



Appeal Decision

Hearing held on 13 February 2024

Site visits made on 12 and 14 February 2024

by Melvyn Middleton BA(Econ), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2024

Appeal Ref: APP/J3015/W/23/3322612

Land off Chewton Street, Eastwood, Nottinghamshire, NG16 3JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Gleeson Homes against the decision of Broxtowe Borough Council.
 - The application Ref is 20/00826/FUL.
 - The development proposed is the erection of 251 two storey dwelling houses consisting of 2 and 3 bed semi and 3 and 4 bed detached units, including estate roads, public open space and drainage.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed erection of 238 two storey dwelling houses consisting of 2 and 3 bed semi and 3 and 4 bed detached units along with 8 semi-detached bungalows, and including estate roads, public open space and drainage on Land off Chewton Street, Eastwood, Nottinghamshire, NG16 3JR in accordance with the terms of the application, Ref 20/00826/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for a full award of costs was made under the Town and Country Planning Act 1990, Sections 78, 322 and Schedule 6; and the Local Government Act 1972, Section 250(5) by Gleeson Homes against Broxtowe Borough Council. This application is the subject of a separate decision letter.

Procedural matters

3. At the beginning of the Hearing, Councillor Radulovic, the leader of Broxtowe Borough Council, made a statement in which he requested that I cancel the Hearing and hold a Public Inquiry into the nature of contamination at the former adjacent waste tip, as well as into the merits of the proposal before me. In doing this he referred to previous representations to the Secretary of State, in which a similar request had been made.
4. In declining his request, I pointed out that the waste tip that is now managed by Viola, was not a part of the application site and that it is not within the scope of my terms of reference to extend the planning appeal process to cover an investigation into the current and historical nature of contamination on adjacent or nearby land.

5. I also pointed out that in my view, the members of the public who wished to participate in the appeal process, other than by reading a statement, would in this particular case, be better served through the Hearing procedure, where they could make their views known through involvement in an informal discussion. Were I to change the process to a Public Inquiry, then the presentation of evidence would be subject to the Inquires Procedure Rules, which could lead to a much more legalistic and costly process, involving proofs of evidence and cross-examination. In my opinion such persons may have been disadvantaged by the change of procedure.
6. In coming to this view, I was aware that at the time that the appeal was made, Broxtowe Borough Council considered that the Written Representation procedure was suitable for the determination of this appeal. Despite the obvious public interest, it did not request that the appeal be determined by way of a Public Inquiry, which was an option available to it. The format of a public Hearing was imposed upon the Council by the Planning Inspectorate, in the interest of the large number of individuals who had made representations at the times of the planning application and the appeal.
7. On 14 February Mr Lowe, a local resident, made a formal complaint on behalf of himself and other members of the public who had participated in the Hearing. The complaint concerned matters relating to the venue, the planning history relating to the site and application and the Hearing's proceedings, particularly the role of the Appellant in them. The Planning Inspectorate deals with complaints under different procedures to decisions. This complaint has already been responded to.

Preliminary Matters

8. The planning application proposed the erection of 251 dwellings. Whilst the Council was processing the application and following a consideration of the proposal's layout and design by Design Midlands, which was at the request of the Council, as well as observations from the highway authority and others, the overall number of dwellings was reduced to 240. The revised mix of dwellings now includes 8 semi-detached bungalows (which are to be located to the south-west of Commons Close) and 232 two storey houses. I have determined the appeal on this basis.
9. The application was accompanied by a number of background Papers, including a Planning Statement, a Design and Access Statement, a Statement of Community Involvement, a Health Impact Assessment and a Transport assessment, together with a number of Ground Investigation Reports. It was also accompanied by a site location plan, a site layout plan and a series of plans, elevations and sections of the proposed buildings and their layout.
10. Whilst the application was being considered by the Council, the Appellant submitted a Desk Study Review and Ground Investigation Report (June 2022) to update and add to the findings of the Ground Investigation Reports that had accompanied the Application. Additionally, whilst the appeal statement was being prepared, Paul Eastwood, a qualified geologist and hydrologist and a long-standing consultant in ground contamination, reviewed the complex historic evidence, from a variety of sources, on contamination and ground conditions at the appeal site and nearby land that has been the subject of quarrying and landfilling.

11. The site's vehicular access proposals involve the construction of a conventional junction with Chewson Street between Nos 157 and 159, leading to a 6.75m carriageway with 2.0m footways. Visibility splays in both directions are commensurate with that required for vehicle speeds of 30mph. Following revisions to the original proposals, Nottinghamshire County Council, acting as Highway Authority, support this aspect of the proposal and in the absence of any objection from the Borough Council, or substantiated concerns from other persons, I do not discuss this matter any further.
12. There were no objections to the proposal, as amended, from any of the relevant statutory consultees, including the Council's Environmental Health Officer and the application was recommended for approval by the Council's Planning Officer. The Council itself refused the application because of the close proximity of the application site to a former landfill site and the absence of sufficient evidence to ensure that the proposed mitigation measures would be sufficiently adequate to ensure that the development of the land would not pose a risk to human health and safety, which would adversely impact on the character of the area.
13. When I began to prepare for the appeal, I became aware that the Council's case was based solely on its consideration that the evidence presented by the Appellant was not clear or compelling. However, there was little non opinionated evidence to support this conclusion. Its statement of case says that "the cumulative effects of pollution on health, living conditions and the natural environment are considered to outweigh the benefits of developing the site for residential purposes". Nevertheless, there is no technical evidence to suggest what the cumulative effects actually are or how/why this has been concluded.
14. I therefore prepared a Pre-Hearing Note, in which I specifically pointed out that in the context of the technical nature of this appeal, it would assist me to have a technical witness representing the Council and a representative of the Waste Management Authority (to answer questions about the adjacent landfill site, for which it is responsible for the monitoring activities) present at the Hearing. In the event no one from the Council's Environmental Health Department, the Waste Management Authority, or an appropriate independent consultancy representing either or both of them, participated in the Hearing discussion about contamination and its ramifications for the proposed development.
15. A brief note "Environmental Health Key Points" was submitted on 12 February by the Council. This contains an assessment from Nottinghamshire County Council about the current waste management position at the adjacent waste site. Additionally, points about the robustness of the Appellant's gas monitoring data, its estimated post construction ground gas levels at the appeal site and its proposed protection measures were made by a Council Environmental Health Officer but there is a sparsity of technical evidence in support of the claims.
16. The appeal is now accompanied by a Statement of Common Ground, which was submitted on 12 February. The only matters in dispute, between the main parties, relate to the Council's view that the proposed development would provide insufficient protection from contamination for future residents of the site and that there is insufficient evidence to confirm that the proposed mitigation measures are adequate to ensure that development of the site would not pose a risk to the existing residents of the area.

17. Over 400 representations were received in response to the Council's consultation on the application and over 50, following a similar exercise, in response to the appeal. Whilst they object to the proposal for a variety of reasons, almost all of these are concerned about the possible impact of the proposal on public health, in the context of landfill gases at the appeal site and neighbouring residential areas. I have taken all of the submitted documents and representations into account, along with all of the other evidence presented to the Hearing, when reaching my decision.
18. At the Hearing the Appellant's case was largely challenged by local residents. Along with the two local MP's, five of these read out statements and eight participated in the Hearing discussion.
19. The Appellant submitted a signed Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 and between itself, the landowners, Broxtowe Borough Council and Nottinghamshire County Council. In the undertaking the landowners covenant with the Council to make financial payments over a ten-year period towards the provision and maintenance of public open space on the site and at Coronation Park, improved medical premises in the area, improved bus stop facilities and services, improved educational facilities and additional library stock for Eastwood library. It also agrees that 10% of the housing to be provided on the site will be affordable (50% social rented and 50% shared ownership). This is in accordance with Policy 15 of the Broxtowe Local Plan 2019. I return to the Agreement later.
20. I visited the site and its locality on the 12 and 14 February 2024.

Main Issue(s)

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise. From all that I have read, seen and heard I therefore consider the main issues to be:

Whether the proposal is sustainable development that is in accordance with the Development Plan, when read as a whole, with particular reference to:

- a) Its housing policies;
 - b) Contamination;
- and;

Whether there are any material considerations of sufficient weight to outweigh the presumption in favour of determining planning applications in accordance with the Development Plan.

Reasons

Development Plan

Housing

22. The Development Plan (DP) for the Area includes the Greater Nottingham Aligned Core Strategy Part 1 Local Plan (CS), which was adopted in 2014 and the Broxtowe Part 2 Local Plan 2018-28 (BLP), which was adopted in 2019.

23. CS Policy A: Presumption in Favour of Sustainable Development, defers to national policy as set out in the Framework.
24. CS Policy 2: Spatial Strategy sets out the total housing provision expected to be provided within Broxtowe over the plan period. Eastwood is defined as a key settlement and identified for growth of up to 1250 homes. Windfall development is expected to contribute towards the identified requirement. The BLP does not allocate the appeal site for any particular purpose but includes it within a defined Eastwood Urban Area, inset from the Green Belt. It also says that development is expected to come forward on sites other than allocations.
25. When determining the application, the Council referred to the site's allocation for housing development in the Broxtowe Local Plan (2004). This allocation was not carried forward into the 2019 BLP because its delivery was uncertain. However, the Council found that the site is in a sustainable urban location within the Eastwood housing market area and outside of the Green Belt. It also meets the requirements of CS housing Policies 8 and 10 as well as BLP Policies 15 and 17. In this context the principle of residential development was considered to be acceptable.
26. At the Hearing, the Council argued that because it could now comfortably demonstrate a five-year housing land supply (6.92 years), there was no longer a requirement to develop this site at this point in time. However, Broxtowe has repeatedly failed to meet its CS annual housing targets since 2013. In 2023 and with only four years of that plan period left, less than 60% of the target had been built in the Borough as a whole, about 62% in the Eastwood sub-housing market. To be on course to meet the CS target, about 76% should have been delivered. There is clearly a need to comply with the Government's objective of significantly boosting the supply of homes¹.
27. Although there is now a comfortable supply going forward, in the Borough as a whole, there is a substantial backlog to make up. The fact that the Borough has not built the housing that it was supposed to, does not mean that the housing requirement has changed or that there isn't a high demand for housing in the area.
28. Whilst housing commitments in the Borough as a whole appear healthy, that is not the case in Eastwood and Eastwood is defined as a separate sub housing market with its own target in the CS. Evidence belatedly supplied by the Council confirms that there were only 218 dwellings committed in Eastwood in 2023 and expected to be delivered by 2028, when up to 471 are needed to reach the CS target. Development at the appeal site, were planning permission to be granted, would be unlikely to deliver occupied homes before 2026. Consequently, the appeal site alone would be unlikely to fill this gap, but it could make a contribution.
29. Going forward a new CS is being prepared but it is not expected to be adopted before 2026 and work on a new BLP has not yet commenced. In this context it seems unlikely that significant alternative land for further development at Eastwood would be identified and confirmed through the plan system for some years, leaving any requirement to be at least partially met by windfalls. Development at the appeal site could contribute to post 2028 development and add to the 160 dwellings already identified. Even so, unless the annual housing

¹ National Planning Policy Framework, Paragraph 60.

requirement was reduced through the CS review, there would be a need to identify additional land for housing development at Eastwood from 2030 onwards. In these circumstances I conclude that the appeal proposal is consistent with the housing requirements of the DP.

Contamination

30. Part 2, of Policy 19 of the BLP, which refers to land potentially affected by contamination, says at paragraph a) that development will not be permitted unless and until a site investigation has been carried out to assess the nature and degree of contamination, using a method of investigation agreed in writing with the Council.
31. Following the submission of the planning application, the Council's Environmental Health Officer had discussions with Hydrock, the Appellants hydro/geological consultants, at which he made comments about the ground investigation reports submitted with the application. Following this, two documents, Remediation Statement and Verification Plan, and Desk Study Review and Ground Investigation Report were reviewed, revised and resubmitted. The Environmental Health Officer subsequently wrote that the revisions had taken account of his previous comments.
32. Subject to a condition that secured the removal of permitted development rights from properties, to ensure that any future development is safe and suitable for use, he indicated that he would raise no objections to the proposal. A suitable condition agreed with the Environmental Health Officer is proposed to be attached to any favourable decision. I infer from the above that a revised site investigation was carried out to assess the nature and degree of contamination in 2022 and that the method of investigation was agreed by the Council's Environmental Health Officer.
33. Paragraph b) requires details of effective and sustainable remedial measures required to deal with any contamination to be agreed in writing with the Council, taking into account actual or intended uses. The updated reports recommended the repair of a sewer, which has now been carried out, and the construction of a passively ventilated subfloor void, along with the installation of suitable gas resistant membranes at all buildings in order to mitigate the presence of any ground gas. Given that the Environmental Health Officer subsequently raised no objections to the proposal and there is no technical evidence to contradict the report's conclusions, I infer that he agreed that the proposed remedial measures were appropriate. In this context I consider that the proposal is consistent with Part 2, paragraphs a) and b) of BLP Policy 19.
34. Paragraph a), of part 1 to Policy 19 of the BLP says that permission will not be granted for development which would result in unacceptable exposure to sources of pollution or risks to safety. Part 2 at paragraph c) says that development of land potentially affected by contamination should cause no significant risk to the health and safety of the occupants of the development.

The presence and effects of landfill gases at and in the vicinity of the appeal site

35. A plan attached to the Committee Report shows the appeal site and an area purporting to be historic landfill sites, that includes much of the appeal site. The source of this is not disclosed but it has given rise to much concern and

possible confusion among members of the public. In reality it may indicate a historic land ownership that was connected to landfilling. However, the latest British Geological mapping of the area (2018)² suggests that none of the appeal site is infilled, ground. Nevertheless, it does indicate two areas immediately adjacent to the appeal site that are. One is to the south of the western part of the appeal site, immediately to the east of Braemar Avenue, and the other adjacent to the western boundary of the site, immediately north of the A610. The former, although smaller, is similar to the area covered by the 1991 Monitoring Agreement between Nottinghamshire County Council and Veolia Ltd. No monitoring regime covers the area immediately north of the A610 and there is no evidence to suggest that any contamination present at this site poses a risk to human health.

36. The boundaries of both areas resemble historic maps that show the extent of clay pit excavation in conjunction with the former adjacent brick works. Having carefully examined this information along with a series of aerial photographs taken between 1974 and 2022 that show the progress of the landfill operations, the various ground investigation reports that accompanied the application and appeal and the location of hedgerows and their nature and species content, I am satisfied that it is very unlikely that any part of the appeal site has been the subject of major waste disposal.
37. The surveys do indicate that there is made ground on isolated patches that together cover about 25% of the appeal site. The material was found to be up to 1.0 metre in depth but with an average depth of only 0.4 metres. This material consists of fragments of non-contaminated material such as glass, brick, cloth and metal among a variably sandy, cobbly, gravelly clay. In this context I am satisfied that any fill material present on the site is very unlikely to give rise to liquid or gaseous pollution that could amount to a public health issue.

On site gas production at the appeal site

38. There are coal seams close to the site's surface and when decomposing, particularly following disturbance, these can give rise to the emission of carbon dioxide and methane. Nevertheless, such geology is present across a wide area in West Nottinghamshire and adjacent parts of East Derbyshire. Although levels of methane and carbon dioxide are recorded in small quantities across the wider area, I have no details about the sources, and no one referred me to any resultant public health issues that had led to a prohibition of development in the area. Indeed, new development appears to have taken place continuously in this area over the past 60 years and including immediately adjacent to the former landfill site that I discuss below. I have not been referred to any adverse implications of doing this. I therefore find that the potential for small amounts of carbon dioxide and methane to be produced from shallow coal seams under the appeal site would not pose a significant risk to human health and safety and is not, on its own, a justification to dismiss this appeal.

Offsite gas production affecting the appeal site

39. The evidence accompanying the appeal suggests to me that the larger area of infilled ground immediately north of the A610, which is not covered by the monitoring agreement between Nottinghamshire County Council and Veolia,

² Extract of Geology by British Geological mapping 1:50,000. Groundsure report 57629 Eastwood, 15 March 2018.

has not historically given rise to significant issues of contamination. However, the area east of Braemar Avenue has and this site is still being monitored for emissions of methane and carbon dioxide.

40. If produced in sufficient quantities and given the right geological or infrastructure circumstances, these gases could migrate from the former waste site and into the appeal site, thereby causing a health hazard. I therefore assess the probability of this happening in today's circumstances.
41. It was suggested at the Hearing that any risk whatsoever, even one that is relatively low, should be considered unacceptable. The Framework, in Section 15, does not echo this. At paragraph 191 it says that decisions should ensure that development is appropriate for its location taking into account the likely effects of pollution on health and living conditions. Paragraph 190 specifically emphasises that where a site is affected by contamination, responsibility for securing a safe development rests with the developer. Additionally, the DP in Policy 19 refers to unacceptable exposure to sources of pollution or risks to safety and causing no significant risk to the health and safety of the occupants of the development. A risk that is relatively low is not a significant risk. My task is therefore to assess whether a developer could reasonably be expected to achieve a safe development at the appeal site.
42. In the context of this appeal, the potential for harmful effects on human health being experienced at the appeal site is limited to those related to the migration of ground or landfill gases along pathways provided by permeable rocks, natural fissures in the ground, shallow coal seams and drainage infrastructure from the monitored tip adjacent to Braemar Avenue. If not properly managed, this movement could in the right circumstances give rise to flammability, toxicity and asphyxiation hazards to humans. However, being some distance away from this former tip, and in this context, the majority of the appeal site is likely to be potentially unaffected.
43. Additionally, the evidence suggests that the probability of this occurring, even on the part of the appeal site that is to the north of the former tip adjacent to Braemar Avenue, is now very low. After nearly 40 years the ability of this tip to produce landfill gas will be substantially reduced because the vast majority of the organic material within the tip will already have decomposed and there is not an infinite supply of such material. Site monitoring data clearly shows that there are now sustained periods of low-level production of methane and carbon dioxide from the tip, with only sporadic increases in the levels of landfill gasses recorded.
44. The fact that the tip's cap is shallow will have historically assisted the venting process to the atmosphere above the site, rather than encouraging lateral movement of the gases. Comparisons of the borehole results around the northern perimeter of the tip site, with those taken close by but on the appeal site, confirm that whilst elevated concentrations of methane and carbon dioxide are recorded occasionally at the former boreholes, there are no corresponding increases in landfill gases at the closest boreholes within the development site. The low-level emissions recorded at these are likely to be associated with the on-site coal seams. In consequence, there is now little or no recorded movement of landfill gas from the tip to the appeal site.
45. Notwithstanding that, the Appellant proposes to remove any preferential pathways for ground gases to migrate from the tip to the appeal site. This

would be achieved by installing clay stanks around any current or proposed services that cross the boundary between the appeal site and the former landfill site. Similar action would also be taken regarding any new services that cross shallow coal seams on the appeal site itself. Additionally, all of the existing boreholes on the appeal site would be decommissioned, using appropriate mitigation techniques.

46. In addition, each building would be fitted with gas protection measures composed of a structural barrier at floor slab level, a ventilated void above this and a gas resistant membrane incorporated into the room floor. The actual design will vary according to the perceived likelihood of ground gases being present at different parts of the site. In reality if ground gases are present, then they are likely to result from coal decomposition rather than from landfill gas originating in the nearby tip. I was referred to a number of examples where housing development has taken place on or adjacent to former landfill sites, with no evidence to suggest that there have been subsequent health and safety issues as a result. Some of these have been the subject of gas protection measures but not all, including the developments at Beamlight Road and Braemar Avenue.
47. The proposal was considered by the Coal Authority and the Environment Agency, the two statutory bodies who have responsibility, for environmental protection, contamination and the residues of former coal mining. Neither object to the proposal but instead have recommended conditions to be attached to any planning consent, in order to mitigate any potential human health risks that are of concern to them. The Council's Environmental Health Officer has similarly not objected but requested the inclusion of a condition concerning the implementation of remedial measures and the removal of permitted development rights. Although responsible for the determination and designation of Statutory Contaminated Land under Part 2A of the Environmental Protection Act 1990, Broxtowe Borough Council has not designated any part of the appeal site or the adjacent land to the south-west that was extensively used to deposit a variety of waste types between 1972 and 1985, as contaminated land.
48. I therefore find that there are no grounds for assuming that the developer could not achieve a safe development. In my view, the proposal would not result in unacceptable exposure to sources of pollution or risks to safety. Although the development of this land is potentially affected by contamination, from on and off-site sources, I consider that the likely levels are such that it would cause no significant risk to the health and safety of the occupants of the development or to others residing nearby. The proposal is therefore in accordance with Parts 1 and 2 of Policy 19 of the BLP.

Other Considerations

Traffic

49. The development is expected to generate 136 and 117 trips in the AM and PM peaks respectively. This will all enter the highway network at the single access point on Chewton Street. Highway modelling has distributed this traffic onto the local highway network and has identified no capacity issues at junctions within the local highway network, although one arm at the Nottingham Road / Giltbrook Crescent / Smithurst Road junction is expected to operate at about 90% capacity, in the PM peak, following the completion of the development. No

highway safety issues have been identified. The internal streets will be built to a minimum width of 5.5 metres with 2 metre footways, conforming to the Highway Design Guide.

50. The Framework says at paragraph 114 that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The evidence does not suggest that either of these two circumstances would arise. The highway authority does not object to the proposal but in the interest of highway safety has requested the imposition of conditions that involve the movement of the bus stop on Chewton Street and the achievement of the relevant highway standards within the development.

Drainage

51. Surface water is to be managed through a Sustainable Drainage Scheme (SuDS). On-site surface water is to be drained to a surface water attenuation pond in the south-eastern corner of the site, from where it will be connected to existing drainage facilities. The net effect should be a reduction in surface water flowing onto adjacent land, following heavy rain, including at Braemar Avenue and the former landfill sites..

Other Matters

Loscoe

52. Contrary to suggestions at the Hearing, the explosion in a building at nearby Loscoe, which was adjacent a to landfill site, occurred in 1984. This was only two years after that landfill site had been closed and it was in a building with no gas protection measures. The tip adjacent to the appeal site has been closed for nearly 40 years and its gas production is still managed through a gas venting system. Additionally, sophisticated gas protection measures are proposed for installation in all buildings on the appeal site. I therefore see no similarities to the Loscoe event or justification for an approach that could lead to a prohibition of development, to be taken at the appeal site.

Broxtowe Local Plan 2004

53. I was referred to item EA13, Omission of housing site H2X west of Halls Lane, Giltbrook in the Inspector's report. It refers to the appeal site, which was considered to be suitable for inclusion as a housing development site in the Revised Deposit Draft Local Plan. However, as a part of Pre-Inquiry Changes, the Council proposed the deletion of the site because it considered that this site and three others would not need to be developed within the plan period. Pollution from landfill gases was not one of the reasons quoted by the Council for its proposed deletion of the site.
54. The impact of the landfill site was nevertheless debated at the Inquiry, the Council referring to a 1997 investigation and report by Joynes Pike, which concluded that the appeal site was not suffering from contamination as a result of the migration of gas from the adjoining landfill site. Additional work, at that time, enabled the Council's Environmental Health Officers to confirm that they were satisfied that the site could be considered acceptable for development, subject to suitable precautionary measures being taken.

55. The measures referred to were a protective membrane to be incorporated under built structures, which twenty years later is effectively what is now being proposed. After considering all of the evidence, the Inspector recommended that site H2X should be retained in the local plan and that no modification be made. In doing that he pointed to the absence of methane on the site and accepted that with appropriate precautionary measures, the site was acceptable for housing development. Twenty years later there is similarly no evidence that landfill gas is migrating under this site from the adjacent landfill site but gas generation levels from that site are likely to be substantially lower than they were in 2004.

Bentonite wall

56. A full planning application was submitted in 2007 for 317 dwellings, included the provision of a bentonite wall around the landfill area adjacent to Braemar Avenue. This had the purpose of physically preventing the migration of landfill gas from the tip to the appeal site and other adjacent areas. That application was refused because in the opinion of the Council, the monitoring arrangements and management responsibilities were unclear.
57. No bentonite wall is proposed as a part of this proposal. The mitigation against the impact of any potential migrating landfill gas, as well as that generated by the coal deposits under the site, is now considered capable of resolution through modifications to the foundations at buildings on the appeal site. This would be a more cost-effective solution that avoids long term communal maintenance responsibilities and is now possible because, due to the passage of time (17 years), the production of landfill gas within the tip, as demonstrated by the uncontested evidence presented to the Hearing, is now substantially less than it was in 2007. The potential for landfill gas migration is consequently also substantially lower than it was then. Whilst the adopted solution would not provide protection for dwellings at Braemar Avenue, the Appellant has no involvement or responsibilities with regard to the interaction between the landfill site and Braemar Avenue.

Chemicals

58. At the Hearing, reference was made to unknown quantities of unspecified chemicals and other substances being illegally dumped at the waste site whilst it was being operated as a landfill site. In addition, I was told that there have been subsequent periodic occurrences of offsite contaminated surface water, particularly in the Beamlight Road area. If the illegal depositing of chemicals was the case, then it seems likely that over the past 50 years, any metal containers etc containing such liquids will have decayed and their contents will have leached out into the surrounding tip. If ground conditions are appropriate, soluble chemicals will very likely be carried away in groundwater, or particularly after periods of high rainfall when water levels under the tip will have risen to levels above that of the land to the south-west, as surface water. However, as in the case of gases originating from decomposing organic material, this process may still be occurring on a reduced scale. The appeal site is upstream of the tip so that were there still to be runoff containing dissolved chemicals, the appeal site would not be affected. Insoluble materials are likely to remain permanently in situ in the tip.
59. Some surface water from the appeal site does currently runoff the eastern part of the appeal site and onto the adjacent tip site. The application proposes the

use of a SuDS, the details of which and their implementation can be conditioned. Such a system could control and regulate the movement of surface water from the parts of the appeal site to be covered in hard surfaces and should reduce the amount of water draining from the appeal site and onto nearby land, including the adjacent tips and that at Braemar Avenue. The benefits of the implementation of a SuDS for the wider area weigh in favour of allowing the appeal.

Conditions and legal agreement

60. The seventeen conditions, most recently set out in the Agreed Statement of Common Ground, were considered and some amended in the context of the discussions at the Hearing. They include the usual timing, plans and materials conditions as well as conditions in the interests of public health and highway safety suggested by the Coal Authority, the Environmental Health Officer, the Environment Agency and the Highway Authority.
61. Following discussion at the Hearing, it was agreed that the Council 's approach to require all necessary remedial measures relating to contamination and a statement confirming that the site has been made safe and stable for development, should be completed before any development commences, was impractical. Instead, the remedial works are to be completed before any building is erected and the statement is to be prepared and submitted to the Local Planning Authority before any of the development is occupied.
62. Additionally, and to enable the development to meet DP policies that seek to achieve sustainable development, conditions concerning the landscaping and public realm works, drainage (including surface water management), ecological and environmental protection and enhancements, construction, demolition, and site management (including acoustic and air quality management), were suggested.
63. The conditions are set out in a schedule at the end of the decision. I have considered the need for all of the conditions in the context of the six tests contained in paragraph 56 of the Framework and the advice contained in National Planning Policy Guidance. The conditions are necessary to ensure that the development is of a high standard, creates acceptable living conditions for future residents within the development, as well as a high-quality public realm for the benefit of residents, workers and visitors; is safe and sustainable, minimises the impact on the environment and complies with the relevant DP Policies. Additionally, the conditions comply with the requirements of paragraphs 55 of the Framework and meet the other statutory tests.
64. The Agreement contains proposed financial contributions towards a number of measures that would improve the extent and quality of facilities in the wider area. Existing local healthcare facilities do not have capacity to meet the requirements of the population that would reside in the appeal development. The agreed financial contribution would enable the Health Authority to provide for the health requirements of the appeal development at local medical facilities and is therefore justified.
65. Similarly, the financial contribution to Eastwood Library would enable it to increase its book stock to meet the requirements of the increased population, who would reside within the development and use the library. The educational contribution would be used to cater for increased educational capacity within

the Broxtowe North planning area, in appropriate sectors, to the extent that they are required to meet the needs of the increased number of pupils generated by the development.

66. The bus stop and service contributions will enable an improved public transport service and facilities to be provided for the site in particular and the area in general, assisting in improvements to the site and area's sustainability. The off-site public open space contribution is required to secure improvements to Coronation Park and its future maintenance. The park is near the appeal site and will experience increased usage as a result of the appeal development.
67. The Agreement, which is discussed in paragraph 19, is also related to the requirements of the relevant DP policies. In my judgement the financial contributions and the other measures achieved through it, meet the requirements of paragraph 57 of the Framework. They are necessary to make the proposal acceptable in planning terms, are directly related to the development, and fairly and reasonably related in scale and kind to it, mitigating potential harmful effects on the environment and community services, as well as securing some of the benefits promoted by the scheme. I am also satisfied that the undertaking and its ramifications comply with Regulation 122 of the *Community Infrastructure Levy Regulations* (CIL) 2010. Additionally, there is no conflict with CIL Regulation 123(3).

Conclusion

68. In conclusion, I consider that, the proposal is required to assist in meeting the Borough's housing requirement, particularly at Eastwood. In this context the proposal is in accordance with the DP's housing policies, particularly CS Policy 2. I have also found that the development would not result in unacceptable levels of pollution or following the implementation of the proposed mitigation measures, be likely to result in unacceptable exposures to sources of pollution or risks to safety. Any risks of harmful pollution from landfill gases would therefore not be a significant risk to the health and safety of the occupants of the development, nor would there be effect, because of the development, on the health of occupiers of properties elsewhere in the area. The proposal is therefore in accordance with BLP Policy 19.
69. The proposal is consequently in accordance with the DP when read as a whole. I do not consider there are any material considerations of sufficient weight to outweigh the presumption in favour of determining planning applications in accordance with the Development Plan. The proposal, when complete, would constitute sustainable development, having regard to all three aspects set out at paragraph 8 of the Framework and the presumption in favour of such development, as set out in paragraph 11 of that document, should be applied. In such circumstances, planning permission should be granted.
70. I recognise that this finding will be disappointing for those who oppose the development and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local people, very important though they are, must be balanced against other considerations, including national and local planning policy. In coming to my conclusions on the various issues that have been raised, I have taken full and careful account of all the representations that have been made. I have balanced these against the provisions of the DP, the Framework and other material considerations. On

balance though, the evidence in this case leads me to the conclusion that the appeal should succeed and be allowed.

M Middleton

INSPECTOR

Schedule of Conditions

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2 The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers:

- Site Location Plan 1: 100 – EA-A-P001-A received by the Local Planning Authority on 24 November 2022.
- 201 Dwelling Type – 201/1G;
- 405 Dwelling Type – 405/1E;
- 250 Dwelling Type – 250/1B;
- 301 Dwelling Type – 301/1H;
- 303 Dwelling Type – 303/1E;
- 314 Dwelling Type – 314/1;
- 315 Dwelling Type – 315/1A;
- 337 Dwelling Type – 337/1;
- 339 Dwelling Type – 339/1;
- 401 Dwelling Type – 401/1G;
- 403 Dwelling Type – 403/1J;
- Detached Single Garage – SD1700;
- Detached Double Garage – SD1701 received by the Local Planning Authority 01 March 2021.
- 254 House Type – 21-254-U-0001-CO3 received by Local Planning Authority on 21 July 2022.
- Proposed Street Scenes – 0767-EA-A-P502E;
- Proposed Site Sections – 0767-EA-A-P501E;
- Elevation Treatment Plan – 0767-EA-A-P105D;
- Proposed Boundary Treatments – 0767-EA-A-P104W;
- Proposed Site Colour Layout – 0767-EA-A-G001F;
- Proposed Site Layout 1 of 3 - 0767-EA-A-P101T;
- Proposed Site Layout 2 of 3 - 0767-EA-A-P102T;
- Proposed Site Layout 3 of 3 - 0767-EA-A-P103T received by the Local Planning Authority on 19 October 2022.

- Detailed Landscape Proposal 1 of 5 – 3677/4G;
- Detailed Landscape Proposal 2 of 5 – 3677/5G;
- Detailed Landscape Proposal 3 of 5 – 3677/6G;
- Detailed Landscape Proposal 4 of 5 – 3677/7G;
- Detailed Landscape Proposal 5 of 5 – 3677/8G received by the Local Planning Authority on 07 November 2022.

3 No building operations shall be carried out until details of the manufacturer, type and colour of the materials to be used have been submitted to and approved in writing by the Local Planning Authority, and the development shall be constructed only in accordance with those details.

4 No demolition or construction hereby approved shall take place until a Demolition and Construction Method Statement has been submitted to and approved in writing by the Borough Council. The statement shall include:

- a) The means of access for construction traffic;
- b) parking provision for site operatives and visitors;
- c) the loading and unloading of plant and materials;
- d) the storage of plant and materials;
- e) a scheme for the recycling/disposal of waste resulting from demolition/construction works;
- f) details of dust and noise suppression to be used during demolition and construction;
- g) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; and
- h) wheel washing facilities.

5 No construction, demolition or site preparation work in association with this permission shall be undertaken outside of the hours of 08:00-18.00 Monday to Friday, 08:00-13:00 Saturdays and at no time on Sundays or Bank Holidays.

6 No building to be erected pursuant to this permission shall be occupied or brought into use until:

- a) All necessary remedial measures have been completed in accordance with the details approved (Hydrock Consultants Ltd., Remediation Statement and Verification Plan); and
- b) It has been certified to the satisfaction of the local planning authority that the necessary remedial measures have been implemented in full and that they have rendered the site free from risk to human health from the contaminants identified.

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 and once the Local Planning Authority has identified the part of the site affected by the unexpected contamination, development must be halted on that part of the site.

An assessment must be undertaken in accordance with the requirements above, and where remediation is necessary a remediation scheme, together with a timetable for its implementation and verification reporting, must be submitted to and approved in writing by the Local Planning Authority.

7 No development shall commence until:

- a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
- b) any remediation works and/or mitigation measures to address land instability arising from the coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

8 Prior to the occupation of the development, a signed statement or declaration prepared by a suitably competent person, confirming that the site is, or has been made safe and stable for the approved development, shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods

and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

9 No planting/obstructions to visibility above 0.6m in height shall be provided within 1 metre behind the highway threshold fronting plots 230 and 240.

10 No part of the development hereby permitted shall take place until bus-stop BR0017 has been relocated in accordance with details first submitted to and approved in writing by the Local Planning Authority.

11 Occupation of the proposed dwellings shall not take place until their respective driveway/parking areas have been provided and surfaced in a bound material (not loose gravel) for a minimum distance of 5.0 metres behind the highway boundary. These areas shall be constructed with provision to prevent the discharge of surface water from the driveway/parking areas to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development.

12 Occupation of the proposed dwellings shall not take place until the site access as shown for indicative purposes on drawing 19/300/SKH/001 Revision A has been provided.

13 The buildings shall be constructed in accordance with the mitigation measures within section 6 of the Spectrum Acoustic Consultants ref DP600/20368/Rev dated 17/11/20.

14 No removal of hedgerows, trees, or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period.

15 No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect mammals including badger and hedgehog, from being trapped in open excavations and/or pipe and culverts are

submitted to and approved in writing by the local planning authority. The measures may include:

- a) The creation of sloping escape ramps (mammal ladders) for badgers (and other mammals potentially using the site), which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day;
- b) Open pipework greater than 150 mm outside diameter being blanked (capped) off at the end of each working day;
- c) Keeping all fuel and other harmful substances in a locked area;
- d) Ensuring any spillages are treated with spill kits;
- e) Night work should be avoided where possible, and any flood lighting should face away from the Site boundaries; and
- f) If any fresh sett digging is observed notifying an ecologist immediately and leaving a 20m buffer around the area until an assessment can be made.
- g) If common amphibians are found during works then they should be carefully moved to a safe place off site, in an area that will be unaffected by works and ideally of a similar habitat type.
- h) To minimise the effect of the proposals on existing habitats, storage of materials and machinery should be on hardstanding and must avoid the root protection zone of trees. Any trees that will be unaffected should be adequately protected during the construction works, in line with BS5837:2012.

15 No development, including site clearance shall commence until a Landscape and Ecological Management Plan (LEMP) is submitted to and approved in writing. Details to be included within the LEMP include:

- a) All mitigation recommendations laid down within the ecology report including those for badgers, nesting birds, hedgehogs, and bats;
- b) A plan showing the location of retained and created habitats, including details of appropriate species to plant (eg native species and those with known benefits to wildlife);
- c) Locations of bat boxes, bird boxes, hedgehog highways, and habitat piles (include specifications/installation guidance/numbers);

- d) Mitigation recommendations in relation to retained/created habitats (eg. no spraying of herbicide, fires, or storage of materials adjacent to the LWS);
- e) A comprehensive list of the plant/tree species to be planted on site (these should be native species with known benefits to wildlife);
- f) Appropriate management prescriptions, aimed at increasing biodiversity benefits (for example, mowing regimes timed to allow flowers/grasses to flower and set seed, and timings of hedgerow maintenance to retain a foraging resource for wildlife); and
- g) Schedules for any required post-monitoring and/or maintenance (for example integrated bird/bat boxes).

16 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 extensions to the dwellings or outbuildings within the curtilage shall be erected without the prior approval of the local planning authority, by way of a formal planning application.

17 Prior to commencement of the development, a scheme of detailed drainage plans for the disposal of surface water and foul sewage shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the use of sustainable urban drainage systems (SUDS) and a related Management Plan. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and thereafter retained.

APPEARANCES

FOR THE APPELLANT:

Richard Sagar LLB	Walker Morris LLP
Paul Eastwood BSc MSc FGS	Hydrock Consultants Ltd
Mark Eagland BA MTP MRTPI	Peacock + Smith

FOR THE LOCAL PLANNING AUTHORITY:

Kevin Leigh of Counsel	33 Bedford Row
Ryan Dawson	Head of Planning Services, Broxtowe Borough Council
Steven Simms	Planning Manager, Broxtowe Borough Council

INTERESTED PARTIES:

Cllr Peter Bales	Broxtowe Borough Council
Cllr Milan Radulovic	Broxtowe Borough Council
Cllr Robert Willimott	Greasley Parish Council
Nigel Lowe	Local Resident
Tim Marston	Local Resident
Mr O'Brien	Local Resident
Mrs Susan O'Brien	Local Resident
Mr Andrew Walton	Local Resident
Mr Richard Dale	Local Resident

DOCUMENTS SUBMITTED TO THE HEARING

Statement read by Darren Henry MP	Broxtowe constituency
Statement read on behalf of Lee Anderson MP	Ashfield and Eastwood constituency
Statement read by Ron Jones	Greasley Parish Council
Statement read by Calvin Goreham	Local Resident
Statement read by Tim Marston	Local Resident

Historic Windfall completions	Broxtowe Borough Council
Site Allocations and Housing Deliveries 2011-23	Broxtowe Borough Council
Summary of S106 Agreement	Submitted by Appellant
Signed S106 Agreement	Submitted by Appellant
Broxtowe Local Plan 2004, Inspector's Report	Extract submitted by Nigel Lowe