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## Appeal Decision

Inquiry held on 15-17 April 2025

Site visits made on 14, 16 and 23 April 2025

**by Andrew Smith BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16<sup>th</sup> May 2025

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**Appeal Ref: APP/C1055/W/24/3356476**

**Land to the West of Royal Hill Road, Spondon, Derby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes Limited against the decision of Derby City Council.
  - The application Ref is 23/01631/OUT.
  - The development proposed is outline application for residential development including access arrangements - up to 90 dwellings.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development including access arrangements - up to 90 dwellings, at Land to the West of Royal Hill Road, Spondon, Derby, in accordance with the terms of the application, Ref 23/01631/OUT, subject to the conditions set out in the attached schedule.

### Applications for costs

2. An application for costs was made by Miller Homes Limited against Derby City Council. That application is the subject of a separate Decision.

### Preliminary Matters

3. It is the case that two amended plans<sup>1</sup> and one additional plan<sup>2</sup> have been submitted at appeal stage. As clarified in advance of and at the Inquiry, these plans taken together seek to ensure consistency in terms of the precise position of the intended site access and illustrate the position of an intended landscape buffer where built development would not occur. These additional/amended plans were consulted upon at appeal stage and I am content that no party with a potential interest in the outcome of the appeal is prejudiced by me treating them as plans for determination in so far as where relevant to do so.
4. The appeal proposal is for outline planning permission with all detailed matters except for access reserved for future approval. For the avoidance of doubt, whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of appearance, landscaping, layout and scale as a guide to how the site might be developed.

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<sup>1</sup> Proposed Access Arrangement, Ref: RHR-BWB-GEN-XX-DR-TR-101 S2 P3 (supersedes RHR-BWB-GEN-XX-DR-TR-101 S2 P2); Illustrative Masterplan, Ref: P19-2639\_DE\_001 01 Rev J (supersedes P19-2639\_DE\_001 Rev F)

<sup>2</sup> Landscape Buffer Plan Ref: P19-2639\_DE\_022 Sheet 01 Rev C

5. It has been brought to my attention that a new Local Plan for Derby (the ELP) is emerging. However, this is at an early stage and has not yet been subject to formal consultation. The ELP thus carries no material weight for the purposes of this appeal's determination.
6. A planning obligation pursuant to Section 106 of the Act (the legal agreement) is before me. This is dated 1 May 2025 and is signed by the appellant, relevant landowners, and the Council. The legal agreement contains various provisions related to affordable housing, healthcare, sports facilities, a community centre, transport, education, and off-site open space. I shall return to the legal agreement later in this Decision.

### **Main Issue**

7. The effect of the proposal upon the function of the Spondon/Chaddesden Green Wedge (the SCGW).

### **Reasons**

8. Green Wedges (GWs) comprise an important and very longstanding part of Derby's character. There are 13 such designated wedges spread across the city, all of which entail open, green expanses of largely undeveloped land. GWs, whilst not having the permanence of Green Belt, help maintain the identity of different residential neighbourhoods and provide uninterrupted links to the countryside. Moreover, their primary function, as stated within the supporting text to Policy CP18 (Green Wedges) of the Derby City Local Plan, Part 1 - Core Strategy (January 2017) (the CS), is to define and enhance the urban structure of the city taken as a whole.
9. Policy CP18 sets out various provisions/restrictions related to the consideration of development proposals within GWs. For example, it seeks to ensure that development is limited to a list of specified development types and does not endanger the open and undeveloped character of GWs. Further, the policy directs that, for all development proposals, the proposed buildings should not have a greater impact on the openness of the GW and the purpose of including land within it when compared to any existing buildings.
10. The site is contained within the SCGW, which is located between the neighbourhoods of Chaddesden to the west and Spondon to the east. The wedge is roughly rectangular in shape, covers approximately 55 hectares of predominantly agricultural land, and sits adjacent to the Green Belt as designated to the north. Its western edge is strongly defined in a linear fashion by Acorn Way, a tree-lined classified route that itself runs the edge of Chaddesden, whilst its eastern edge tends to be defined by the rear of properties located to the western side of Spondon. Meanwhile, its southern edge is chiefly comprised of the rear boundaries of Derby Road properties.
11. It is noteworthy that the defined extent of the SCGW narrows along a short stretch of its eastern edge. This narrowing effectively omits from the wedge the buildings that comprise Springfield Primary School as well as other built development proximate to West Road. To the south of West Road and within the SCGW, is West Park Secondary School and its associated playing fields. This school sits on high ground close to a ridgeline that runs east-west across the centre of the GW, meaning that its buildings appear prominently within the SCGW.

12. In terms of other potentially detracting elements of development worthy of note, there is a covered reservoir compound situated adjacent to the northern boundary of the SCGW that contains a large standalone building (the reservoir building) of utilitarian design. Additionally, an amalgamation of diversified farmsteads (the farmsteads) is situated approximately central to the northern half of the SCGW.
13. The site itself is situated to the eastern side of the northern half of the SCGW and is comprised of a series of relatively small-sized field parcels presently used for the keeping/grazing of horses. Whilst it is common ground between the parties that the site is not in agricultural use, I experienced it to retain an inherently rural and open character. The on-site facilities/paraphernalia associated with the keeping of horses, as witnessable upon inspection, tended to be of modest size/extent and to occupy discreet locations adjacent to field boundaries. Accordingly, notwithstanding the presence of some areas of bare ground, occasional gaps within hedgerows, and sporadic stretches of temporary fencing, it would be unfair and inaccurate to categorise the site as scruffy. It instead makes a valuable contribution to the open and undeveloped character of the SCGW, especially when taken and considered as a whole.
14. The site's relationship with built development was discussed at the Inquiry. The point was raised that development is existent at proximity to each of the site's sides. Whilst I do not dispute this to be the case, it must be noted that both the reservoir building to the north and the farmsteads to the west comprise outlying elements of development detached from the edges of the SCGW as distinguishable on the ground. Thus, whilst not positive contributors to the open and undeveloped character of the SCGW, the farmsteads and reservoir building are read as detached features contained within the wedge that do not contribute toward any perception of bringing Spondon and Chaddesden closer together. In this sense, their presence is of little relevance to my consideration of this Main Issue.
15. That said, the existence of built development to the south, albeit separated from the site by elements of established planting (including upon a wooded area of land) and playing fields, is of pertinence to my deliberations. Indeed, the amalgamation of built development that is in-situ, which includes a row of dwellings and complexes of school buildings situated either side of West Road, narrows the central section of SCGW. This is both in terms of how measured on a plan and experienced on the ground in perceptual terms.
16. The influence of this amalgamation of development upon the function performed by the SCGW is fittingly reflected via the position of its 'axis' as illustrated within a Green Wedge Review (the GWR) published by the Council in October 2012. This axis represents the most sensitive part of the SCGW, meaning that development in close proximity to it would be anticipated to have a heightened impact upon the role and function of the SCGW. The delineation of the axis is skewed towards the western side of the SCGW, which is an inevitable repercussion of the manner in which the wedge narrows as a consequence of the physical arrangement of built development along and proximate to its eastern edge.
17. Therefore, even though I have found the site to make a valuable contribution to the open and undeveloped character of the SCGW and acknowledge that development toward the edges of GWs would still impact their function, it is fair to assert that the appeal site, when taken in its entirety, does not comprise a piece of the most sensitive part of the wedge. This is owing to its eastward positioning within the

SCGW, as well as to its relative closeness to aforementioned developments proximate to West Road.

18. The proposal, which consists of the development of up to 90 dwellings, would undoubtedly erode the openness and undeveloped character of the SCGW. It is also important to recognise the potential for the scheme to reinforce the narrowness of the wedge in this general location, and that some sense of sprawl from the edge of Spondon into the SCGW is an inevitability of the proposal. That said, it is of pertinence that development, as depicted upon the Illustrative Masterplan, would not project further west than the westward extent of built development off West Road.
19. Furthermore, the appeal site is of sufficient expanse to enable the appellant to commit to delivering a minimum of two hectares of amenity greenspace upon the site. Consequently, a landscape-led development proposal – underpinned by the planned retention and enhancement of tree cover and hedgerow features that would assist in softening the visual impact of development – is illustrated via both the latest Illustrative Masterplan and Landscape Buffer Plan. Accordingly, the most elevated part of the appeal site which comprises the portion of on-site land situated closest to the SCGW's axis, would, in conjunction with other areas of the site, remain clear of built development.
20. In summary, the proposal would have an adverse effect upon the function of the SCGW in direct conflict with relevant provisions of Policy CP18 so as to cause harm. Moreover, a type of development not supported by the policy would be introduced that would materially erode the largely undeveloped, green, and open gap that prevails between Spondon and Chaddesden and would fail to provide opportunities to improve remaining parts of the SCGW. That said, for reasons that are explained above, it is my judgement that the role and function of the SCGW would not be fundamentally impacted to the extent that the principle of a GW be unacceptably undermined. Reflective of this, Spondon and Chaddesden would continue to be read and experienced as two distinct and separate communities. I shall return to the identifiable harm/policy conflict and its implications within my Planning Balance below.

## **Other Matters**

21. Just off Royal Hill Road is a pedestrian access point to Springfield Primary School. This access is used by various children/parents for the purposes of access/egress at the start and end of any school day. Royal Hill Road is a no through road that offers a range of unrestricted parking opportunities. At its eastern end it connects to Locko Road, which leads southwards to a staggered crossroads (the crossroads) offering connections to West Road, Church Street and Chapel Street. There are other schools that exhibit a close relationship to the crossroads, comprising West Park Secondary School and St. Werburgh's Primary School. A range of highways-related objections have been raised by interested parties. Such objections have often centred upon traffic/parking conditions and associated capacity/safety concerns during peak periods that coincide with school drop off and pick up times.
22. The proposal is supported by a Transport Assessment (August 2023) that incorporates detailed capacity assessments of five junctions, which include Royal Hill Road's junction with Locko Road as well as the crossroads, that are informed by traffic survey work carried out on a neutral weekday outside of any school

holiday period. It was ultimately found that the proposal and its anticipated additional trips did not generate a need for off-site mitigation. For the avoidance of doubt, there is no clear reason for me to find the survey work to be non-representative of actual circumstances. Further, the Highway Authority (the HA) has raised no objection to the scheme subject to the imposition of relevant planning conditions. This is a matter of importance because the HA are responsible for the safety of users of the local highway network.

23. I accept that Royal Hill Road and roads off it, namely Marina Drive and Charles Avenue, are used on a day-to-day basis for the purposes of parking in association with Springfield Primary School. This is a source of frustration for numerous local residents. However, notwithstanding references made to incidences of road rage, I have not been provided with substantive or suitably persuasive evidence to clearly demonstrate generated traffic flows and/or parking demand to be at levels capable of severely compromising the capacity or safety of the local network. Indeed, upon an inspection undertaken across an afternoon peak period, I did not witness any significant junction waiting times (including at the crossroads) or any obvious potential for blockages/unsafe manoeuvres to be necessitated as a consequence of parked or waiting vehicles along Royal Hill Road or roads off it. This is even though I acknowledge Royal Hill Road to be of relatively narrow width and sometimes bending alignment.
24. It must also be noted that peak periods are fleeting across the course of any given day, and that it is fair to predict that any trips generated by the proposed development in relation to Springfield Primary School would be on foot as opposed to via vehicle. To my mind, there is no obvious reason to suspect that materially different local highway conditions would prevail post-development. Further, I am content that no more than a negligible impact upon traffic/queuing conditions at Willowcroft Road's signalised junction with Nottingham Road would be felt as a result of the scheme's occupation. I am also content that the newly proposed site access would be appropriately positioned and designed. All related matters considered, I am satisfied that the proposal would have an acceptable effect upon the local highway network and would not prejudice highway or pedestrian safety. I also note here that the Council's Senior Environmental Health Officer has set out that the air quality impact of the development is expected to be low.
25. Recent bus service improvements have facilitated new/extended services from bus stops that include those sited on Locko Road adjacent to its junction with Royal Hill Road. Whilst it is my understanding that long-term funding has yet to be secured for these service improvements, it cannot be reasonably asserted that future occupiers of the development would necessarily not have the realistic option to choose bus travel as a sustainable alternative to private car use.
26. I acknowledge that the proposal would result in the loss of land currently used for keeping/grazing horses and would thus necessitate horses being moved from the site. Whilst I appreciate this to be a potential source of disruption and inconvenience for relevant owners/local residents, it has not been clearly demonstrated with comprehensive supporting evidence that suitable alternative premises would be unable to be sourced nor that there would be materially harmful well-being implications for any of the animals or individuals involved.
27. It has been suggested that, in the event the appeal be successful and planning permission be granted, a precedent could be set for allowing other housing



developments elsewhere within the SCGW and/or other GWs. However, it is my responsibility to consider the proposal that is before me upon its own individual merits in light of the specific site and case circumstances to hand at this point in time. It thus follows that there is no clear reason to consider that any possible future development proposal elsewhere would necessarily be looked upon favourably by the relevant decision-maker as a consequence of this Decision.

28. I have been presented with copies of historic planning refusals, issued by the Council in 1976 and 1985, relating to land situated in the same part of the SCGW as now under consideration. An open wedge between Chaddesden and Spondon as well as the potential to set a precedent for further development are matters referenced on both decision notices. Whilst these decisions assist in demonstrating the very longstanding nature of GWs, planning policy – at both a local and national level – has much evolved since their determinations. These historic refusals are thus of somewhat limited relevance to by deliberations.
29. The possible potential to alternatively develop brownfield sites situated elsewhere in the local area has been raised by an interested party. However, it is my responsibility to consider the planning merits of the specific development proposal that is before me in view of the individual case and site circumstances that avail.

## **Planning Balance**

### *The presumption in favour of sustainable development*

30. It is common ground between the main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Accordingly, the policies most important for determining the scheme are deemed out-of-date and – as the policies of the National Planning Policy Framework (December 2024) (the Framework) that protect areas or assets of particular importance do not provide a strong reason for refusing planning permission – the presumption in favour of sustainable development is engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole. This is, as set out in the Framework, whilst having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

### *Adverse impacts, including the apportionment of weight to conflict with Policy CP18*

31. In terms of the scheme's adverse impacts, I have identified conflict with Policy CP18 of the CS and associated harm to the function of the SCGW. The parties agree that Policy CP18 is one of the most important policies (alongside Policy CP6 – Housing Delivery) for determining the scheme and I have no reason to take a different view. It is therefore a policy that is deemed out-of-date. Nevertheless, to assist in gauging the weight that should rightfully be applied to the identified policy conflict, it is necessary for me to explore the degree to which Policy CP18 is consistent with the Framework.
32. A key aim of the Framework is to support the Government's objective of significantly boosting the supply of homes. Policy CP18 is a restrictive policy in the sense that it limits development opportunities within GWs to specific development types that do not include new-build residential development. I do not accept any

assertion made to the contrary. For the avoidance of doubt, although there is mention within the policy to seeking to continue the principle of GWs where urban extensions occur, the policy's supporting text offers a firm indication that this particular provision is principally aimed at prospective urban extensions situated outside the city boundary. There is thus tension between the provisions of Policy CP18, which act to restrict the delivery of new homes, and the drive to significantly boost housing growth.

33. This tension is exacerbated when taking account of the extent of Derby's annual housing requirement, which is presently calculated at 906 dwellings utilising the standard method set out in planning practice guidance, against which a 3.85-year supply and thus a significant supply shortfall is presently calculable.
34. It is also pertinent that, although GW boundaries were reviewed as part of the CS's preparation, a Part 2 Local Plan has not been progressed. The CS was found sound on the basis that 851 dwellings of its total 11,000 requirement (capped from an objectively assessed need of 16,388) being addressed through the Part 2 Local Plan. Indeed, within the supporting text to Policy CP18 it is indicated that amendments to GW boundaries shall be considered via the Part 2 Local Plan. This process can now be fairly anticipated to fall instead under the remit of the ELP. Indicative of this, a recent housing land capacity study<sup>3</sup> published by the Council earmarks possible GW releases as a source of potential new capacity at a quantum of 615 units as part of a provisional maximum city-wide housing capacity figure of 12,500.
35. In terms of previous assessment, the GWR sought to establish the different roles and functions of each of the GWs. This was to assist an understanding of whether the principle of each individual GW could be justifiably maintained, and to review potential development sites that had been promoted to the Council at that time (which did not include the appeal site) in the lead up to the eventual adoption of the CS. It was identified that the SCGW should not be considered to have any potential capacity for new development from a GW perspective. However, it is readily apparent from the content<sup>4</sup> of the document that only the development potential of promoted sites and their immediate environs were specifically considered through the GWR. It cannot therefore be fairly argued that the development potential of the SCGW (or of any other GW) was exhaustively assessed in comprehensive terms in advance of the adoption of the CS and its Policy CP18.
36. Turning to a 2016 appeal decision<sup>5</sup> relating to an unsuccessful 125-unit proposal at land at Acorn Way and Derby Road, the Inspector identified that to protect the SCGW would not necessarily be inconsistent with the exhortation in the Framework<sup>6</sup> to boost significantly the supply of housing. However, that decision was made some years ago in a different policy context. For example, the CS had been submitted for examination and offered – through its emerging allocations at that time – the realistic prospect of establishing a five-year supply of deliverable housing sites. Furthermore, a very modest housing supply shortfall that was reasonably likely to be transient was identified by the Inspector at that time. This is not the case now where a significant supply shortfall is apparent and the ELP is at

<sup>3</sup> Derby Housing Land Capacity: Position Paper October 2024

<sup>4</sup> including Figure 2.70 – Summary of Assessment of Promoted Sites

<sup>5</sup> APP/C1055/W/15/3132386

<sup>6</sup> original version, published March 2012

a stage that dictates no material weight can currently be afforded to it for decision-making purposes. Indeed, there is no realistic prospect of an up-to-date plan being adopted in the near future in view of the various stages yet to be navigated prior to formal adoption. Thus, the aforementioned findings of the 2016 Inspector are of little relevance.

37. The 2016 Inspector identified that GWs continue to chime with important aims of the Framework. This is still the case now, whereby GWs contribute to various social and environmental aims as set out in the latest version of the Framework. For example, they enhance the natural and built environment, play a key role in protecting the character of the city, and offer opportunities for leisure and recreation so as to support strong, vibrant and healthy communities. Moreover, the principles underpinning the rationale for GWs are consistent with the Framework.
38. Even so, Policy CP18, which dictates how development proposals should be treated within GWs, was adopted in the context of a now out-of-date housing requirement and is protectionist in the sense that it seeks to effectively rule out new-build housing development inside the city's designated GWs. As such, the restrictions imposed by the policy are acting as a distinct deterrent to new housing development coming forward within what is a tightly constrained city boundary. Therefore, Policy CP18 cannot be considered fully consistent with the Framework.
39. I apportion moderate weight to the scheme's identified conflict with Policy CP18 and commensurate moderate weight to the associated harm that would be caused by the proposal to the function of the SCGW. In addition, it must be recognised that – on the basis of my finding that the proposal would erode the openness and undeveloped character of the SCGW – harm would be caused to the character and appearance of the area. The site is nevertheless experienced in the context of existing developed influences, which include the built edge of Spondon. When also factoring in the physical and visual containment that applies to areas of the site earmarked for built development, as well as the expected mitigative influence over time of new structural planting, I am content that the degree of harm to be caused in a character and appearance sense can be accurately categorised as limited.

#### *Scheme benefits*

40. The proposal involves the creation of up to 90 additional housing units in a location well-served by close by facilities and services within a local authority area where the agreed housing land supply level represents a significant shortfall when compared to the minimum five-year supply threshold endorsed by the Framework. In such circumstances, the additional dwellings, which would be anticipated to be delivered quickly, would make a meaningful and important contribution to the supply-deficit and attract very significant weight as a public benefit.
41. Further, the policy-compliant delivery of 30% affordable homes as part of the housing to be developed would promote the delivery of distinct social benefits and respond to a rising unmet need at a local level. Indeed, a 2023 Local Housing Needs Assessment identifies a need for 672 affordable dwelling per annum across the period 2022/23 to 2038/39 and evidence has been produced to demonstrate that the number of households on the Housing Register in Derby has grown rapidly in recent years. In this context, notwithstanding the existence of empty homes in the city, the benefits to be drawn from the on-site delivery of affordable housing attract very significant weight.



42. There are various other benefits to be drawn from the scheme. For example, there would be job creation during the construction phase and increased household spending generated once occupied. Meanwhile, the on-site delivery of amenity greenspace – whilst principally intended to serve future occupiers of the scheme – would, in conjunction with the provision of new connections through the site, deliver some environmental/social benefits for the wider community. Further, notwithstanding the extent of built development that is proposed, a bio-diversity net-gain is predicted and fairly anticipated. Moreover, the scheme's benefits would be very significant when assessed in cumulative terms and attract substantial weight.

### *Final Balance*

43. Having considered the adverse impacts and benefits of the scheme before me, I conclude that the adverse impacts identified, comprising moderate harm to the function of the SCGW in association with identified conflict with Policy CP18, and limited harm to the character and appearance of the area, would not, in combination, significantly and demonstrably outweigh the proposal's substantial benefits when assessed against the Framework's policies taken as a whole whilst having particular regard to key policies as presented above. Thus, the presumption in favour of sustainable development, as set out in the Framework, applies.
44. Therefore, notwithstanding identifiable conflict with one of the most important policies for determining this appeal, there are material considerations, including the Framework, that indicate that the proposal should be determined otherwise than in accordance with the development plan in this instance.

### **Legal Agreement**

45. The legal agreement secures the aforementioned on-site provision of 30% affordable housing (a mix of 80% social rented and 20% shared ownership, unless otherwise agreed in writing with the Council) in line with the requirements of Policy CP7 of the CS.
46. In addition, healthcare, sports facility, community centre, transport, major open space (off-site), and education (primary and secondary) contributions are secured in line with the requirements of the Planning Obligations Supplementary Planning Document (August 2018) and its appended financial contributions matrix.
47. The healthcare contribution is to be directed towards improvements to Chapel Street Medical Centre, Derwent Valley Medical Practice and/or The Park Medical Practice, whilst the sports facility contribution is to be spent upon improvements to Springfield Leisure Centre, Derby Arena and/or Moorways Sports Village. The community centre contribution is to be directed towards Spondon Village Hall, whilst the transport contribution is to be spent upon improvements to public transport, cycling and pedestrian facilities and/or network capacity improvements within the locality, with priority to be given by the Council to directing the contribution towards bus service provision. The major open space contribution is to be directed towards improvements to Willowcroft Road Rec, Brunswood Park and/or West Park Meadows.
48. The education contributions are to be directed towards improvements to any primary or secondary school located within the local catchment (as listed in the legal agreement). Such contributions shall only be payable, either in full or in part, in the event that – upon application for the approval of reserved matters –

insufficient primary/secondary pupil spaces to serve the development are identifiable across the local catchment.

49. I am satisfied that the various contributions and provisions secured through the legal agreement would be necessary to make the development acceptable in planning terms, would be directly related to the development, and be fairly and reasonably related in scale and kind.

### **Conditions**

50. A list of draft planning conditions was worked upon by the parties in advance of the Inquiry. Following further discussion at the event, I have considered the conditions against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments to the list for consistency and clarity purposes. Pre-commencement conditions have only been applied where agreed to by the appellant and where necessary to guide initial works on site.
51. In the interests of promoting the expedient delivery of housing, I have imposed, with the agreement of the parties, a six-month time limit for reserved matters applications to be submitted and an 18-month time-limit for the commencement of development following reserved matters approval. In the interests of certainty, a condition setting out the approved plans is also required.
52. In the interests of highway safety, conditions are reasonable and necessary that secure the implementation of a Construction Management Plan, as well as the provision of site access to a minimum of binder course level and precise details of highway design prior to the commencement of construction.
53. The securance of a Construction Management Plan would also be in the interests of safeguarding the living conditions of existing local residents. For the same reason, the undertaking of a comprehensive noise assessment (and subsequent submission of a noise mitigation scheme if required) is also reasonable and necessary to condition.
54. To guard against flood risk and in the interests of promoting the appropriate management of surface water, a condition is reasonable and necessary that secures the implementation and subsequent retention of a Sustainable Drainage Strategy. I note here that the scheme's illustrative layout takes account of a small extent of pluvial flood risk identified in association with an unnamed ordinary watercourse located adjacent to the site's southern boundary, an approach accepted by the Council's relevant Drainage Officer. Moreover, in the absence of any objection from the Lead Local Flood Authority, there is no clear reason for me to doubt the veracity of the conclusions and recommendations drawn by the submitted Flood Risk Assessment (July 2023). The scheme would not be fairly anticipated to increase flood risk from any source.
55. In the interests of minimising risks to human health, conditions to secure the undertaking of a Phase I ground contamination study, a Phase II Site Investigation if found necessary, and subsequent remediation if required, are reasonable and necessary.
56. In the interests of ensuring the suitable protection of retained trees/hedgerows during the construction phase, an Arboricultural Impact Assessment and Arboricultural Method Statement is reasonable to secure via condition. The

scheme, I note, has been preliminarily designed to keep removals of established planting to a realistic minimum. This is reflected by the latest Illustrative Masterplan and other supporting documentation.

57. In the interests of protecting, retaining and/or enhancing biodiversity, conditions are reasonable and necessary to secure the submission and implementation of a Construction Environmental Management Plan, badger and barn owl surveys, a detailed landscape and planting scheme, a Landscape and Biodiversity Enhancement and Management Plan (LBEMP), a Biodiversity Species Enhancement Plan, and a lighting strategy prior to the installation of any lighting fixtures. For the avoidance of doubt, the landscape/planting scheme and LBEMP conditions would also be in the interests of ensuring the acceptable delivery and subsequent maintenance, for the lifetime of the development, of at least two hectares of amenity green space as committed to by the appellant.
58. I note here that, as part of the field survey work undertaken to support an Ecological Appraisal (August 2023), the site was inspected for evidence of, and its potential to support, protected and notable species (including bats). The extent of suggested further species-specific survey work (relating to badgers and barn owls) has been accepted by the Wildlife Trust in its role as a specialist adviser to the Council.
59. In the interests of promoting sustainable travel choices, the submission and implementation of a scheme of improvements to the public right of way that runs the southern boundary of the site is reasonable and necessary to condition.

### **Conclusion**

60. For the reasons given above, the appeal is allowed such that outline planning permission is granted subject to conditions.

*Andrew Smith*

INSPECTOR

## Schedule of Conditions

- 1) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called the “reserved matters”) shall be obtained from the Local Planning Authority in writing before any development is commenced. Reserved matters pursuant to this condition shall adhere to the approved Landscape Buffer Plan, Ref P19-2639\_DE\_022 Sheet 01 Rev C. For the avoidance of doubt, no built development shall be permitted on the areas identified as Landscape Buffer on this plan.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 6 months from the date of this permission. The development hereby permitted shall begin not later than the expiration of 18 months from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in full accordance with the following approved plans:  
P19-2639\_003 Sheet 01 Rev B (Site Location Plan);  
RHR-BWB-GEN-XX-DR-TR-101 S2 P3 (Proposed Access Arrangement);  
RHR-BWB-GEN-XX-DR-TR-101 S2 P3 (Proposed Footway Link Details);  
P19-2639\_DE\_022 Sheet 01 Rev C (Landscape Buffer Plan);  
P19-2639\_DE\_001 01 Rev J (Illustrative Master Plan – in so far as it depicts means of access only).
- 4) No development shall take place including any works of demolition until a Construction Management Plan (CMP) has been submitted to and been approved in writing by the Local Planning Authority. The approved CMP shall be adhered to throughout the construction period and shall provide for:
  - parking of vehicles of site operatives and visitors
  - routes for construction traffic
  - hours of operation
  - method of prevention to deter mud being carried onto highway by wheel washing and sweeping
  - parking for materials deliveries
  - delivery times
  - a highway dilapidation survey.
- 5) Prior to commencement of any development on the site, precise details of the following shall be submitted to and approved in writing by the Local Planning Authority: parking and turning facilities, access widths, gradients, surfacing, street lighting, structures, visibility splays and drainage, which shall be designed in accordance with details contained in Delivering Streets and Places (2017), Manual for Streets (2007), and any successor documents. The development shall be carried out in accordance with these agreed details.
- 6) No development shall commence on any part of the site unless or until the site access has been constructed to a minimum of binder course level. The works shall be carried out to the satisfaction of the Local Planning Authority.
- 7) Prior to commencement of any development on the site, a Sustainable Drainage Strategy and associated detailed design, management and maintenance plan for surface water drainage using SuDS methods, shall be submitted to and approved in writing by the Local Planning Authority. The

approved drainage system shall be implemented in accordance with the approved Sustainable Drainage Strategy prior to the occupation of any dwellings on the development site and maintained thereafter for the lifetime of the development.

- 8) Prior to commencement of any development on the site, a Phase I ground contamination study shall be completed, documenting the site's previous history and identifying all potential sources of contamination and all plausible pollutant linkages with respect to future site users in accordance with the Government's Land Contamination Risk Management (LCRM) Guidance. A Phase I Desktop Study Report shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of the development.
- 9) Where the agreed Phase I Assessment referred to in Condition 8 has identified potential contamination, a Phase II Site Investigation shall be carried out to determine the levels of contaminants on site that could pose a risk to the health of future site users, in accordance with LCRM Guidance. A risk assessment shall then be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development in order to determine the level of potential risk to site end users. In those cases where the agreed Phase II Investigation Report has detailed that significant contamination risks to human health exist on site, a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, in order to identify measures needed to mitigate the identified risks. The Remediation Strategy shall be completed in accordance with LCRM Guidance.
- 10) Prior to commencement of any development on the site, an Arboricultural Impact Assessment and Arboricultural Method Statement, to include a Tree Protection Plan (having regard for BS5837:2012 Trees in relation to design, demolition and construction – Recommendations) for the protection of trees and hedgerows on and adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. No works shall be carried out on the site unless and until the approved protection measures are implemented for the retained trees and hedgerows and they shall be retained in place for the duration of the works on the site. If any retained tree or hedgerow is removed, uprooted or destroyed or dies, replacements shall be planted at the same place and shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
- 11) Prior to commencement of any development on the site, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
  - a) risk assessment of potentially damaging construction activities;
  - b) identification of "biodiversity protection zones";
  - c) practical measures (both physical measures and sensitive or precautionary working practices) to avoid or reduce impacts on species and habitats during construction, tree felling or vegetation clearance, including badger, great crested newt, reptile, bat, breeding birds, hedgehog and others as required;
  - d) the location and timing of sensitive works to avoid harm to biodiversity features;



- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication;
- g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h) use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 12) Prior to commencement of any development on the site, including preparatory site clearance, a badger survey to assess the presence of any recent excavated and existing badger setts on or close to the development site (within 30 metres of the site boundary) shall be carried out and the results, including appropriate mitigation/licencing requirements, submitted to and approved in writing by the Local Planning Authority. Any approved mitigation measures agreed shall be implemented in full prior to the commencement of development.
- 13) Prior to commencement of any development on the site, including preparatory site clearance, a barn owl survey to assess the presence of barn owl activity on and around the site, to include hedgerow 7 (as depicted in accordance with Target Note 25 on the Phase I Habitat Plan contained within the submitted Ecological Appraisal (August 2023)), shall be carried out six months prior to the development commencing and the results, including appropriate mitigation/licencing requirements, shall be submitted to and approved in writing by the Local Planning Authority. The survey shall be carried out outside of the barn owl nesting season. Any approved mitigation measures agreed shall be implemented in full prior to the commencement of development.
- 14) Prior to construction of the development above foundation level, a comprehensive noise assessment shall be undertaken, assessing the site against the criteria contained within BS8233:2014 and relevant standards or guidance. The assessment shall be completed by a suitably qualified acoustician and submitted to and approved in writing by the Local Planning Authority. Where the assessment indicates that noise mitigation measures are required to be included in the approved housing to protect future residents from excessive noise disturbance, a noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. In all cases where windows are required to remain closed in order to meet the relevant noise targets, the mitigation scheme shall be accompanied by an overheating assessment. All agreed mitigation works shall be incorporated into the development prior to its first occupation and retained thereafter.
- 15) Prior to construction of the development above foundation level, a Biodiversity Species Enhancement Plan, to include a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. Any approved measures shall be implemented in full and maintained thereafter. The Plan shall clearly show positions, specifications and numbers of features, which shall include but not be limited to the following:
  - 1 swift brick per dwelling, in line with British Standard 42021:2022)

- 5 integrated and/or external bat boxes
  - 2 log piles
  - fencing gaps of 130mm x 130mm to maintain connectivity for hedgehogs, where site levels permit.
- 16) Prior to occupation of any dwellings on the development, a detailed landscape and planting scheme for the site, to include existing vegetation to be retained, details of proposed planting, including species, stock type and numbers of plants, details of soil volumes and design of tree pits, together with protection measures for new planting, shall be submitted to and approved in writing by the Local Planning Authority and implemented in full. The scheme shall include details of amenity greenspace, including footpaths/cycleways and a toddlers play area (Local Equipped Area for Play), with the total area available for use not being less than 2 hectares. All planting shall be carried out no later than the first planting season following the occupation of any dwelling or the completion of the development, whichever is the sooner. All planted materials shall be maintained for a minimum of five years and any trees or plants removed, dying, being damaged or becoming diseased within that period shall be replaced in the next planting season with others of similar size and species to those originally required to be planted unless the Local Planning Authority gives written consent to any variation.
- 17) Prior to occupation of any dwellings on the development, a Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to and approved in writing by the Local Planning Authority. The aim of the LBEMP shall combine both ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. The LBEMP shall include the following:
- a) details for the creation, enhancement and management of habitats and species on the site post-development, in accordance with the proposals set out in the submitted Biodiversity Net Gain Assessment, Ecological Appraisal and Biodiversity Metric 4.0 (Tetra Tech, August 2023);
  - b) description and location of features to be retained, created, enhanced and managed, as per the approved biodiversity metric or revised version as agreed;
  - c) aims and objectives of management, in line with desired habitat conditions detailed in the metric;
  - d) appropriate management methods and practices to achieve aims and objectives;
  - e) prescriptions for management actions;
  - f) preparation of a work schedule (including a work plan for the lifetime of the development);
  - g) details of the body or organisation responsible for implementation of the plan;
  - h) a monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 10, 15, 20 and 30 years, with monitoring reports to be sent to the Local Planning Authority at each of these intervals;
  - i) a set of remedial measures to be applied if conservation aims and objectives of the plan are not being met;

j) requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism(s) by which the implementation of the plan across the lifetime of the development shall be secured by the developer with the management body(ies) responsible for its delivery. The approved plan shall be implemented in accordance with the approved details and adhered to at all times.

- 18) Prior to occupation of any dwellings on the development, a scheme of improvement works for public right of way 'Spondon 7' from its westernmost connection point with the site up to Royal Hill Road, to include a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of improvement works shall be implemented in accordance with the timetable to be agreed.
- 19) The risk reduction measures detailed within any agreed Remediation Strategy agreed through Condition 9, shall be implemented in full. A Validation Report shall subsequently be produced which adequately demonstrates that the measures have been implemented in full, that all significant risks to human health have been removed and that the remediation targets have all been met. The Validation Report shall be submitted to and approved in writing by the Local Planning Authority prior to any dwellings on the development being occupied.
- 20) Prior to the installation of any lighting fixtures, a detailed lighting strategy to safeguard bats and other nocturnal wildlife shall be submitted to and approved in writing by the Local Planning Authority. This shall provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors or timers, as well as a timetable for implementation. Should the scale of proposed lighting dictate so, a lux contour plan shall be submitted to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features in accordance with guidelines that can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Any approved measures shall be implemented in full in accordance with the timetable to be agreed and shall be retained as approved thereafter.

## APPEARANCES

### FOR THE APPELLANT:

|                       |                                                   |
|-----------------------|---------------------------------------------------|
| Christopher Young KC  | Counsel, instructed by Gary Lees of Pegasus Group |
| He called:            |                                                   |
| Katherine Ellinsfield | Associate Landscape Architect, Pegasus Group      |
| Gary Lees             | Consultant, Pegasus Group                         |
| Helen Dawkins *       | Planning Director, Miller Homes                   |
| Jonathan Collins *    | Strategic Land Director, Miller Homes             |
| Sarah Hollis *        | Principal Associate, Gowlings                     |

### FOR THE COUNCIL:

|                     |                                                                                              |
|---------------------|----------------------------------------------------------------------------------------------|
| Hugh Richards       | Counsel, instructed by Stephen Teasdale, Planning and Highways Solicitor, Derby City Council |
| He called:          |                                                                                              |
| Cllr Matthew Holmes | Local Councillor – Mickleover Ward                                                           |
| Ian Woodhead *      | Development Control and Land Charges Manager                                                 |
| Sara Hodgkinson *   | Development Control Team Leader                                                              |
| Rosie Watson *      | Implementation Team Leader                                                                   |

\* participated in the planning obligation and conditions roundtable session only

### INTERESTED PARTIES

|                     |                                         |
|---------------------|-----------------------------------------|
| Cllr Jonathan Smale | Local Councillor – Spondon Ward         |
| Cllr John Wright    | Local Councillor – Chaddesden East Ward |
| Kevin Palmer        | Local resident                          |

## **INQUIRY DOCUMENTS**

- ID1 Letter from Jonathan Davies MP, dated 11 April 2025
- ID2 Opening statement of the appellant
- ID3 Opening statement of the Council
- ID4 Transcript of statement made by Cllr Jonathan Smale
- ID5 Transcript of statement made by Cllr John Wright
- ID6 Transcript of statement made by Kevin Palmer, local resident
- ID7 Derby City Council Local Development Scheme, February 2025
- ID8 Appeal Note related to bus provision, agreed by main parties
- ID9 Revised suggested conditions
- ID10 Closing statement of the Council
- ID11 Closing statement of the appellant
- ID12 Written costs application made by the appellant
- ID13 Revised draft legal agreement

## **DOCUMENTS RECEIVED AFTER THE INQUIRY**

- A Completed Section 106 agreement, dated 1 May 2025, submitted 2 May 2025
- B Response to costs application, submitted by the Council on 2 May 2025
- C Final costs comments, submitted by the appellant on 7 May 2025