-01 Rev A: Block Plan and the principles set out in the Design and Access Statement prepared by Urban Design Box and dated November 2021.
5. If there is to be more than one phase of development, a phasing plan must be submitted as part of the reserved matters.
6. No greater than 50 dwellings hereby permitted shall be occupied until the access roundabout has been provided in accordance with Drawing No. T21558 001 Rev C, and no greater than 50 dwellings hereby permitted shall be served from the construction and first phase development access as shown on Drawing T21558.016.

The construction and first phase development access, as shown on Drawing T21558.016, shall be stopped-up to traffic on completion of the access roundabout, with the hedgerow and footway along the site frontage reinstated accordingly.

No greater than 50 dwellings hereby permitted shall be occupied until junction improvements have been undertaken for the following junctions:

- A51 Stone Road / A53 Newcastle Road Priority Junction as shown on Drawing T21558 006 Rev A
  - A51 Nantwich Road /A53 Newcastle Road (N) Priority Junction as shown on Drawing T21558 007.
7. Works for the puffin crossing on the A53 identified on Drawing Nos. T21558 001 Rev C & T21558 002 Rev B shall be completed prior to occupation of any dwelling.
  8. No part of the development hereby permitted shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning

Authority. The Travel Plan shall set out proposals (including a timetable) to promote travel by sustainable modes which are acceptable to the Local Planning Authority. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually on each anniversary of the date of the planning consent to the Local Planning Authority for approval for a period of five years from first occupation of the development permitted by this consent.

9. Prior to the commencement of any works, a Construction Environmental Management Plan shall be submitted in writing to, and approved by, the Local Planning Authority. This shall include details of any proposed phases of construction and details relating to:
- the control of noise and vibration emissions from construction activities including groundworks and the formation of infrastructure including arrangements to monitor noise emissions from the development site during the construction phase
  - the control of dust including arrangements to monitor dust emissions from the development site during the construction phase
  - measures to prevent mud deposition offsite on the highway from vehicles leaving the site including wheel wash facilities
  - a site compound with associated temporary buildings
  - the parking of vehicles of site operatives and visitors
  - the loading and unloading of plant and material; and
  - storage of plant and materials used in constructing the development.

Development shall be carried out in compliance with the approved Construction Environmental Management Plan.

10. In relation to the development hereby permitted, no machinery shall be operated, no process shall be carried out and no construction traffic shall enter or leave the site between 1800 hours and 0700 hours Monday to Friday, and not at any time on Sundays, Bank Holidays or after 1300 hours on any Saturday.
11. Prior to the occupation of the development permitted, noise mitigation measures shall be carried out in accordance with the conclusions of the Noise Assessment, Ref. 26380-04-NA-01. These shall include:
- Selection of glazing, acoustically attenuated ventilation and building fabric with a sufficient sound reduction index;
  - Careful consideration of dwelling orientation to protect private amenity spaces; and/or
  - Installation of acoustically sound fencing at garden boundaries having an unscreened, or partial unscreened view to the roads.
12. Air quality mitigation measures shall be carried out in accordance with the recommendations of the Air Quality Assessment, Ref. 26380-04-AQA-01. These shall include:

- A shared pedestrian/cycle route throughout the site, connecting to the A53 in the eastern corner of the site;
- Bus stop improvements on the A53, adjacent to Sandyfields – improved shelter at the existing northbound stop, new cantilever shelter for the southbound stop, timetable information and seating;
- A new signalised pedestrian crossing of the A53 just to the south of the bus stops, to facilitate walk trips to/from the village;
- Provision of a single Adult Annual Arriva Bus Pass for the West Midlands Zone;
- Superfast broadband connectivity for each dwelling (Openreach available in the area);
- Information packs containing details such as car share schemes;
- Cycle storage for each dwelling; and
- An EV charge point for each dwelling.

13. Development shall not commence until sufficient site investigation works have been undertaken to adequately assess the nature and extent of any land contamination on the site.

Unless otherwise agreed in writing by the Local Planning Authority, the scope of site investigation works shall be submitted to, and approved in writing by, the Local Planning Authority. The works must be undertaken by competent persons and in accordance with the requirements of:

- BS10175 Investigation of Potentially Contaminated Sites - Code of Practice
- BS8576 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds.

The findings of the site investigation should be used to assess the potential risks from land contamination to:

- Human health
- Controlled water
- Property
- Ecological systems
- Archaeological sites and ancient monuments.

A report of the results of the site investigation works, together with a risk assessment should be submitted to, and approved in writing by, the local planning authority.

14. If the development is to be phased, development of each phase shall not commence until a detailed remediation scheme for that phase, to bring the site to a condition suitable for its intended use by removing unacceptable risks has been submitted to, and approved in writing by, the local planning authority. The scheme must include:

- All remediation works to be undertaken
- Proposed remediation objectives and remediation criteria
- Site management procedures

15. The approved remediation scheme for each phase must be carried out in accordance with the approved remediation statement prior to the occupation of that phase of the development, unless otherwise agreed in writing by the Local Planning Authority.

The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of the approved remediation scheme, a verification report that demonstrates its effectiveness must be submitted to, and approved in writing by, the Local Planning Authority.

16. In the event that the development is phased, prior to occupation of each phase of the development, written confirmation that no contamination was found or suspected should be submitted to the Local Planning Authority.

In the event that contamination is found, or is suspected to be present, at the site when carrying out the approved development for each phase, then development for that phase shall be halted and the suspicion reported in writing to the local planning authority.

If required by the local planning authority, an investigation and risk assessment of the suspected land contamination must be undertaken by appropriately qualified and experienced persons and in accordance with the requirements of:

- BS10175 Investigation of Potentially Contaminated Sites - Code of Practice
- BS8576 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds
- Environment Agency guidance (Land Contamination: Risk Management)

The findings of the investigation, an appropriate risk assessment and, if required, any proposed remediation measures, together with a scheme of validation, should be submitted to, and approved in writing by, the Local Planning Authority.

If remediation is required, then the agreed works must be carried out, together with independent validation of the same (in accordance with the approved validation proposal), the report of which should be submitted to and approved in writing by, the Local Planning Authority.

17. No soils (or soil forming materials) are to be imported to the site until information on their source, the results of any soil analysis, and an assessment of their suitability for use has been submitted to and agreed in writing by the Local Planning Authority.

Prior to their import onto site, a suitable methodology for testing soils following their import and placement on the site should be submitted to and agreed in writing by the Local Planning Authority. The methodology should include:

- The sampling frequency

- Soil analysis schedules
- The criteria against which the analytical results will be assessed.

The agreed methodology shall then be carried out, the results of which should be submitted to, and approved in writing by, the Local Planning Authority.

18. Prior to the first occupation of each dwelling hereby permitted, at least 1 parking space per dwelling must be provided with a fully operational dedicated electric vehicle charging point and thereafter maintained unless otherwise agreed by the Local Planning Authority. All other parking spaces shall be provided with passive wiring to allow future charging point connection. Charge points shall be a minimum of 32Amp with Type 2 Mennekes connections Mode 2 (on a dedicated circuit), or equivalent.
19. The development hereby permitted shall not commence until a scheme for drainage for the disposal of foul and surface water flows has been submitted to and approved by the Local Planning Authority, including plans and a timetable for its implementation, and the scheme shall be implemented in accordance with the approved details.
20. The development shall be carried out in full accordance with the approved Flood Risk Assessment, Ref. 26380-01-FRA-01 including the following measures:
  - Surface water will be conveyed, stored and treated within the proposed features on site. These will include detention basins, permeable paving and infiltration basins.
  - A total storage volume of 7987.2m<sup>3</sup> will be available within the site-wide drainage strategy to cater for all events up to and including the 1 in 100-year plus 40% climate change design storm.
  - The disposal of foul water from Catchments 1 and 2 will be via a new proposed connection into the existing foul water sewer within the A53 at Manhole 2001. Given the site levels, a gravity connection can be made into Manhole 2001.
  - The disposal of foul water from Catchments 3 will be via a new proposed connection into the foul water sewer located within the new development east of the site. Given the site levels, a gravity connection can be made into the new development. If a connection can not be made foul water flows will be pumped south of the site where it will connect into the gravity system before discharging into the foul water sewer within the A53 at Manhole 2001.
  - Foul water flows generated by the existing cottage on site will outfall into the wider drainage system. The existing foul water network on site will continue to supply the existing cottage till a connection to the wider drainage system can be made.
21. Prior to the commencement of the development hereby permitted, a written scheme of archaeological investigation(s) ('the Scheme') shall be submitted for the written approval of the Local Planning Authority as appropriate given the results of evaluation. If required, the Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-fieldwork reporting and appropriate publication. The

archaeological site work shall thereafter be implemented in full in accordance with the approved written scheme of archaeological investigation.

The development shall not be occupied until the site investigation and post-fieldwork assessment has been completed in accordance with the approved written scheme of archaeological investigation.

Prior to the occupation of the final dwelling on the site, provision will be made for analysis, publication and dissemination of the results, and archive deposition will be secured.

22. No development shall commence until a Tree Protection Plan in accordance with BS5837:2012 has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
23. No development shall commence until an Arboricultural Method Statement in accordance with BS5837:2012 has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
24. A minimum of 5.08ha of green open space shall be provided on site.
25. No development shall take place until details of the proposed open space and children's play area to be provided have been submitted to, and approved in writing by the Local Planning Authority. Such details and scheme to include:
  - the size, location and type of open space and play area;
  - details and specifications for works and materials showing how the open space will be graded, drained, landscaped, seeded, planted, laid out and provided fit for use by the public;
  - details of the design and layout of the play area, the construction specification, the safety surfacing, materials and play equipment, demonstrating that they meet relevant European safety and disability standards, together with details of fencing, seating for supervising adults and a buffer zone landscaped with low level planting including the number and type of pieces of play equipment. These should be in general accordance with the principles shown on Drawing RCH101-SK11: Natural Play Area Proposal;
  - the future management and maintenance requirements of the open space and play area;
  - the proposed ongoing maintenance operations for the open space and play area, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the open space and play area;
  - the proposed means of funding the ongoing maintenance and management of the open space and play area in accordance with the management plan and, where one is formed, the details of the management company.

The open space and play area shall be provided and thereafter maintained and managed in accordance with the approved details and scheme.

26. Ecological and biodiversity mitigation measures shall be carried out in accordance with the mitigation and enhancement strategy outlined in Section 3 of the Ecological Assessment Ref. 13732\_R02a\_CA\_CW and Section 3 of Bat Survey Addendum Report Ref. 13732\_R04\_CA\_CW.

End of Schedule