STRATEGIC POLICY DS3: SUPPORTING SUSTAINABLE COMMUNITIES
PARAGRAPHS 2.9 – 2.12

7. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible. If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Paragraphs 58 and 69 of the National Planning Policy Framework (NPPF) state that planning policies and decisions should aim to ensure that places and developments are: -

> *'Safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*'

In addition, the Council is itself obliged to comply with a statutory duty to: -

> *'Without prejudice to any other obligation imposed upon it, it shall be the duty of each local authority to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area.'* Section 17(1) of the Crime and Disorder Act 1998.

Within the Local Plan itself, as currently drafted, the following provisions make reference to the above issues: -

- Overarching Policy SC0: Sustainable Communities
- BE1 – Layout and Design
- Paragraph 5.9
- HS1 – Healthy, Safe and Inclusive Communities
- HS7 – Crime Prevention

It is also worth noting that the Council's own '*Draft Infrastructure Delivery Plan – April 2014*' states the emergency services infrastructure will be required to support new development and communities.

Yet despite all of the above, there are no references at all within Strategic Policy DS3, or within supporting paragraphs 2.9 – 212, to either of the following: -

- Designing out crime
- Emergency services infrastructure provision

This is a fact that also seriously undermines the achievement of the objectives contained within the following strategy documents: -

- A Shared Vision – Warwick District's Sustainable Community Strategy 2009-2026
- South Warwickshire Community Safety Partnership – Partnership Plan – April 2014 – March 2017
- Garden Town, Villages and Suburbs – A Prospectus for Warwick District Council – May 2012

In addition, we would like to draw attention to the fact that the Secretary of State in April 2014 at appeal (APP/X2410/A/13/2196928 & APP/X2410/A/13/2196929) confirmed that police infrastructure matters are legitimate considerations in planning terms. He concluded at paragraph 16 of his decision that: -

> "*He also agrees with the Inspector (IR8.43-8.46) that the completed s106 Unilateral Undertaking, dated December 2013, between the Appellant, the Council and the Police and Crime Commissioner for Leicestershire (APP10) meets the tests of Regulation 122 and the Framework and should be regarded as material consideration."*

The decision letter, relating to a proposal for 250 dwellings on land off Mountsorrel Lane, Rothley, Leicestershire and Inspector's report are included at **Appendix 1**. Paragraphs 5.1 – 5.12 of the Inspector's report deal with contributions towards policing and paragraphs 5.5 and 5.7 are particularly relevant.

We are also aware that the Inspector and the Council will have noted the case of '*R (PCC for Leicestershire) v Blaby DC and Others*' (May 2014). In this respect, we would like to draw attention to paragraphs 61 – 62 of the Judgement, which stated: -

> *"61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.*
>
> *62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant."*

Whilst rejecting the grounds for judicial review put forward by the Leicestershire Police and Crime Commissioner, the judgment above did confirm that consideration and support for police infrastructure is now a normal part of planning requirements.

As a result of all of the above, we consider that Strategic Policy DS3 and paragraphs 2.9 – 2.12 as drafted are currently inconsistent with national planning policy. They are also currently ineffective when it comes to ensuring that developments design out crime and provide for emergency services infrastructure.

8. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the test you have identified at 7. above where this relates to soundness (Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

To resolve all of our concerns, we request that the following amendments are made to Strategic Policy DS3 and supporting paragraph 2.9 (as highlighted in bold): -

'Strategic Policy DS3: Supporting Sustainable Communities

We will promote high quality new development including...

f) delivering communities and developments that are safe, secure and enjoy very low crime levels.

We will expect development which enables new communities to develop and sustain themselves. As part of this we will provide for the infrastructure needed to support communities and business including…

b) social infrastructure (such as education, ***health, the emergency services and sports facilities)…***

Explanation

2.9 It is important that new development is high quality, ***safe and secure****. This underpins sustainable and cohesive communities and engenders a strong sense of civic pride. It enables new housing and new employment to develop into thriving* ***low crime*** *communities for local residents and business. High quality development not only enhances people's lives, but also enhances the reputation of the areas and therefore brings associated economic benefits. Good design is good business.'*

Inserting all of the above amendments would make Strategic Policy DS3 and supporting paragraphs 2.9 – 2.12 wholly consistent with the NPPF and consequently ensure their effectiveness upon delivery.

Warwickshire POLICE West Mercia POLICE

TR1 ACCESS AND CHOICE

7. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible. If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

We do not consider TR1 to be effective in soundness terms, as it does not reference the fact that new developments should allow swift and easy access for emergency services vehicles to attend incidents and individuals quickly, helping to prevent crime and in some cases, save lives. The importance of TR1 requiring this therefore cannot be overemphasised.

8. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the test you have identified at 7. above where this relates to soundness (Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

We request that part (b) of TR1 be amended as follows to resolve our concerns and improve the effectiveness of the policy: -

b) are designed to provide suitable access and circulation for a range of transport modes including pedestrians, cyclists, ***public transport and the emergency services;***

Department for Communities and Local Government

Mr Paul Stone
Signet Planning Ltd
Strelley Hall
Nottingham
NG8 6PE

Our Ref: APP/X2410/A/13/2196928 &
APP/X2410/A/13/2196929
Your Ref: EM1891

8 April 2014

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY WILLIAM DAVIS LTD
LAND OFF MOUNTSORREL LANE, ROTHLEY, LEICESTERSHIRE
APPLICATION REFs: P/12/2005/2 and P/12/2456/2

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stevens BA MPhil DipTP MRTPI FRSA, who held a public local inquiry on 10-13 December 2013 into your clients' appeal against the failure of Charnwood Borough Council ("the Council") to give notice within the prescribed period of their decisions on applications for planning permission for:

   Appeal A: construction of a maximum of 250 dwellings, replacement primary school, change of use from dwelling to medical facility, change of use from agricultural land to domestic curtilages, green infrastructure, potential garden extensions, construction of a relief road, and demolition of barns in accordance with application ref: P/12/2005/2, dated 20 September 2012**;** and

   Appeal B: an area of public open space including water balancing ponds and green infrastructure in accordance with application ref: P/12/2456/2 dated 21 November 2012.

2. On 29 May 2013, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals over 150 units or on sites of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and outline planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report

Jean Nowak, Decision Officer
Planning Casework Division
Department for Communities and Local Government
1/H1, Eland House
Bressenden Place
London, SW1E 5DU

Tel 0303 444 1626
Email pcc@communities.gsi.gov.uk

(IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The application for costs (IR1.1) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

5. The Secretary of State notes (IR8.2-8.9) that the parties agreed at the inquiry that the description of the proposals should be amended to read:

   Appeal A:

   "A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns"

   Appeal B:

   "Change of use from agricultural land to Biodiversity Park."

   The Secretary of State is satisfied that all interested persons were given an opportunity to express their views on these changes and there is no evidence of prejudice. He has therefore determined the appeals on the revised basis.

6. Following publication of the planning practice guidance on 6 March 2014, the Secretary of State wrote to you and the Council on 17 March to seek views on any points of relevance to your clients' case; and you responded on 31 March on behalf of both parties confirming that your clients and the Council are content that the new guidance on the relevant topics does not materially alter the considerations In this case. A copy of your response may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

7. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Charnwood Borough Council Local Plan 2004 (LP); and the Secretary of State agrees with the Inspector that the policies most pertinent to the main issues in these appeals are those set out at IR1.22-1.27. Like the Inspector (IR1.28), he gives them due weight according to their degree of consistency with the *National Planning Policy Framework* (The Framework), as set out at IR1.34.

8. The Secretary of State has also taken account of the *Charnwood Local Plan 2006 to 2028 Core Strategy (CS) (Pre-Submission Draft)* (IR1.29-1.32); and he is aware that, since the close of the appeal inquiry, the examination into the soundness of the CS has been opened. Nevertheless, for the reasons given at IR1.32 (particularly with regard to unresolved objections), he attributes little weight to it.

9. In addition to the Framework, other material considerations which the Secretary of State has taken into account include *the* p*lanning practice guidance* referred to in paragraph 6 above, and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

10. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR1.4 and also referred to at IR8.1.

Appeal A

Consistency with development plan and sustainability

11. For the reasons given at IR8.10-8.22, the Secretary of State agrees with the Inspector's conclusion at IR8.24 that the appeal proposal would accord with a wide range of development plan policies but that there would be limited conflict with Policy CT/4 (development in Areas of Local Separation (ALS)) to which he gives some weight (see paragraph 13 below). The Secretary of State also agrees with the Inspector that, as agreed by the parties (IR8.23), the appeal site is in a sustainable location for housing development.

Housing needs and land supply

12. For the reasons given at IR8.25-8.29, the Secretary of State agrees with the Inspector's conclusion at IR8.30 that the release of the appeal A site is necessary to meet the housing needs of the Borough. Whilst acknowledging the steps that have been taken towards the adoption of a CS since the close of the appeal inquiry, he agrees with the Inspector's observation at IR8.26 that there is currently little evidence of sufficient sites having been allocated to provide a 5 year housing land supply. He also agrees (IR8.27-8.29) that paragraph 14 of the Framework is engaged because the local plan is out-of-date so that the presumption in favour of sustainable development applies.

Character and appearance of the area, including the purpose and integrity of the ALS

13. Like the Inspector (IR8.31), the Secretary of State accepts that, if the appeal succeeds, there would be a reduction in openness and the character of the existing ALS between Mountsorrel and Rothley would be changed. However, he also agrees with the Inspector at IR8.39 that, for the reasons given at IR8.32-8.38, the proposed development would not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider ALS. He also agrees that the countervailing environmental benefits, including those arising from the landscaping proposals in the appeal scheme master plan and the careful design of the relief road to include significant areas of new planting, more than outweigh the loss of ALS and the limited landscape harm caused by the loss of green field land.

Appeal B

14. Having regard to the Inspector's comments at IR8.7-8.9, and noting that the Council have resolved that Appeal B is acceptable on its own terms (IR8.51), the Secretary of State agrees with the Inspector at IR8.55 that the Appeal B proposal is wholly in accordance with the Framework and with the local plan and that there are no other material considerations which indicate planning permission should not be granted.

Conditions and obligations

15. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon (IR8.40-8.41), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with the terms of the planning practice guidance.

16. The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR8.42-8.47. He agrees with the Inspector (IR8.42) that all the provisions included in the executed Section 106 Agreement dated 13 December 2013 are necessary and comply with the Framework and Regulation 122 of the CIL Regulations. He also agrees with the Inspector (IR8.43-8.46) that the completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and the Police and Crime Commissioner for Leicestershire (APP10) meets the tests of Regulation 122 and the Framework and should be regarded as a material consideration. However, the Secretary of State agrees with the Inspector that, for the reasons given at IR8.47, the signed and completed S106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and NHS England (Leicestershire and Lincolnshire) (APP13) does not meet the tests of Regulation 122, and he therefore gives it no weight.

Overall Conclusions

17. The Secretary of State concludes that, as the development plan is out-of-date and the Council cannot demonstrate a 5 year supply of housing land, there is a strong case for allowing this appeal and granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. He acknowledges that the proposed development would represent a limited conflict with the development plan through its effect on the purpose and integrity of the ALS, but he considers that this harm would be limited and insufficient to undermine its continuing planning function. Therefore, having regard to the other benefits of the appeal proposals, he concludes that, overall, the scheme represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

Formal Decision

18. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeals and grants planning permission for:

    Appeal A: a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns**,** in accordance with amended application ref: P/12/2005/2, dated 20 September 20112**;** and

    Appeal B: change of use from agricultural land to Biodiversity Park in accordance with amended application ref: P/12/2456/2 dated 21 November 2012.

19. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

20. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

22. A copy of this letter has been sent to the Council.

Yours faithfully

JEAN NOWAK
Authorised by Secretary of State to sign in that behalf

ANNEX A

CONDITIONS

APPEAL A - Appeal Ref: APP/X2410/A/13/2196928

1) Insofar as this decision grants full planning permission for the relief road as indicated in the application, the development, hereby permitted, shall be begun not later than 2 years from the date of this permission.

2) The development of the relief road shall be carried out only in accordance with the details and specifications included in the submitted application, as amended by the revised drawings Nos. NTT/2033/HD/104 rev P3, NTT/2033/HD/104 rev P4, NTT/2033/HD/105 rev P4, NTT/2033/HD/106 rev P4, NTT/2033/HD/100 P11, NTT/2033/008 rev P2 showing the layout and design of the relief road.

3) Insofar as this decision grants outline planning permission for those parts of the development other than the relief road, details of the layout, scale, appearance, access, landscaping and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins, in accordance with the phasing scheme as agreed under condition No. 5 below and the development shall be carried out as approved.

4) The application(s) for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the final approval of the last of the reserved matters.

5) No development, including site works, shall take place until a phasing scheme in respect of the relief road, pedestrian/cycle access routes to the site, public open space, recreational, children's play areas, Biodiversity Park and the residential areas has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.

6) No development, including site works, shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

7) No development, including site works, shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year critical storm plus an appropriate allowance for climate change will not exceed the run-off from the undeveloped site following the corresponding rainfall event.
The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
The scheme shall also include:

- details of how the scheme shall be maintained and managed after completion
- sustainable drainage techniques or SuDS incorporated into the design in line with The SUDS manual C697. A development of this type should incorporate at least two treatment trains.
- details to show the outflow from the site is limited to the maximum allowable rate, i.e. greenfield site run-off
- design details of the proposed balancing ponds, including cross-sections and plans. This includes all connections to any receiving watercourse.

8) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision B and the mitigation measures detailed within the FRA produced by BWB Consulting and dated March 2013.

9) No development, including site works, shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-

(i) the routing of construction traffic;
(ii) the times of construction work;
(iii) the parking of vehicles of site operatives and visitors;
(iv) loading and unloading of plant and materials;
(v) storage of plant and materials used in constructing the development
(vi) measures to control the emission of dust and dirt (including a scheme for wheel cleaning) during construction to ensure that the highway is kept free of mud, water and stones;
(vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
(viii) measures to protect the trees and hedges to be retained on the application site during the duration of the construction works;
(ix) measures to protect the wildlife habitats and wildlife corridors during the duration of the construction works.

10) No development, including site works, shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the Local Planning Authority for their assessment and written approval. Any remediation works required by the approved strategy shall be carried out in accordance with the approved remediation strategy.

11) No development in any phasing as agreed under condition 5, including site works, shall take place until a landscaping scheme for the respective phase, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:

(i) the treatment proposed for all ground surfaces, including hard areas;
(ii) full details of tree planting;

(iii) planting schedules, noting the species, sizes, numbers and densities of plants;
(iv) finished levels or contours;
(v) any structures to be erected or constructed;
(vi) functional services above and below ground; and
(vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.

12) The landscaping schemes for the development shall be fully completed, in accordance with the details agreed under the terms of condition No. 11, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

13) No development, including site works, shall take place until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules, including ecological measures for all landscape areas, other than domestic gardens, has been submitted to and agreed in writing by the Local Planning Authority. The agreed Green Infrastructure Biodiversity Management Plan shall then be fully implemented.

14) The details to be submitted in accordance with condition No. 3 shall include open space/children's play area provision at a rate of 200 square metres per 10 dwellings of which 75 square metres per 10 dwellings must include play equipment.

15) The details to be submitted in accordance with condition No. 3 shall include open space provision for recreational use by adults, youth and for general amenity purposes.

16) No development, including site works, shall take place until all existing vehicular accesses to the site have been identified and details submitted to and approved in writing by the Local Planning Authority to show how and when the accesses that are to become redundant as a result of this proposal shall be closed permanently and the existing vehicular crossings reinstated.

17) No development, including site works, shall take place until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

18) No development, including site works, shall take place until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the Local Planning Authority, and no development shall take place except in accordance with the approved details.

APPEAL B - Appeal Ref: APP/X2410/A/13/2196929

1) The development, hereby permitted, shall be begun not later than 3 years from the date of this permission.

2) The use hereby permitted shall not commence until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:

   (i) the treatment proposed for all ground surfaces, including hard areas;
   (ii) full details of tree planting;
   (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
   (iv) all existing trees, hedges and other landscape features, indicating clearly those to be removed.

3) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the commencement of the use or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

4) The use hereby permitted shall not commence until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules for the area, has been submitted to and agreed in writing by the Local Planning Authority. The agreed landscape management plan shall then be fully implemented.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 27 January 2014

Town and Country Planning Act 1990

Two appeals by William Davis Ltd

Local Planning Authority: Charnwood Borough Council

Inquiry held on 10 -13 December 2013

Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

File Refs: APP/X2410/A/13/2196928 & APP/X2410/A/13/2196929

Inspector's Report

CONTENTS

File Ref: APP/X2410/A/13/2196928 (APPEAL A)
Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by William Davis Limited against Charnwood Borough Council.
- The application Ref P/12/2005/2 is dated 20 September 2012.
- The development proposed is the construction of a maximum of 250 dwellings, replacement primary school, change of use from dwelling to medical facility, change of use from agricultural land to domestic curtilages, green infrastructure, potential garden extensions, construction of relief road (details to be agreed as part of the submission) and demolition of barns.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.

File Ref: APP/X2410/A/13/2196929 (APPEAL B)
Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by William Davis Limited against Charnwood Borough Council.
- The application Ref P/12/2456/2 is dated 21 November 2012.
- The development proposed is an outline application for an area of public open space including water balancing ponds and green infrastructure.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.

1. Procedural Matters

1.1 At the Inquiry an application for costs was made by William Davis Limited against the Charnwood Borough Council. This application is the subject of a separate Report.

1.2 The Inquiry was held at the Ramada Hotel, High Street, Loughborough into two appeals by William Davis Limited on 10-13 December 2013. I made accompanied site visits on 12 December 2013 to the appeal sites and other sites. I also visited other sites on an unaccompanied basis.

1.3 The appeals were recovered by the Secretary of State (SoS) by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 29 May 2013. The reason for this direction is that the appeals involve proposals for residential development of over 150 units or on sites over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

1.4 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of these appeals:

(i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;

(ii) Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position;

(iii) The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;

(iv) Whether any permission should be subject to any conditions and, if so, the form these should take; and

(v) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

1.5. There are two Statements of Common Ground (SoCG); one for Appeal A,[1] and one for Appeal B.[2] There is a Section 106 Planning Obligation Agreement,[3] and two Section 106 Unilateral Undertakings[4] and a List of Suggested Conditions for each appeal.[5] The Appellant, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The document lists are set out at the end of this Report.

The Sites and Surroundings

1.6 There are agreed site descriptions for both appeals in the SoCGs.

The main points for each site are:

1.7 **Appeal Site A** covers about 26.22 hectares and is located in Rothley, Leicestershire. Vehicular access would be off the junction of Mountsorrel Lane and Walton Way to the west and Loughborough Road to the east. Appeal site A is part of a larger area of land controlled by the Appellant which comprises about 32.82 hectares. 6.6 hectares relate to land to the south of the appeal site which is the subject of conjoined Appeal B.

1.8 To the north of Appeal Site A is residential development, which is separated from the site by a narrow watercourse (Sic Brook), sports fields and a site with the benefit of planning permission for housing. Adjacent farmland defines the southern limits of the site. To the east there is a garden centre (Brooklea Nursery). The western boundary is marked by the rear gardens of properties fronting Mountsorrel Lane, Mountsorrel Lane itself and a cemetery.

1.9 There are a number of hedges crossing the site and existing trees as shown in Design and Access Statement (DAS). The site generally falls north to south down towards Rothley Brook (circa 47m AOD). The northern part of the site,

[1] INQ3
[2] INQ4
[3] APP9
[4] APP10 and APP13
[5] APP22A and APP22B

adjacent the Linkfield Road area, actually falls to the north-west (circa 57m AOD). The highest point (circa 69m AOD) sits to the south of this and forms a ridge line; some 12 metres higher than the north-west boundary.

1.10 There are no public footpaths or bridleways across the site. The site is currently used predominantly as grazing land with some arable farmland. The site is situated close to a number and range of community facilities. These facilities are listed in the SoCG[6] with walking distances taken from the centre of the site except where specified.

1.11 **Appeal Site B** covers about 6.6 hectares and is located in Rothley, Leicestershire. Pedestrian access would be off Mountsorrel Lane to the west and Loughborough Road to the east. To the north of the site there are fields which are the subject of an appeal for residential development and a relief road (Appeal A). The adjacent Rothley Brook defines the southern limits of the site. To the east is Loughborough Road. The western boundary is marked by the rear gardens of properties fronting Mountsorrel Lane, Rothley Tennis Club and Rothley CoE Primary School.

1.12 The site comprises trees, hedges, grassland and wetland habitat. The hedges crossing the site and existing trees are shown in the DAS.[7] The site falls within the Environment Agency's designated flood zones 2 and 3. Rothley Brook Local Wildlife Site (LWS) and Farnham Bridge Marsh LWS occur within or on the site boundary. There are no heritage assets on the appeal site. There are no public footpaths or bridleways across the site.

The Proposals and the Council's Putative Reason for Refusal

1.13 Although the Council did not determine the applications within the appointed time, it subsequently reported both applications to the Plans Committee on 20 June 2013. With regard to the application for residential development and the link road (Appeal A) the officer's report (CBC02) explained that the Council would have refused this application for the following putative reason. The Council's resolution to refuse the application is at CBC01 and for convenience I set it out below:

"The local planning authority is of the opinion that the proposal would lead to the loss of an Area of Local Separation resulting in a significantly narrowed and reduced actual and perceived gap of open undeveloped land between the villages of Rothley and Mountsorrel contrary to the saved policy CT/4 in the adopted Borough of Charnwood Local Plan. This would be contrary to interests of the well established planning policies and emerging policies in the Charnwood Local Plan to prevent the coalescence and merging of villages in the Soar Valley. This significant adverse impact is considered to outweigh the benefits of allowing the development because of the harmful effect it would have on the purpose and integrity of the Area of Local Separation and would undermine its continuing planning function".

1.14 With regard to the application for the Biodiversity Park (Appeal B) this was also reported to the Council's Plans Committee on 20 June 2013 (see CBC04)

[6] INQ3
[7] APP16

following the lodging of the appeal against non determination and it was resolved that planning permission would have been granted subject to conditions (see CBC03). It was considered that this development could be delivered without the housing and link road development and without an adverse impact on the Area of Local Separation (ALS) and was therefore considered acceptable.

1.15 The application in Appeal A was submitted in outline form with all matters save for access reserved for future consideration. The application in Appeal B was also submitted in outline but with all matters reserved for future consideration. The reader should be aware that there were considerable discussions between the Appellant and the Council on both applications prior to the submission of these appeals and these resulted in various changes being made to the proposals to try and overcome the concerns of the Council on a number of issues. Section 6 of Mr Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes I asked at the outset of the Inquiry for clarification of the description of the both proposals, a list of the plans on which both proposals should be based and a list of the documents submitted with both appeals.

1.16 In this regard the reader should refer to documents APP12A, APP12B, APP14 and APP20 which were agreed by the Appellant and the Charnwood Borough Council. Document APP12A confirms that in relation to Appeal A the description of the proposal has now changed from that shown on the original application form to:

"A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns."

Document APP20 also explains that the changes are compliant with the Wheatcroft principles.[8] Document 12B confirms that in relation to Appeal B the description of the proposal has now changed from that shown on the original application form to:

"Change of use from agricultural land to Biodiversity Park."

Document APP14 sets out the agreed list of plans for both appeals and Document 16 sets out the agreed list of documents supporting both appeals.

1.17 The Appeal A proposal is described in Section 3 of the SoCG.[9] The most helpful plan is the Illustrative Masterplan P-A3. This indicates the areas proposed for a maximum of 250 dwellings, the proposed access via a link road, the proposed green infrastructure, balancing ponds, public open space and community orchard.

1.18 The Appeal B proposal is described in Section 3 of the SoCG.[10] The most helpful plan is the Illustrative Masterplan P-B3. This indicates that of the 6.6 hectares some 5.73 hectares would comprise the Biodiversity Park and the

[8] Wheatcroft v Secretary of State [1981] 1EGLR139
[9] INQ3
[10] INQ4

remainder would be green infrastructure. Pedestrian access to the site would be off Mountsorrel Lane to the west, Loughborough Road to the east and the proposed residential development to the north.

Environmental Impact Assessment (EIA)

1.19 The proposed development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations,[11] being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 12(1) and 6(4) of the above Regulations, the SoS issued a Screening Direction on 12 September 2013 to the effect that this development is not EIA development. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.

Planning Policy

1.20 The development plan for the area includes the saved policies of the Charnwood Borough Council Local Plan 2004 (CBCLP). A list of the relevant policies is set out in the SoCG for each site. A copy of the Saving Letter dated 21 September 2007 and the detailed wording of all the policies is also included on the file.

1.21 Set out below are those policies which are most pertinent to the main issues in these appeals. However, the Conclusions and Recommendations in this Report have taken account of all relevant policies.

Charnwood Borough Council Local Plan 2004 (Saved Policies)

1.22 *Policy ST/1 – Overall Strategy for Charnwood* – sets the overall framework for development in the Borough, ensuring that needs of the community are met and that features of the natural and built environment are protected and safeguarded where necessary. *Policy ST/2 – Limits to Development* – indicates that development will be limited to within the existing Limits to Development boundaries of existing settlements, subject to specific exceptions set out in the Local Plan. *Policy ST/3 – Infrastructure* – ensures that developers provide financial contributions for related infrastructure or community facilities.

1.23 *Policy H/5 - Affordable Housing on Unallocated Sites* – seeks to secure the provision of the appropriate amount of affordable housing with a range of house types on windfall sites. *Policy H/16 – Design and Layout of New Housing Developments* – seeks to ensure that high standards of design are achieved in terms of scale, character of the area, privacy, landscaping and creating a safe and secure environment.

1.24 *Policy CT/1 - General Principles for Area of Countryside, Green Wedge and Local Separation* - states that development within these areas will be strictly

[11] The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

controlled. The policy allows permission for the re-use and adaptation of rural buildings for uses suitable in scale and nature, and small-scale new built development, where there would not be a significant adverse environmental impact and the proposal would meet certain criteria. *Policy CT/2 – Development in the Countryside* - states that in areas defined as Countryside, developments acceptable in principle will be permitted where it would not harm the character and appearance of the countryside and provided it could safeguard its historic, nature conservation, amenity and other local interests. *Policy CT/4 – Development in Areas of Local Separation* – states that in Areas of Local Separation development would be acceptable in principle where the predominantly open and undeveloped character of the area is retained and gaps between settlements not reduced.

1.25 *Policies RT/3 – RT5* set standards for the provision of play and recreation spaces in new development. *Policy RT/12* indicates that areas of open space for recreation, amenity, structural landscaping and natural green space will be required in association with new development. *Policy EV/43 – Percent for Art* calls for works of public art to be provided as an integral part of new major development, where it can be readily seen by the public.

1.26 *Policy TR/1 – The Specified Road Network* - seeks to ensure that development is not granted which results in serious congestion on the main traffic routes through the Borough, or otherwise prejudice the ability to provide for safe and efficient movement of traffic. *Policy TR/6 – Traffic Generation from New Development* - indicates that developments which would result in unsafe and unsatisfactory operation of the highway system or have a significant impact on the environment will not be permitted, unless measures are proposed to overcome any harmful effects.

1.27 *Policy TR/16 - Traffic Calming* - seeks to ensure measures are included to reduce traffic speeds and assist in the creation of higher quality and safer living and working environments within and in the vicinity of development sites. *Policy TR/17 - Impact of Traffic on Minor Roads* - indicates that developments which would result in significant changes to the amount of traffic using rural or roads through villages with safety or environmental implications will not be permitted, unless measures are proposed to overcome any harmful effects. *Policy TR/18 – Parking Provision in New Development* - seeks to set the maximum standards by which development should provide for off street car parking dependent on floorspace or dwelling numbers.

1.28 The CBCLP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 therefore, in accordance with the NPPF paragraph 215 and accompanying footnote 39, due weight should be given to these policies according to their degree of consistency with the NPPF.

Charnwood Local Plan 2006 to 2028 Core Strategy (Pre-Submission Draft)

1.29 The Council's Pre-Submission Draft Core Strategy (CS) was considered by Cabinet on 11 April 2013 and approved for consultation. The SoCG sets out an indicative timetable for the preparation of the CS which anticipates a Public Examination in April 2014 and Adoption in October 2014. The emerging CS sets out a development strategy for the provision of homes and jobs in Policy

CS1.[12] The priority location for growth will be the Leicester Principal Urban Area, where 7,260 homes and up to 46 hectares of employment will be delivered by 2028. The majority of the remaining growth will be met at Loughborough and Shepshed where at least 6,450 homes and up to 22 hectares of employment land will be delivered by 2028.

1.30 A small amount of housing and employment development is anticipated in the Service Centres to maintain their facilities and services to benefit the people who live there and to support surrounding communities. A total of 3,170 homes and up to 7 hectares of employment land will be delivered in the Service Centres. Mountsorrell and Rothley are identified as Service Centres in the emerging CS. There is no specific policy relating to ALS in the CS. However, the emerging CS envisages the continued use of ALS but with the boundaries to be reviewed through a Sites Allocations and Development Management Development Plan Document (DPD) which is planned to be adopted in June 2015.

1.31 Policy CS11 of the emerging CS[13] relates to landscape and countryside. It indicates that the predominantly open and undeveloped character of ALS will be protected unless new development clearly maintains the separation between built-up areas of settlements. Policy CS12 relates to Green Infrastructure and recognises the need to protect and enhance green infrastructure for communities. It specifically supports proposals related to the River Soar which provide high quality walking and cycling links between the corridor and Charnwood's towns and villages. Policy CS13 supports developments that protect biodiversity and geo-diversity and those that enhance, restore or re-create biodiversity.

1.32 In accordance with paragraph 216 of the NPPF, account can be taken of emerging policies but the weight attached to such documents and polices will depend on their stage of preparation, extent to which there are unresolved objections and the degree of consistency between these emerging policies and the NPPF. It is agreed between the main parties that the weight that can be attributed to the emerging CS is limited as there are significant unresolved objections.[14]

Supplementary Planning Documents

1.33 The Council has issued a number of Supplementary Planning Documents (SPD) that are of relevance. The *'Leading in Design'* SPD (October 2006) encourages, promotes and inspires higher design standards in development. The *'Making it Easy'* SPD (February 2006) is a set of guidelines for creating buildings and environments that are accessible for all people with disabilities. The *'S106 Developer Contributions'* SPD (October 2007) ensures the provision of reasonably related infrastructure that is appropriate to the type and scale of development and the circumstances of the particular locality. The *'Affordable Housing'* SPD (October 2005) sets out the need for affordable housing. It seeks

[12] APP17
[13] CBC12
[14] INQ3 paragraph 6.10

a minimum of 30% affordable housing units on sites of this size for new housing.

National Planning Policy Framework (NPPF) (2012)

1.34 The NPPF has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 215 makes it quite clear that the NPPF can override development plan policy that is not consistent with its provisions. Paragraph 49 of the NPPF indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the NPPF indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole or unless specific NPPF policies indicate development should be restricted.

2. THE CASE FOR CHARNWOOD BOROUGH COUNCIL (CBC)

The main points are:

Introduction

2.1 It is common ground that: (a) Appeal B is acceptable on its own terms; the matter in dispute relates to Appeal A; (b) the Council cannot demonstrate a 5 year supply and therefore the housing supply policies of the development are out of date pursuant to paragraph 49 of the NPPF; (c) by operation of the NPPF, the appeals should be allowed unless the harm to the ALS significantly and demonstrably outweighs the benefits of the scheme; (d) by operation of paragraph 215 of the NPPF, due weight should be accorded to the development plan depending on the degree of consistency with the NPPF; (e) 83% of the Borough is covered by countryside and 5% of the countryside is subject to protection as ALS and Green Wedge. The appeal sites lie within a designated ALS; and (f) the northern cluster of proposed new housing, which hugs the edge of Mountsorrel, is unlikely to have an unacceptable impact. The Council's concerns relate to the impact of the larger southern cluster of houses and the relief road on the ridge.

Status of the ALS

2.2 It is also common ground that the appeal site has the following attributes agreed by Mr Rech in cross examination: (a) it possesses relatively coherent countryside character; (b) it makes a positive contribution to local distinctiveness on account of the fact that it is typical of the landscape character area to which it lies; (c) its predominant appearance is open and natural, notwithstanding the presence of urban features in the vicinity; (d) presently, it fulfils its planning function of providing open and undeveloped land to maintain separation between the villages; (e) it is visually more impressive than most urban fringe sites; and (f) it is of higher landscape quality than the remaining part of the eastern part of the ALS on account of

the fact that it has a more coherent field pattern and better preserved trees and hedgerows.

2.3 The SoS is invited to accept that the appeal site forms part of an enclave of countryside which presently curries a strong impression of separation between Mountsorrel and Rothley.

2.4. Policy CT/4 states that within an ALS development will only be permitted where the predominately open and undeveloped character of the area is retained and the already narrow gap between settlements is not reduced.[15] The intent of the policy is crystal clear. The words are written in plain English. The explanatory text could not be more explicit: "These already narrow gaps should remain predominately open and undeveloped to secure effective separation" (at paragraph 6.24).

2.5 In his 2000 Local Plan report the Inspector noted: "It is my opinion that there is still a need to maintain an effective area of separation between Mountsorrel and Rothley in order to retain their own identities.[16] Importantly, he describes the gap between the two settlements as "already narrow".

2.6 At that time, he found: "In my view, with the ridge line moving closer towards Rothley, the gap between the two settlements would be materially reduced in visual terms...I cannot agree with the objectors that the objection site would be developed in a manner which provides for the continued protection of the separate characters, and setting, of the settlements of Rothley and Mountsorrel, without affecting adversely the ALS.[17]

2.7 Later, he concluded: "I consider that the proposal would significantly diminish the physical and visual separation between Mountsorrel and Rothley, and materially harm their characters and separate identities.[18]

2.8 In 1980 an Inspector considered the character and role of the southern part of the appeal site. That appeal related to residential development in the location of the proposed southern cluster as shown at LPA1. The Inspector concluded: "despite the ribbon of development along Mountsorrel Lane, however, I consider that the open countryside separating the 2 settlements is the dominant feature in the landscape, particularly when viewed from the outskirts of Rothley...The shallow valley to the east of Mountsorrel Lane is pleasing in appearance, and together with the ridge to the north, it provides an emphatic visual and physical separation between Rothley and Mountsorrel.[19]

2.9 Of course, the policy architecture under which the appeal was dismissed is quite different to that which exists today, but this central aesthetic assessment is just as applicable now as it was then. Mr Rech agreed that the appearance of the site has not changed materially in the last 33 years. It is clear that the Appellant intends to build its southern cluster of housing on the very area of

[15] See Mr Morley's Appendix CBC07
[16] See Mr Morley's Appendix CBC08 paragraph 4.1134
[17] Ibid. paragraph 4.1135
[18] Ibid. paragraph 4.1136
[19] See Mr Morley's Appendix CBC15 paragraph 17

land which the Inspector found provided an emphatic visual and physical separation between Rothley and Mountsorrel.

2.10 The Appellant avers that the existing gap between the villages of some 800m is not narrow. Indeed, Mr Rech described the gap as "wide". This is not credible. In this regard, the Appellant finds itself in a minority of one. The CBCLP states all the gaps to which Policy CT/4 relate are narrow. In respect of this particular ALS, the Inspector in the 2000 Local Plan report describes the gap between the two settlements as "already narrow". The SoS is invited to agree with not only the Council but also the Inspector and the development plan that the gap is already narrow.

2.11 In these circumstances, Mr Rech agreed that where a gap is already narrow the terms of Policy CT/4 should be applied with rigour. So it is here.

Is Policy CT/4 consistent with the NPPF?

2.12 It is submitted that the policy is consistent with the NPPF. The Appellant avers that Policy CT/4 is inconsistent with the NPPF because it provides a blanket ban on residential development by incorporation of Policy CT/1. It is not accepted that this is the case given that the restriction on land use applies to a very small part of the Borough's land. Even if the policy is considered to sit uncomfortably with the more permissive approach of the NPPF, it is telling that emerging Policy CS11 (the successor ALS policy to Policy CT/4) introduces a more flexible approach. This shall be returned to later.

2.13 Addressing the Appellant's allegation head-on, it is noted that it is common ground that the aspiration of maintaining areas of open land in order to keep separation between settlements is an enduring and well-established principle of planning.

2.14 Second, whilst not expressly referred to in the NPPF, it can be seen that the purpose of such a local designation finds support in the NPPF:

(a) One of the Core Planning Principles recognises "the intrinsic character and beauty of the countryside" and the need "to take account of the different roles and character of different areas;"[20] and

(b) In plan-making local authorities are told to "identify land where development would be inappropriate, for instance because of its environmental or historic significance"[21] — this is precisely what the development plan does now and in its emerging form.

2.15 In determining whether the restrictive nature of Policy CT/4 is consistent with the NPPF, the SoS is assisted by the conclusion reached by other decision makers. In the Rearsby Roses decision 8 months ago, the Inspector found that the ALS designation in the Borough, founded upon Policy CT/4, "does not clearly conflict with the Framework."[22]

[20] NPPF paragraph 17
[21] NPPF paragraph 157
[22] Mr Morley's Appendix CBC16

2.16 Further assistance is provided in the recovered decision at Land North of Stephenson Way, Coalville which addresses the weight to be attached to the Green Wedge designation.[23] The Inspector concluded that the restrictive Green Wedge policy (Policy E20) "is not out of date and that it remains relevant and that it merits significant weight in the appeal" (paragraph 311). The SoS agreed with this conclusion, finding that "the saved policies in the NWLLP [which includes Policy E20] should be given most weight" (paragraph 10). Importantly, the SoS notes "the period the NWLLP covers ended in 2006, but he agreed that the Green Wedge here has served and continues to serve a useful and much valued planning purpose, and that it should only be lost for very compelling land use planning reasons" (paragraph 13). Overall the SoS concludes that he agrees with the Inspector that "overall the proposals cannot be regarded as sustainable development" (paragraph 19). The view of the SoS could not be clearer: restrictive policies designed to significantly inhibit built development to maintain separation between particular settlements is up to date and entirely consistent with the pro-growth imperative of the NPPF.

2.17 The Peggs Green decision, 9 months ago, relates to an appeal for 5 houses within a Green Wedge in Leicestershire.[24] The Inspector records that although the appeal site was then within the Green Wedge designation the emerging CS disapplies this designation to it. In short, the Green Wedge designation was a dead man walking and would die imminently. The Inspector concludes: "The fact that the Framework does not provide for the designation of Green Wedges does not in itself make the policy inconsistent...In my opinion, the designation in protecting an area of landscape provides a useful strategic planning function, and although it is intended that the designation will be deleted, until the CS is adopted it will continue to perform that function. It is a function that is not inconsistent with the Framework and in particular the environmental role of planning in contributing to protecting and enhancing the natural, built and historic environment" (paragraph 8). If the Inspector accorded weight to a designation which was to die imminently, greater weight should be afforded the ALS here, which is intended to live on for the next plan period.

2.18 These appeal decisions fly in the face of the position advanced by the Appellant at this Inquiry. It is plain that there is no conflict between Policy CT/4 and the NPPF. It is clear that the aspiration to maintain open land between settlements to prevent coalescence is a longstanding and well-established principle of planning. There is nothing eccentric or old fashioned about Policy CT/4. It is a perfectly conventional and acceptable means of protecting land which serves an important planning function.

2.19 It is telling that the Appellant has been unable to identify a single decision of an Inspector or SoS which adopts the approach which it advances at this Inquiry. This speaks volumes.

2.20 The central proposition at the centre of the Appellant's case is that the ALS designation, as provided by the terms of Policy CT/4 is inconsistent with the NPPF and therefore no weight should be accorded to it. For the reasons given, this is quite simply a bad point.

[23] Mr Morley's Appendix CBC18
[24] Mr Morley's Appendix CBC22

2.21 By operation of paragraph 215 of the NPPF, it is common ground that due weight should be accorded to the development plan depending on the degree of consistency with the NPPF. Given that the ALS is not in material conflict with the thrust of the NPPF, full weight should be attached to it.

Weight to be attached to the ALS Designation

2.22 It is common ground that the ALS is a longstanding designation and has protected the appeal site for the last 3 decades.

2.23 This is not a case where some elderly local designation has become redundant through the passage of time. This is not a case where the designation is intended to come to an end in the foreseeable future. The ALS, embodied by saved Policy CT/4, lives on in the emerging CS. Policy CS11 states expressly: "We will protect the predominately open and undeveloped character of ALSs unless new development clearly maintains the separation between the built up areas of these settlements."[25]

2.24 Mr Stone agreed in cross examination that this emerging policy:

(a) Does not tolerate a marginal degree of separation as separation must be clear; and

(b) If it is concluded that a residual gap of 240m is insufficient, the terms of the policy will be offended.

2.25 The explanatory text accompanying Policy CS11 states that "the retention of ALS will be balanced against the need to provide new development, including homes, in the most sustainable locations" (paragraph 7.15). It is plain that Policy CS11 properly responds to the pro-growth imperative of the NPPF by introducing a more flexible element to its wording by allowing residential development if its impact is not unacceptable.

2.26 The emerging CS is to be submitted to the SoS by the end of 2013. To date, 20 consultation responses have been received by the Council. They are broadly supportive of the continuing role of ALS. There is only one which challenges the appeal site's designation as an ALS. It was the Appellant. This speaks volumes. Again, the Appellant finds itself in a minority of one. The SoS can be satisfied, at the very least, that Policy CS11 is likely to form part of the adopted new development plan. Further, notwithstanding that a review of the boundaries of the ALS is to be undertaken, given the location of the appeal site in the centre of the ALS it is highly improbable that the boundaries will be amended so radically so as to delete the appeal site from it. If it were, the integrity and purpose of this ALS would be fatally undermined.

2.27 The SoS is invited to judge the ALS as it is constituted now. It is a matter of record that there is to be a review of the boundaries of the ALS. There is no evidence before the Inquiry that the part of the ALS which relates to the appeal site is ripe for deletion. That the boundary of the ALS may be altered in some unknown way at some future point in time is speculative. Even if the

[25] See Mr Morley's Appendix CBC12

boundary were to be altered, Mr Morley explained in evidence that given its central location the appeal site is not an obvious candidate for removal.

2.28 The ALS and Green Wedge designations protect 5% of the Borough. Therefore, 78% of the Borough which comprises open countryside is undesignated. It follows as a matter of common sense that in order to make good the significant housing supply shortfall, it is not inevitable that the ALS designation will be largely lost. This is not a Local Planning Authority whose area is covered by large swathes of designated land (such as Green Belt, AONB or Conservation Areas) which mean that other land is inevitably vulnerable to development. To put it simply, there is plenty of undesignated land beyond the built limits of settlements to provide the much needed housing.

2.29 There is a dispute as to whether Policy CT/4 should be characterised as a housing supply policy to which paragraph 49 of the NPPF applies. Whilst, of course, the restrictive nature of Policy CT/4 has an impact on the distribution of housing in the Borough the Council respectfully prefers the judgement of Lang J over that of Lewis J. It cannot convincingly be described as a housing supply policy.[26]

Extent of Harm

2.30 There is agreement between the parties that the photomontages before this Inquiry are methodologically sound and can assist the SoS in determining the appeals.

2.31 It is common ground that if the appeal succeeds:

(a) there will be a reduction in openness;
(b) the character of the appeal site will be fundamentally altered; and
(c) operational development in the form of the new relief road will connect Mountsorrel Lane and Loughborough Road across the ALS.

2.32 The reduction in openness and the substantial narrowing of the gap between the villages of over two thirds is significant, since Mr Rech agreed in cross examination that it is the very openness of the appeal site which helps it to fulfil its planning function under Policy CT/4.

2.33 As a matter of approach it is common ground that one should not merely undertake an arithmetic exercise of measuring the length of the residual gap between the villages, but must consider the perception of separation Mr Rech agreed with this in cross examination. In this way, the decision maker should undertake a quantitative and a qualitative assessment. The extent to which the Appellant seeks to reduce the exercise to comparing minimum distances, it falls into error.

2.34 As a matter of fact, it is common ground that the minimum length of the separation will fall from in the region of 800m to 240m. On any reckoning this represents a significant reduction in the extent of separation. The Appellant points approvingly to the western part of the ALS, where the minimum length

[26] See paragraph 8.18 of my Report

of the separation is less than the residual gap between the villages if the appeal succeeds. Little turns on this point. The two parts of the ALS are not physically connected and there is little inter-visibility between the two. Mr Rech confirmed in cross examination that in reality each part functions as a distinct enclave of open land.

2.35 Turning to the qualitative assessment, the Council is confident that the Inspector will conclude that on the ground the siting of the southern cluster of housing and the relief road on the conspicuous ridge will cause a significant detraction to the sense of separation.

2.36 It is agreed that 10 new openings will be created in the existing hedgerow, which shall lead to the removal of a length of 250m. It is difficult to afford credibility to Mr Rech's characterisation that this loss is "very minimal". It is fair to report that as part of the mitigation, 1km of new hedgerow is to be planted along the relief road and the new access road serving the northern boundary of the main housing area. However, Mr Rech confirmed in cross examination that existing hedgerows are far more valuable in landscape terms than recently planted ones. It can therefore be seen that notwithstanding the net increase in hedgerow, that which will be lost is of a higher aesthetic value contributing to the legible field pattern than the new planting which is designed to provide screening for the road.

2.37 The material harm caused to existing hedgerows and the attendant impact on the coherence of the field pattern weighs against the appeal.

2.38 The proposed scheme comprises 2 clusters of housing. The northern cluster is intended to form part of Mountsorrel. The southern cluster is intended to form part of Rothley. It is common ground that the two clusters are intended to be connected by the new relief road. Doubtless the SoS will have in mind the extent to which the fact that the single proposed scheme straddles the two settlements can be said to maintain the separateness of the settlements or whether it is likely to have the opposite effect.

2.39 It is clear when one visits the site that the southern cluster does not relate well to edge of Rothley. It is perceived as an urban extension rather than the 'rounding off of the village.

2.40 It is common ground that the relief road is not required to make the proposal acceptable since the two clusters of housing could be adequately accessed from the existing Mountsorrel Lane.[27] The Council does not doubt that the provision of the new road brings benefits to the existing residents in the area and enjoys the support of the Highway Authority. However, the Council must consider the road in the round, rather than simply in highway terms. Given that it is not necessary to make the development acceptable, one must consider whether the benefits of its construction outweigh what Mr Rech conceded was some harm.

[27] Agreed by Mr Stone in cross examination and see also paragraph 2.10 of the Highway Assessment at Mr Stone's Appendix 21

2.41 The Council remains firmly of the view that the location of the relief road on the ridge means that it is to be sited on the most visually prominent part of the appeal site. The road is to be built in accordance with Manual for Streets. It is to be two lanes in width, with provision for cyclists and pedestrians and street lit in parts. Such a well-used road is likely to prove to be a significant detracting influence on this most conspicuous part of the ALS. The harm to the ALS is exacerbated by the fact that the road snakes through the main part of open land of the appeal site, which by operation of the s106 Agreement, is to be kept in agricultural use. The location of the relief road, bisecting the open land which the Appellant has expressly designed to have the important role in maintaining the open and undeveloped land between the villages, will inevitably have the effect of reducing the effectiveness of the land in performing this vital function.

2.42 Put simply, the SoS cannot be satisfied that the relief road is needed and the benefits of its provision outweigh the considerable cost to the character of this elevated part of the ALS.

The Development Plan

2.43 The Appellant's case on Policy CT/4 is confused. Mr Stone confirmed in cross examination that it was offended by the appeal proposal. In contrast, Mr Rech vociferously denied that it was breached. He argued at some length that the deployment of a volume of well-chosen green infrastructure will prevent the loss of openness and so comply with Policy CT/4.

2.44 It is plain that the construction of up to 250 houses together with a new road would inevitably undermine the integrity of the ALS. It was utterly unconvincing for Mr Rech to suggest otherwise and aver that the policy is not breached at all. The idea that a masterly sophisticated green infrastructure would have such a marked effect so as to mean that the presence of 250 houses would not cause a loss of open and undeveloped land lacks credibility.

Valued Landscape

2.45 The SoS is invited to accept that the appeal site falls to be convincingly characterised as a valued landscape on account of the fact that it serves an important role in providing an area of open and undeveloped land to provide meaningful separation between the villages. This value not only reflects its explicit protection in the development plan for the last 3 decades, but also the amenity value derived from views across it from roads and existing properties which overlook it. The value of the appeal site is enhanced by its rarity; there is only a very small area of land between the villages.

2.46 If the land falls to be characterised in this way, it follows that the appeal site is subject to two layers of protection: Policy CT/4 and paragraph 109 of the NPPF which requires that development must not only maintain but also enhance the character of the area. It is clear to all who have eyes to see that the siting of 250 houses, even with the most sophisticated mitigation scheme known to man, must have an adverse impact on what is presently an open and natural piece of land. Whatever the extent of the adverse impact, the development will offend the requirement of paragraph 109 'to do no harm'.

2.47 In these circumstances, the planning balance tips decisively against the acceptability of the appeal proposal.

Conclusion

2.48 The appeal offends the development plan and important parts of the NPPF. It is submitted that the harms identified significantly and demonstrably outweigh the accepted benefits of both schemes in terms of the provision of market and affordable housing, provision of POS and ecological gains.

2.49 The proposal cannot convincingly be characterised as sustainable development in the terms sought by Government.

2.50 The SoS is invited to dismiss both appeals. If it is concluded that Appeal A is to be allowed, the Council agrees that Appeal B should be allowed also.

THE CASE FOR WILLIAM DAVIS LTD

The main points are:

Introduction

3.1 At the outset of the Inquiry the Inspector outlined the main issues in this case. These are set out at paragraph 1.4 of this Report. There is no need to repeat them here but they will be addressed individually and they provide a structure for these submissions. The views of interested persons will also be assessed.

(i) Compliance with the Development Plan and sustainable development principles

3.2 The development plan for the purposes of this case consists of the saved policies of the CBCLP (adopted 2004). This document was only intended to make provision for development needs (including housing) up to 2006. The "Saving Letter"' dated 21 September 2007[28] saved a variety of policies but did so subject to express caveats that (i) saved policies would be replaced "promptly" — this was especially important for CBC because by 21 September 2007 the plan was already a year past the end date (2006) of the period for which it was intended to make development provisions; and (ii) where policies were adopted "some time ago" (i.e. in 2004)

> *"…it is likely that material considerations in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions. ..."*

3.3 These caveats have direct relevance to the application of the development plan in this case. Section 38 (6) requires that

> "*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination*

[28] Mr Morley's Appendix CBC10

must be made in accordance with the plan unless material considerations indicated otherwise."

3.4 The "material considerations" referred to in this case must include at least (i) the NPPF and (ii) the "Saving Letter".

3.5 The NPPF makes clear that:

"*This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making."*

3.6 However, paragraph 215 establishes what the approach is in respect of saved plans such as this one:

"In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

3.7 It is necessary therefore to test the consistency of the saved policies with the NPPF.

3.8 Only one development plan policy is raised by CBC in the putative reason for refusal: Policy CT/4: Area of Local Separation (ALS). The policy cross-refers to Policy CT/1 in terms of restricting the type of development that might be allowed. Any such types of potentially acceptable development identified in Policy CT/1 to be acceptable must also meet the criteria in Policy CT/4. This is the control mechanism of Policy CT/4. However, the purpose of Policy CT/4 is to prevent settlements merging with each other.

3.9 The case of COLMAN[29] identifies the consequences of paragraph 215 of the NPPF in decision taking at appeal. In that case Parker J characterised the relevant policies in that case in this way:

"These policies are, in my view, on their own express terms, very far removed from the 'cost/benefit' approach of the NPPF."[30]

3.10 If this "cost/benefit" approach is applied to Policy CT/4, it is found somewhat wanting as its central intention and its control mechanism is to avoid anything other than the development identified in Policy CT/1 being brought forward in the ALS. However, the purpose of the policy is consistent with the NPPF because all parties to the Inquiry agree that, in principle, that it is a sound planning aspiration to seek to maintain separation of settlements.

3.11 What is the answer to this quandary? The solution is to conclude that the purpose aspect of Policy CT/4 is consistent with the NPPF but that the control mechanism aspect is not because it represents an outright ban on open

[29] Mr Stone's Appendix APP10 - see paragraphs 6 and 16
[30] ibid at paragraph 22

market housing within the ALS, without the possibility of any countervailing benefit outweighing the prohibition.

3.12 This analysis is also helpful in deciding how the question in paragraph 49 of the NPPF must be answered, namely: Is Policy CT/4 a "relevant policy for the supply of housing"?

3.13 There are two conflicting High Court judgments in this respect: WILLIAM DAVIS[31] and COTSWOLD DISTRICT COUNCIL.[32] The approaches of the two judges are apparently irreconcilable and one of them must be wrong.

3.14 In this case the preference that the SoS may have for one or other authority is tempered by the fact that the paragraph 49 decision is not central to this case because:

(i) the paragraph 215 COLMAN test of consistency with the NPPF must be undertaken independently of the paragraph 49 question whether or not Policy CT/4 is a policy for the supply of housing;

(ii) the answer to the paragraph 49 question results in the presumption in paragraph 14 of the NPPF being activated or not: in this case it has been accepted that for five reasons the paragraph 14 presumption exists in this case.[33] The Appellant does not need therefore to rely on the test in paragraph 49 to enjoy the presumption in favour of development in paragraph 14 of the NPPF.

3.15 If a choice were essential, which it is not, the SoS is invited to prefer the approach in COTSWOLD because the control mechanism in Policy CT/4 is clearly very relevant to the supply of housing: it represents an absolute ban on open market housing in the ALS. The effect of Policy CT/4 is therefore very relevant to the supply of housing. The approach taken in DAVIS is correct to point out that paragraph 49 of the NPPF is within the housing section. However that section presumes that there will be adequate housing provision in the plan. This is clearly not the case here and paragraph 49 needs to be read with this in mind. Furthermore, the limits to development and ALS (and Green Wedge) boundaries were all drawn in the 2004 plan reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS[34] acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management DPD process. This also serves to demonstrate the direct link between ALS and provision of housing.

3.16 For these reasons it is submitted that Inspector Morgan puts the position correctly in the Sapcote decision:

[31] CBC17 at paragraph 47
[32] APP4 at paragraph 72
[33] Accepted by Mr Morley in cross examination
[34] CBC12 at paragraph 7.14 and Mr Morley's proof of evidence at paragraph 13.6

"In this case, no such district-wide supply exists, and Policy C4 of the BDLP, insofar as it is a relevant policy imposing restraint on housing supply, has also to be considered out-of-date."[35]

This policy analysis enabled the Inspector to regard ALS Policy C4 as having two characteristics:

(i) the purpose aspect as described in paragraph 14 of the decision

"*The AoS performs the important function of preserving the separate identities of both settlements. Although the appeal scheme would not physically reduce the measure of that separation, it would reduce the perception of their separateness. This would be harmful to the function of the AoS thus rendering the development in conflict with policy C4 of the BDLP. The extent of this harm however, needs to the quantified."*

and

(ii) the restriction aspect as described in paragraph 48 of the decision set out above.

Is the Development consistent with the Development Plan?

3.17 The answer to this question is that the proposal conforms with the purpose of Policy CT/4 because it maintains an adequate area of separation between Mountsorrel and Rothley. It is in this sense that Mr Rech's evidence argues for compliance with the purpose of Policy CT/4.

"7.32 The overall analysis of policy matters is carried out by Mr Stone. The primary purpose of the CT/4 is to keep settlements separate, and this is a desirable aspiration. It is my opinion that the careful design approach adopted by the appeal proposals meets that aspiration, and the Mountsorrel and Rothley maintain their individual identities following completion of the appeal development"[36]

3.18 The arguments relating to why Mr Rech is right in this analysis falls to be considered below under Main Issue (iii). If that conclusion is right, i.e. there is no breach to the purpose of Policy CT/4 then the technical breach relating to the control mechanism ought to have little weight attached to it.

3.19 Three further points relating to the technical breach of the control mechanism are as follows:

(i) the control mechanism fails the paragraph 215 test in the NPPF for reasons set out above; and

(ii) whichever view is taken on the paragraph 49 "policy for supply of housing test" it is the fact that CBC desperately needs additional housing

[35] Mr Stone's Appendix 23 at paragraph 48
[36] Mr Rech's proof of evidence at paragraph 7.32

and this must be relevant when deciding what weight to attach to Policy CT/4;

(iii) CBC has taken the view elsewhere that Policy CT/4 is a policy relevant to housing and that it is out of date

(a) "*Whilst the proposal would therefore be contrary to the policy CT/1, CT/3 and CT/4 of the saved policies of the local plan, it is acknowledged that these policies in terms of their allocation of housing developments is (sic) out of date. ...*"[37]

(b) *"Jelson's Application – land off Halstead Road (P/13/1008/2), Mountsorrel the officer report to Plans Committee (12th September 2013) states 'In these appeals the Council has conceded in Statements of Common Ground policies that constrain housing (ST/1, CT/1, CT/2 and ST/2) are out of date'. Whilst the sites in question were not within an Area of Local Separation there is an acknowledgment that policies that constrain housing, which would include CT/4, where appropriate, are 'out of date'.* [38]

3.20 It is trite law that to accord with the development plan a proposal does not have to comply with each and every policy or proposal therein. In this case only Policy CT/4 is alleged to be breached. If the breach is only technical as argued above, and if it is accepted that the purpose of ALS is preserved by the development then a strong case is made out that the proposal is consistent with the development plan, taken as a whole. Even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of paragraph 14 of the NPPF as required under Main Issue (ii) below.

Would the proposed development deliver a sustainable form of development?

3.21 Yes, it would. There are three dimensions to sustainable development as set out in the NPPF at paragraph 7. Mr Morley accepted all of the benefits identified in Mr Stone's Table at page 43 of his proof of evidence. The SoCG accepts that *"The site is in a sustainable location for housing development."*[39]

(ii) Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position

3.22 CBC's housing land supply is in crisis. It lies between 2.93[40] and 2.6 years.[41] There is no good reason why the Sedgefield approach should not apply here. If there were a 10% non implementation discount as applied at Honeybourne[42] and elsewhere these supply figures would be less. The annual requirement runs at over 1,000 homes.[43] The CS will not be adopted until October 2014 at

[37] APP8 page 20 3rd complete paragraph lines 1-3
[38] Mr Stone's proof of evidence paragraph 3.6
[39] INQ3 page 18 paragraph 7.1 (xvii)
[40] INQ3 page 15 paragraph 6.8
[41] INQ3 page 22 paragraph 8.14
[42] Mr Stone's Appendix 13
[43] INQ3 page 15 paragraph 6.8 - Annual requirement 1,014

the earliest – almost 1 year away. Mr Morley did not know if the CS would guarantee a 5 year supply when adopted. Mr Stone explained that large sites such as promoted in the emerging CS at Policy CS1[44] take between 18 months – 2 years to start delivering homes that can be occupied. In so far as the Site Allocations and Development Management Policies DPD will be expected to supplement the 5 year supply it will not be adopted until June 2015[45] and is already 8 months behind schedule.[46]

3.23 Mr Morley accepted that until the Site Allocations and Development Management Policies DPD was adopted it was only through development control decisions such as this that an attempt can be made to achieve a 5 year housing land supply that paragraph 47 of the NPPF requires. Mr Stone's Appendix 18 includes the Council's Assessment of 5 Year Housing Land Supply as at 31 March 2013. At page 5 of that Assessment Figure 1 line c shows expected completions in CBC in 2013-2014 will total 536 homes. This is against an annual housing requirement of 1,014. From these figures it is clear that not much progress is being made.

3.24 All of these factors combine to create a compelling case for urgency of action and lend considerable weight to the merits of this proposal.

3.25 There is no doubt that paragraph 14 of the NPPF is engaged in this case because, as Mr Morley accepted in cross examination:

(i) the housing policies of the CBCLP are "out of date" because the plan is 7 years beyond its intended life span;

(ii) in so far as Policy CT/4 restricts supply of housing it is "out of date" (as the Committee Report in APP8 accepts). This admission represented abandonment of what he said there at paragraph 8.3 of his proof of evidence;

(iii) Policy CT/4 is inconsistent with the cost benefit analysis in COLMAN and therefore fails the paragraph 215 test and is therefore "out of date" as far as paragraph 14 is concerned;

(iv) the saved policies of the CBCLP are "silent" within the meaning of paragraph 14 as to where the admitted housing need should be located: it only says where development cannot go;

(v) the emerging CS itself acknowledges that Policy CT/4 is "out of date" because it anticipates a review of its boundaries as part of the Site Allocations and Development Management Policies DPD;

"The retention of Areas of Local Separation will be balanced against the need to provide new development, including new homes, in the most sustainable locations."[47]

[44] APP17 pages 31-32
[45] INQ3 paragraph 6.11
[46] Mr Morley in cross examination
[47] Mr Morley's Appendix 12 paragraph 7.15

3.26 Because paragraph 14 of the NPPF is engaged, the balance identified therein is required. Mr Stone has carried out that exercise and his Table demonstrates that the case in favour of the grant of planning permission is overwhelming.

3.27 It is admitted that no paragraph 14 footnote 9 "specific policies" apply to the site.[48]

3.28 Release of this site is necessary to meet housing needs of the Borough.

(iii) The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;

3.29 The first point to note in this Main Issue is that the Inspector has included for consideration a matter which is not raised in the putative reason for refusal, namely the effect on the character and appearance of the area. Secondly, Mr Radmall accepted the factual reliability of the Landscape and Visual Appraisal (LVIA). Thirdly, this is not a valued landscape as set out in the NPPF. It is not a NPPF footnote 9 site, nor is it an Area of Particularly Attractive Countryside site and Rothley Parish Council does not object to its development.

Character of the Area

3.30 The purpose of analysis of the effect of development on the character of the area is to enable the NPPF paragraph 14 "adverse impacts"/"benefits" balancing exercise to be undertaken. Even if this assessment were to conclude that there were adverse impacts on the character of the countryside, that conclusion would represent an "adverse impact" in respect of the "environmental role" of sustainable development. That is far from an end to the matter as CBC appears to believe.

3.31 If that balance is carried out correctly the process should be as follows:

(i) environmental benefits of the scheme should be identified;

(ii) environmental disadvantages should be identified;

(iii) benefits and disadvantages of the "social" and "economic" roles should be identified;

(iv) all factors at (i) — (iii) must be put into the balance as paragraphs 8 and 14 require.

3.32 Mr Radmall's evidence failed to follow this process. He reached the conclusion at (iv) without considering the social and economic roles. In this respect his approach is flawed. He also failed to take into account the environmental benefits identified in Mr Stone's Table at paragraph 43 of his proof:

"- *Biodiversity Park*
- *Enhanced biodiversity within housing site*

[48] Mr Morley in cross examination

- *Provision of comprehensive accessible green infrastructure network protecting and enhancing existing landscape features*
- *Creation of new right of way connecting Rothley across to the Soar Valley*
- *Protections of ALS in perpetuity"*

Mr Morley accepted that each of these were relevant countervailing benefits to set off the loss of ALS and the landscape harm caused by loss of greenfield countryside.

3.33 The effect on the character of the area is essentially an issue for the Inspector rather than argument but

(i) all of Mr Radmall's viewpoints were from Rothley where the Parish Council does not object to the development;

(ii) he agreed that the two alternative locations for housing development (on the ridge or adjacent to Homefield Lane) would be worse;

(iii) he admitted his photomontages had not taken into account planting proposals which in time would soften the appearance of the new development (as Mr Rech's Appendix 2 Figs 7 and 8: Aerial Perspectives demonstrate).

(iv) existing urban fringe uses, such as the nursery with its unattractive outside storage, detract from the character of the area.

3.34 Another factor is that the Site Allocations and Development Management Policies DPD will involve the potential for housing to be examined in this location. Any housing is bound to bring about change.

3.35 The scheme before the SoS is one which has emerged slowly and carefully and advice from the consultant to both Parish Councils, Mr Will Antill, has been taken on board. The scheme would bring about significant change but it has been carefully designed in terms of location to limit adverse effects. In particular

(i) the site has remarkably limited visibility[49];

(ii) the built development avoids the ridge[50];

(iii) the long sections demonstrate that from Homefield Lane the built development avoids the skyline[51] and the LVIA regards the residents of Homefield Lane as High Sensitivity[52];

(iv) the development accords with advice in Trent Valley Washlands Key Characteristics[53]

[49] Mr Rech's Appendix 2 Fig 6
[50] Mr Rech's Appendix 2 Figs 3 and 4
[51] Mr Rech's Appendix 6 Fig 3
[52] LVIA page 25

"- *Constant presence of urban development, mostly on valley sides, in places sprawling across the valley and transport corridors following the valley route*;

- *Contrasts of secluded pastoral areas, with good hedgerow structure, and open arable with low hedges;* (It will be recalled that there is a net gain of hedgerows under the scheme APP15)

- *Strong influence of riparian vegetation, where rivers are defined by lines of willow pollards and poplars;*" (features present in the Biodiversity Park which will be managed pursuant to the s106)"

(v) the recreational opportunities created are consistent with the emerging CS aspirations for Green Infrastructure;[54]

(v) the Biodiversity Park and the Agricultural Areas are "locked in" by the S106 for as long as CBC regard these areas as being worthy of being kept free from development. So long as it does, no Inspector or Judge would release the land from the constraints which the S106 imposes.

3.36 The character and appearance of the area would change: that is inevitable as it is a greenfield site. Mr Morley has accepted that most of the 2,000 plus homes required to get up to a 5 year supply will need to be provided on greenfield sites. The change is therefore inevitable somewhere and acceptable here and is associated with important counterbalancing environmental benefits.

Effect on Purpose and Integrity of ALS

3.37 The question here is not whether the extent of the ALS would change — it obviously would — but rather what is the effect of that. Policy CT/4 is not a landscape quality policy and the Council accepts that a new road can be located within countryside locations (ALS) without affecting the importance of their openness as at Woodthorpe.[55]

3.38 The relevant statistics are agreed and are set out in Mr Rech's Note to the Inspector.[56] It is the fact that ALS are often narrow: the western part of the Mountsorrel/Rothley ALS is 100 m wide or less at its narrowest. The pinch point west of Mountsorrel Lane is about 150m wide.[57] There is no evidence that, at this distance, the ALS becomes ineffective. Consideration of the plans showing ALS elsewhere in Mr Rech's Appendix 4 shows that ALS gaps are often narrow.

[53] LVIA page 13
[54] Mr Morley's Appendix CBC12 paragraph 7.17 and Mr Rech in answer to Inspector's question
[55] APP11 page 48
[56] APP19 Agreed dimensions and APP15: hedgerow lost and net gain overall
[57] Measured by Mr Rech

3.39 Most telling of all, the Committee Report for Land at Allendale Road took the view that a gap of 105-150m between the proposed development at the site and Woodthorpe Village was acceptable

"... It is concluded therefore, that the settlement of Woodthorpe would be adequately protected by the proposal and that the integrity of the ALS would still be retained. ..."[58]

This gap was regarded by the Loughborough Local Plan Inspector as being incapable of reduction:

"... the present gap represented the minimum necessary for the recognition of Woodthorpe as a separate and freestanding settlement. ... "[59]

The 1995 Study expressly accepted this assessment:

"*In line with the Inspector's findings following the Loughborough Local Plan Inquiry it is accepted that the gap presently defined between Woodthorpe and Loughborough is realistically the minimum that is acceptable to provide meaningful separation for Woodthorpe to remain as a freestanding settlement*."[60]

It is impossible to understand how a very substantial reduction of such a sensitive gap can be regarded as acceptable yet a gap of 240m post development at the appeal site is not acceptable. This point is explored further in the costs application.

3.40 The gap on the eastern side post development would compare favourably with the gap on the western side in terms of width. Add to that the fact that only a small percentage of the ALS is lost to development. There is no objection to the northern cluster of housing.[61]

3.41 The only fair conclusion to reach is that, post development, there would remain a robust and adequate ALS between Mountsorrel and Rothley — and the Rothley Parish Council agrees with that assessment which is why it has chosen not to object.

(iv) Whether any permission should be subject to any conditions and, if so, the form these should take;

3.42 At the time of writing it is understood that these are agreed.

(v) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

[58] APP11 page 48: 2nd and 3rd paragraphs
[59] Mr Rech's Appendix 4 paragraph 7.2
[60] Mr Rech's Appendix 4 paragraph 7.5
[61] CBC closing submissions paragraph (f)

3.43 There are three planning obligations: (i) to CBC/LCC (ii) to the Police and Crime Commissioner for Leicestershire and (iii) to the NHS.

CBC/LCC

3.44 The Appellant accepts that these commitments are CIL compliant.

Police and Crime Commissioner for Leicestershire

3.45 The Inspector will note that in relation to the 200 + 130 = 330 homes at the Parkers' Sites[62] the Police made similar requests. CBC came off the fence in that Committee Report and said the sums were not CIL compliant. It is simply unreasonable for the Parkers' developments to pay nothing to the Police and for this development to be required to pay over £100,000. The Coalville Inspector declined to find similar claims CIL compliant. [63]

NHS

3.46 Whether this claim passes the CIL test depends entirely upon the acceptability of the "formula" approach. One can readily understand such an approach passing muster at a Charging Schedule Examination but here the claim is made in respect of (i) a surgery which has not got a "live" claim, (ii) where it is not known if any claim would succeed, nor (iii) the cost of any improvements which (iv) may or may not be approved by the NHS. There is also an issue that the capital sum paid would or may increase the capital value of the property in the Practice's hand for which the Appellant is not given any credit. This latter argument is not addressed by the Inspector in the Coalville Inspector's Report.

INTERESTED PERSONS

3.47 Much has been heard of the democratic process and of localism. Parish Councils represent grass roots localism and Rothley Parish Council has decided not to object to this scheme. This manifestation of localism has attracted bitter criticism but that is often what democracy entails: hard choices where the good of many sometimes comes at a cost of disadvantages to the few.

3.48 Granting of planning permission outside of the development plan process and its consistency with localism has been considered by the Courts. In TEWKESBURY,[64] Males J found that authorities which did not have a 5 year supply had to expect land releases outside of the development plan process. The criticism in terms of localism should not be of the developers but of CBC which, 8 years after the end date of its last plan, is still some way off having its emerging CS adopted. That process could be postponed if, as is the case in NW Leicestershire, the Examination reveals that the CBC CS has an inadequate housing provision.

[62] APP8 and APP11
[63] CBC18: Inspector's Report paragraph 302
[64] APP5 paragraphs 49-52 and 72

3.49 Mountsorrel Parish Council does object but according to Mr Rech the visual impact of the development is less from that direction. One thing the long standing Chairman of the Parish Council was adamant about was the need for a new link road. Those who say it is not necessary do so for other than traffic reasons it would seem.

OVERALL CONCLUSIONS

3.50 This LPA is in housing crisis but is not doing enough to address the housing deficit. This development has very considerable benefits associated with it which are not disputed by Mr Morley. Any fair minded person looking at the plus – minus audit would conclude that the disadvantages have not outweighed the benefits.

3.51 The sole basis for refusal rests on the effect of this proposal on the ALS. That effect is acceptable in its own right for reasons given above. To regard the impact as so seriously adverse as to warrant refusal

(i) ignores the extent of the housing crisis;

(ii) ignores the other benefits associated with the scheme; and

(iii) creates a different standard for ALS distances at Mountsorrel – Rothley than CBC has accepted at a more sensitive location at Loughborough – Woodthorpe.

3.52 We ask you to recommend the grant of planning permission and we ask the SoS so to grant.

4. THE CASE FOR LEICESTERSHIRE COUNTY COUNCIL (LCC)

4.1 The County Council is a Rule 6 party at the Inquiry and a key provider of various items of social and other infrastructure. In that role, it has no objection in principle to the appeal proposals, but in the event that planning permission is granted, wishes to secure justified and otherwise appropriate financial contributions, by way of a Section 106 Planning Agreement (to which it is a signatory), towards the costs and provision of the necessary infrastructure.[65]

4.2 LCC has an interest in contributions towards sustainable transport improvements and traffic calming measures, education and libraries. Aware of the responsibilities imposed by the CIL Regulations 2010, it has submitted suitably detailed and robust evidence to the Inquiry on all of these matters, providing an explanation of the statutory and policy basis for seeking contributions, the quantum of monies sought and details of the services and facilities which would be provided by LCC to serve the development.[66]

4.3 LCC2 comprises two documents: one which sets out the public transport and traffic calming contributions and the second document sets out the key

[65] APP9
[66] LCC1, LCC2, LPA2 and APP9

requirements for an education and a library facilities contribution. LCC2 refers to both Government policy and to LCC's own adopted policies for planning obligations. Particular reference is made to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) which states that a planning obligation may only constitute a reason for granting planning permission if the obligation is: necessary to make a development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development (the CIL tests). Document APP9 is the Deed of Agreement prepared under section 106 of the Town and Country Planning Act 1990 which would deliver the obligations entered into by the Appellant, the LPA and LCC if planning permission is granted for the proposed development.

4.4 There is also a Statement of CIL compliance with the CIL Regulations 2010 at LPA2. This is intended to assist the reader as it summarises how each of the obligations contained in the bilateral Agreement (APP9) complies with the legal requirements of Regulation 122 of the CIL Regulations 2010. It explains the quantum and the justification for seeking each contribution. Each contribution is listed in LPA2 as it appears in the Agreement.

4.5 In summary, a sum of £16,582 Additional Sustainable Transport Contribution is sought by LCC if any bus service is provided or diverted along the proposed link road within 5 years of first occupation of the final dwelling. A bus pass contribution of £650 per dwelling is sought for the provision of two bus passes and £52.85 per dwelling for the provision of a travel pack by LCC. The sum of £725,940.60 is sought as a contribution towards the provision by LCC of two new classrooms at the new school proposed in Rothley or any successor education facilities. The sum of £90,000 is sought as a contribution towards the traffic calming measures along Walton Way, Mountsorrel. The sum of £13,590 is sought as a contribution towards the provision of improved library facilities and stock at Rothley Library. Finally, a sum of £16,991 is sought towards improvements to encourage sustainable modes of travel including such as bus stop improvements, information display cases, a bus shelter and real time information.

4.6 All of the contributions which LCC has requested are therefore justified and reasonable in themselves and meet the requirements of the CIL tests. Insofar as the SoS is not satisfied that a contribution within the Agreement meets the requirements of the CIL Regulations, clause 1.2.10 of the Deed of Agreement (page 7) enables that provision to be severed from the Agreement without affecting the lawfulness of the remaining parts.

5. THE CASE FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE (LP) (Rule 6 party)

5.1 The sum of £106,978 is sought by The Police and Crime Commissioner for Leicestershire (LP) towards Police infrastructure that would mitigate the impact of the proposed development. That figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. LP3 page 17 contains an itemised breakdown of the

anticipated expenditure on Police services/items dedicated towards the appeal development.

5.2 It is noted that the Landowner in this matter does not accept that any part of the Police Contribution meets the CIL tests as recited in the Unilateral Undertaking at clause 1.2.10.[67] However, there appears to be no criticism by the Appellant of the approach taken by LP to the contribution requested, and no evidence has been produced to undermine the conclusions LP arrive at as to the nature and level of contribution required to mitigate the impact of the proposed development on LP resources.

5.3 The sum requested equates to approximately £427.91 per dwelling. That sum can only be arrived at by working backwards - it is not a roof tax applied to all proposed residential developments in the force area because that would not reflect the individual circumstances and needs of each development. For example, in the Land south of Moira Road appeal APP/G2435/A/13/2192131,[68] the contribution per dwelling amounted to approximately £300 whereas in the Land at Melton Road appeal APP/X2410/A/12/2173673,[69] the contribution worked out to be £590.85 per dwelling. In both instances, the requests were found to be CIL compliant.

5.4 Mr Lambert explains through the documentation[70] submitted in respect of the initial application and for this appeal why the Police seek contributions, including the planning policy justification at both national and district level, and the difficulties associated with funding new infrastructure items in response to growth in residential development which places additional demand on police resources. The Inspector considering the Land at Melton Road Appeal at paragraph 291 accepted that "the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example," and went on to conclude;

"*Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs", can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, "safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*'

5.5 Those conclusions were endorsed in the SoS's decision letter at paragraph 20.

5.6 Mr Lambert also explains why current revenue sources e.g. Council tax receipts, are insufficient to respond to growth in residential development, and

[67] APP10
[68] LP3 - Mr Lambert's proof and Appendices
[69] Ibid.
[70] LP1-LP4

are unable to fund much needed infrastructure to mitigate the additional demand placed on police resources by that growth. That position was examined and verified by external consultants employed by Local Councils in the Leicestershire Growth Impact Assessment of 2009; the Executive Summary is reproduced at Mr Lambert's Appendix 4.

5.7 There is no spare capacity in the existing infrastructure to accommodate new growth and any additional demand, in circumstances where additional infrastructure is not provided, would impact on the ability of police to provide a safe and appropriate level of service and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy and without the contribution the development would be unacceptable in planning terms. It is right, as the Inspector accepted in the Melton Road decision (paragraph 292), that adequate policing is fundamental to the concept of sustainable communities. It is therefore necessary for the developer to provide a contribution so that adequate infrastructure and effective policing can be delivered; that is provided for through the Unilateral Undertaking APP10.

5.8 Mr Lambert has addressed each and every item of infrastructure required in his evidence and has sought to justify each request by reference to the 3 tests of Regulation 122 of the 2010 Regulations and also paragraph 204 of the NPPF Those tests provide the framework in which LP work to assess the appropriate level of contribution necessary to mitigate the impact of residential development - a process which is under constant review to keep requests up-to-date and accurate as demonstrated by the recent letter dated 14 November 2013 amending the total sum sought in respect of Police vehicles downwards to reflect the fact that an average of 10% of the original value of a vehicle will be redeemed upon disposal.[71]

5.9 Furthermore, LP confirms that the contribution can be, and would be spent on infrastructure to serve the appeal development because the sum requested is not required to meet with a funding deficit elsewhere or to service existing development. The contribution sought is therefore directly related to the development.

5.10 In conclusion, the request for a contribution towards additional Police infrastructure to mitigate the impact of the appeal proposal is a necessary, carefully considered and lawful request. The request is directly related to the development and to mitigating the impacts it would generate based on an examination of present demand levels and existing deployment in the District.

5.11 The request is wholly related to the scale and kind to the appeal development and the Inspector, and SoS are respectfully asked to conclude the same.

5.12 The Appellant does not accept that any part of the LP requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010.[72] The LPA has indicated that it is neutral in relation to the request.[73]

[71] LP4
[72] APP10 Clause 1.2.10 page 6
[73] LPA2

6. INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

6.1 **Mr David Allard** is the Chairman of Mountsorrel Parish Council (MPC). He said that for the last 40 years Mountsorrel has been a focus for growth but without the associated social infrastructure such as shopping and community facilities seen elsewhere in the Soar Valley. That growth has placed a disproportionate burden on the social infrastructure in the locality. The Rolls Royce factory and various shoe factories have disappeared leading to high levels of commuting. Most of this development has been on the south side of Mountsorrel.

6.2 He said the Quorn-Mountsorrel bypass was constructed in 1991 and since then traffic on Linkfield Road has grown considerably. There is a constant stream of traffic to the A6 on its way to Loughborough. There is an urgent need for a relief road. MPC is concerned about the settlements' identity and separation. It wants the relief road but not the development. The proposed development would only exacerbate the problems rather than improve the position. The MPC objects very strongly to the areas proposed for development.

6.3 **NHS England (Leicestershire and Lincolnshire)** is responsible for the provision of primary healthcare to serve residents in those areas. Since most new residents register with a GP practice, large new housing developments such as is proposed here would have a major impact on the capacity of GP practices to deliver healthcare.

6.4 The NHS request for S106 developer contributions relies on a Department of Health calculator to estimate the number of additional consultations that the scheme would give rise to, assuming a total scheme population of 605. In this case there are two GP practices in Mountsorrel. Out of the total patient list of both practices, Alpine House Surgery has 87.7% of the patients and Linkfield Road has 12.3% of the patients. Assuming the current ratio of patient registrations then the 605 new patients would be divided as follows: Linkfield Road - 74 new patients and Alpine House – 531 new patients. In this case it is possible to build additional capacity into the existing Alpine House Surgery to provide 2/3 consulting rooms plus associated space which would enable the NHS to handle the increasing workload. The total contribution requested by the NHS for this purpose is £111,095.82.

6.5 Document IP1 sets out the basis of the request in more detail. It explains that the NHS has limited resources to support investment in GP premises. The organisation is currently focusing on supporting an agreed investment plan which does not include the Mountsorrel practices. The proposed extension would need to be able to meet all of the current NHS standards for surgery premises. The indicative size of the premises requirements has been calculated based on typical sizes of surgery projects. The cost per sq m has been identified by a quantity surveyor experienced in health care projects. The NHS considers that the request is CIL-compliant and that the contribution would be delivered through a Deed of Unilateral Undertaking (APP13).

6.6 The Appellant does not accept that any part of the NHS requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010.[74] The LPA has indicated that it is neutral in relation to the request.[75]

[74] APP13 Clause 1.2.10 page 6
[75] LPA2 page 1

6.7 **Mr Julian Deeming** is a member of the Rothley Mountsorrel Greenbelt Preservation Group (RMGPG). The members of the RMGPG strongly object to the proposals and in particular about the loss of open land between Rothley and Mountsorrel. They oppose the development primarily because if it is allowed it would lead to the loss of the villages' individual community identities. The Group strongly agrees with the recommendation of CBC to not allow the development to proceed.

6.8 He said that the current ALS has been protected for the last 30 years and CBC is working to safeguard local community identity by seeking to continue this protection in the future through the emerging CS, a move which they collectively welcome.

6.9 He pointed out that the developers are suggesting that the degree of separation will not be significantly eroded by the proportion of land they plan to develop. However, any development which accommodates 250 houses cannot be deemed as insignificant and would inevitably reduce what is currently there. For local residents this is not small, it is a major change to the landscape and environment. Evidence of this can be found in the CBC evidence of Peter Radmall, which clearly states arguments which counter those put forward by the developers. Living in these villages puts local residents in a strong position to judge the impact on the communities.

6.10 He stated that the current ALS is important because it helps to define the villages and prevents the conurbation of this area, which increasingly threatens the local environment. The proposed area of development is vital green space and maintains the rural character of the villages providing opportunities for agriculture and wildlife habitat. This green space needs to be protected. This proposal would have a significant visual impact on the landscape especially along the ridgeline making this development visible from all directions, totally changing the vista and therefore the character of the environment. The fact that this area of land has not been altered by public access has helped to preserve both environment and community character.

6.11 He claimed that the RMGPG is hugely concerned by potential flooding on the site. Numerous photographs are available of flooding taking place well beyond the areas of flooding indicated within the plans. The majority of people who contacted CBC regarding the development were opposed to the proposal and despite the changes to the plans made by the developers, they remain opposed. Many people in these two communities do not want this development to happen and have been motivated to express their feelings through the democratic processes available. There would also be a loss of farmland.

6.12 He stated that the RMGPG remains unconvinced by arguments which claim to show the benefits of the proposed link road. They are hugely concerned about the visual impact of the road especially going over the ridgeline. With regard to the proposed Community Orchard he wondered who it is for, who would maintain it and who would have access to it? These questions have not been adequately answered. Currently swathes of the land have been allowed to over-grow due to lack of maintenance which is an indication of the care that the developers would take with the land in the village of Rothley.

6.13 He said that the wide, open spaces are a haven for wildlife, far more than indicated by the two day wildlife survey carried out on behalf of the

developers. The local ecosystem would be damaged by this development and he questioned whether the proposed new wildlife areas would be a benefit.

6.14 Mr Deeming urged the Inspector to follow the decision of local people, the Parish Council and the CBC and not allow this development to take place. Given the Government's localism agenda and the strength of local opposition these appeals should be dismissed and planning permission refused.

6.15 **Mr Kendall** is a member of Upper Mountsorrel Lane Residents' Association (UMLRA). The Group consists of about 40 households on Mountsorrel Lane and Badgers Bank. Mr Kendall confirmed that the Group is in complete agreement with all the points raised by RMGPG. Mr Kendall referred to the existing ribbon of development along Mountsorrel Lane and then to the appeal decision made in 1981 by Inspector D F Binnion. He quoted from paragraphs 16, 17 and 18 of the appeal decision.

6.16 Mr Kendall said that despite this ribbon of development the Inspector considered that the open countryside separating the two settlements is the dominant feature in the landscape, particularly viewed from the outskirts of Rothley. Situated just to the south of the ridge, the development, in particular the roofs, would be visible from the south and south east, despite the proposed landscaping. The shallow valley to the east of Mountsorrel Lane is pleasing in appearance and together with the ridge to the north it provides an emphatic visual and physical separation between Rothley and Mountsorrel.

6.17 Mr Kendall stated that the Inspector considered that the proposal, although small in area, would nevertheless have a significant adverse effect on the attractive character and appearance of an important area of open countryside between the two settlements. Furthermore, it seems that approval would make pressure for similar development on each side of Mountsorrel Lane leading in due course to the coalescence and detrimental to the character, form and appearance of Rothley and Mountsorrel.

6.18 Mr Kendall considered that the Appellant was retaining land to the east of the current appeal site for future housing development but it would not be developed for a further 20 years. He said that Rothley Parish Council may not oppose the development but the views of the Parish Council are certainly not the views of local residents. He claimed that applications made by the Appellant always seemed to be supported by the Parish Council but that applications made by any other major developer are opposed.[76] He asked that the appeal be dismissed and that planning permission be refused.

6.19 **Councillor Diane Wise** represents Rothley and Thurcaston. Her main concern relates to the loss of separation between Rothley and Mountsorrel. She said that in the past few years numerous planning applications have been allowed, mainly on appeal. This has resulted in the villages along the route of the A6 being almost merged into one long ribbon of development and the loss of integrity for all the villages. Despite Section 106 contributions the impact has been great, resulting in overcrowded schools, lack of sufficient health facilities and problems with the parking of cars on the inadequate road systems. If the

[76] See IP4

appeals are granted the separation between Rothley and Mountsorrel would be greatly reduced. This will again impact on the integrity of both villages. The appeals should be dismissed and planning permission refused.

7. Written Representations

7.1 A number of letters were received both before and during the Inquiry from local residents.[77] The vast majority of them object to the proposals, for much the same reasons summarised under the appearances by Interested Persons in the preceding section. No significant new matters are raised.

[77] See CBC02, CBC04 and INQ2

8. CONCLUSIONS

[In this section the numbers in superscript refer to the earlier paragraph numbers of relevance to my conclusions.]

8.1 Points (i) to (iii) set out at paragraph 1.4 above relate to the matters about which the SoS needs to be informed and cover the main considerations of prime significance in these appeals. The conclusions that follow are structured to address each of the points (i) to (iii) in turn. I then proceed to examine conditions in point (iv) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under s106 of the 1990 Act in point (v) before giving my overall conclusions and recommendations. [1.4]

Introduction

8.2 **Appeal A** relates to a site to the south of Mountsorrel and to the north of the village of Rothley. To the west is Mountsorrel Lane and to the east is Loughborough Road. The southern residential areas of Mountsorrel and sports pitches form the northern boundary of the site whilst the northern extent of the flood zone of Rothley Brook forms the southern boundary. Brooklea Nursery lies to the east between the site and Loughborough Road. To the west the site boundary extends to Mountsorrel Lane except where there are existing residential properties in the form of ribbon development and a cemetery. The land rises about 24m from Rothley Brook to the south of the site to the ridge line running east to west adjacent to the sports pitches of Rothley Sports and Social Club and then falls about 12m down to the rear of properties on Whatton Oaks. The site is a collection of fields of varying sizes separated by mature native hedges and trees.[1.7-1.10]

8.3 Appeal A was lodged with the SoS against non-determination of the application. The original application was submitted in outline form with all matters save for access reserved for future consideration. However, there were considerable discussions between the Appellant and the Council prior to the submission of this appeal to try and overcome the concerns of the Council. Section 6 of Mr. Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes both parties have agreed that the description of the proposal in relation to Appeal A should be amended as follows:

"A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns." [1.15-1.16]

8.4 In the Wheatcroft case it was held that the decision maker could give permission for something different to that applied for provided, that the resultant development was not of a materially different character and no prejudice was caused to consultees. The main part of the test in judging whether or not the proposed development is 'substantially' different is whether prejudice is likely to be caused. Whilst the amendments to the scheme are of significance it cannot be argued that the development as a whole is substantially different than that which was applied for. Document APP20 explains that the changes are compliant with the Wheatcroft principles. I am

satisfied that interested persons have been notified and had the opportunity to express their views and there is no evidence of prejudice in this case.[1.16]

8.5 It follows that Appeal A should be determined on the basis of the amended description and the revised plans. Document APP14 sets out the agreed list of revised plans for Appeal A and Document 16 sets out the agreed list of documents supporting this appeal. Appeal A proposal is described in more detail in Section 3 of the SoCG (INQ3). The most helpful plan is the Illustrative Masterplan P-A3. This indicates the areas proposed for a maximum of 250 dwellings, the proposed access via a link road, the proposed green infrastructure, balancing ponds, public open space and community orchard. [1.17]

8.6 **Appeal B** relates to an area of land excluded from Appeal site A because of the risk of flooding. The site comprises trees, hedges, grassland and wetland habitat. The site falls within the Environment Agency's designated flood zones 2 and 3 and lies to the south of the proposed residential site in Appeal A. Appeal B was also lodged with the SoS against non-determination of the application. The original application was submitted in outline form with all matters reserved for future consideration. Like Appeal A this proposal was subject to discussions with the Council. Section 6 of Mr. Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes both parties have agreed that the description of the proposal in relation to Appeal B should be amended as follows:

"Change of use from agricultural land to Biodiversity Park" [1.11-1.12, 1.14-1.16]

8.7 In relation to Appeal B the proposal is also compliant with the Wheatcroft principles. I am satisfied that interested persons have been notified and had the opportunity to express their views and that there is no evidence of prejudice in this case. Document APP14 sets out the agreed list of revised plans for Appeal B and Document 16 sets out the agreed list of documents supporting this appeal. The Appeal B proposal is described in Section 3 of the SoCG (INQ4). The most helpful plan is the Illustrative Masterplan P-B3. This indicates that of the 6.6 hectares some 5.73 hectares would comprise the Biodiversity Park and the remainder would be green infrastructure. Pedestrian access to the site would be off Mountsorrel Lane to the west, Loughborough Road to the east and the proposed residential scheme to the north.[1.16, 1.18]

8.8 The proposed development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 EIA Regulations, being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 12(1) and 6(4) of the above Regulations, the SoS issued a Screening Direction on 12 September 2013 to the effect that this development is not EIA development. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.[1.19]

8.9 The Council resolved that planning permission would have been granted against non determination for the Biodiversity Park (Appeal B) subject to conditions. The matters in dispute relate to Appeal A.[1.14] I shall therefore start with **Appeal A** and deal with compliance with the development plan and sustainable development principles:

Issue (i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;

8.10 The statutory development plan for the area includes the saved policies of the Charnwood Borough Council Local Plan 2004 (CBCLP). A list of the relevant policies is set out in the SoCG for each site. A copy of the Saving Letter dated 21 September 2007 and the detailed wording of all the policies is also included on the file. The CBCLP saved policies will remain in place until they are formally superseded by the Council's CS and other development plan documents. However, it is noteworthy that the Core Strategy (CS) is still at a relatively early stage and its adoption is not anticipated until October 2014. A Site Allocations and Development Management Policies DPD is likely to be adopted some time after that in June 2015. [1.20, 2.43-2.44, 3.1-2]

8.11 The parties agree the relevant policies in the SoCGs. The policies are summarised in paragraphs 1.22 – 1.27 of my Report and there is no need to repeat them here. The Council acknowledges that the CBCLP is time expired and that its housing policies are out of date. However, it argues that the saved CBCLP countryside policies, in particular Policy CT/4 referring to ALS, remain relevant and retain the full weight of development plan policy. The Appellant maintains that the CBCLP was only intended to make provision for development needs up to 2006. It is argued that the "Saving Letter"' dated 21 September 2007 saved a variety of policies but did so subject to two caveats: (i) saved policies would be replaced "promptly" – this was important for CBC as the plan was already a year past the end date of 2006; and (ii) policies were adopted "some time ago" in 2004. Hence, the Appellant argues that only due weight not full weight should be afforded to relevant policies. [2.1, 2.18, 3.2]

8.12 I accept that the caveats referred to by the Appellant have a direct relevance to the application of the development plan in this case. The NPPF and the "Saving Letter" are material considerations and paragraph 215 of the former advises that from March 2013 onwards due weight should be given to relevant policies in existing plans according to the degree of consistency with the NPPF. It is necessary to test the consistency of the saved policies with the NPPF.[3.3-3.7]

8.13 Only one development plan policy is raised by CBC in the putative reason for refusal: Policy CT/4: Area of Local Separation (ALS). The policy cross-refers to Policy CT/1 in terms of restricting the type of development that might be allowed. For any such types of potentially acceptable development identified in Policy CT/1 to be acceptable they must also meet the criteria in Policy CT/4. This is the control mechanism of Policy CT/4. However, the purpose of Policy CT/4 is to secure effective separation and to prevent settlements merging with each other. [3.8]

8.14 The NPPF contains many references to the need to conserve and enhance the natural environment and one of its core principles is that planning should

recognise the intrinsic character and beauty of the countryside (paragraph 17). It stresses the continuing need to protect valued parts of the countryside from development, including through plan-making, which may (paragraph 157) "indicate broad locations for strategic development on a key diagram and land use designations on a proposals map." Paragraph 157 goes on to say that Local Plans should also identify land where development would be inappropriate, for instance because of its environmental ... significance. Elsewhere paragraph 76 refers to the scope for designating land as Local Green Space.[2.14-2.15]

8.15 Both main parties rely on various Inspectors' appeal decisions/SoS decisions and High Court judgments. The Council refers to a 1980 appeal decision on the southern part of the site, the 2000 Local Plan Report together with decisions at East Goscote, Coalville and Peggs Green. It is argued that these decisions fly in the face of the position advanced by the Appellant at the Inquiry. The Appellant refers, amongst others, to decisions at Knowstone (Colman), Coalville, Cotswold and Sapcote. [2.5, 2.8, 2.15- 2.17, 3.9, 3.13, 3.16]

8.16 The case of Colman identifies the consequences of paragraph 215 of the NPPF in decision taking at appeal. In that case Parker J characterised the relevant policies in this way: *"These policies are, in my view, on their own express terms very far removed from the 'cost/benefit' approach of the NPPF."* If this "cost/benefit" approach is applied to Policy CT/4, it is found somewhat wanting as its central intention and its control mechanism is to avoid anything other than the development identified in Policy CT/1 being brought forward in the ALS. However, the purpose of the policy is consistent with the NPPF because all parties to the Inquiry agree that, in principle, that it is a sound planning aspiration to seek to maintain separation of settlements.[3.9-3.10]

8.17 Therefore, I agree with the Council that Policy CT/4 does not clearly conflict with the NPPF and I give it due weight, even though the NPPF does not specifically refer to ALS. But that does not mean that all land within existing ALS in the Borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Policy CT/4 cannot be given full weight because it represents an outright ban on open market housing within the ALS, without the possibility of any countervailing benefit outweighing the prohibition. [2.15, 3.11]

8.18 This analysis is also helpful in deciding how the question in paragraph 49 of the NPPF must be answered, namely: is Policy CT/4 a "relevant policy for the supply of housing"? There are two conflicting High Court judgments in this respect: Coalville and Cotswold. The approaches of the two judges are apparently irreconcilable. However, the paragraph 49 decision is not central to this case because the paragraph 215 Colman test of consistency with the NPPF must be undertaken independently of the paragraph 49 question whether or not Policy CT/4 is a policy for the supply of housing. In this case it has been accepted by CBC that for 5 reasons the paragraph 14 presumption exists. The Appellant does not need therefore to rely on the test in paragraph 49 to enjoy the presumption in favour of development in paragraph 14 of the NPPF.[3.12-3.14]

8.19 If a choice were essential, which it is not, the SoS is invited to prefer the approach in Cotswold because the control mechanism in Policy CT/4 is clearly very relevant to the supply of housing: it represents an absolute ban on open

market housing in the ALS. The effect of Policy CT/4 is therefore very relevant to the supply of housing. The approach taken in Coalville is correct to point out that paragraph 49 of the NPPF is within the housing section. However, that section presumes that there will be adequate housing provision in the plan. This is clearly not the case here and paragraph 49 needs to be read with this in mind. Furthermore, the limits to development and ALS (and Green Wedge) boundaries were all drawn in the CBCLP 2004 reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management Policies DPD process. This also serves to demonstrate the direct link between ALS and provision of housing.[3.15]

8.20 At first blush the proposals are contrary to Policy CT/4 of the CBCLP. However, if the matter is considered more closely it quickly becomes apparent that the proposal would maintain an adequate area of separation between Mountsorrel and Rothley. The ALS have a strategic role and are intended to act as small, open, rural buffers whose main purpose is to prevent neighbouring settlements from merging or coalescing. If that analysis is correct and there is no breach to the purpose of Policy CT/4 then the technical breach relating to the control mechanism ought to have little weight attached to it. This needs to be examined under Main Issue (iii).[3.18]

8.21 Plainly the control mechanism under Policy CT/4 fails the paragraph 215 test in the NPPF for reasons set out above and cannot be given full weight. Furthermore, whatever view is taken on the paragraph 49 "policy for supply of housing test" it is the fact that CBC desperately needs additional housing and this must be relevant when deciding what weight to attach to Policy CT/4. It is noteworthy that CBC has taken the view elsewhere that Policy CT/4 is a policy relevant to housing and that it is out of date.[2.29, 3.19]

8.22 To accord with the development plan a proposal does not have to comply with each and every policy or proposal therein. In this case only Policy CT/4 is alleged to be breached and the proposed development would accord with a host of other policies subject to conditions. If the breach is only technical as argued above, and if it is accepted that the purpose of ALS is preserved by the development then a strong case is made out that the proposal is consistent with the development plan, taken as a whole. Even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of paragraph 14 of the NPPF as required under Main Issue (ii) below. [3.20]

8.23 The main parties agree that the proposed development would deliver a sustainable form of development. There are three dimensions to sustainable development as set out in the NPPF at paragraph 7. Mr Morley accepted all of the benefits identified in Mr Stone's Table at page 43 of his proof of evidence. The SoCG accepts that the appeal site is in a sustainable location for housing development. [3.21]

8.24 In relation to Issue (i) I conclude that the proposal would accord with a very wide range and a large number of development plan policies but it would not be consistent with a strict interpretation of Policy CT/4 of the CBCLP. The saved policies including Policy CT/4 still merit due weight as development plan policies. Although there would be some conflict with this policy, this, for the

reasons stated above, would be limited. The proposed development would accord with the 3 dimensions to sustainable development set out in paragraph 7 of the NPPF.

Issue (ii) Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position;

8.25 Plainly CBC's housing land supply is in crisis. It lies between 2.93 and 2.6 years. There is no good reason why the Sedgefield approach should not apply here. If there were a 10% non implementation discount as applied at Honeybourne and elsewhere these supply figures would be less. The annual requirement runs at over 1,000 homes. The emerging CS will not be adopted until October 2014 at the earliest – almost 1 year away. Mr Morley did not know if the CS would guarantee a 5 year supply when adopted. Mr Stone explained that large sites such as promoted in the emerging CS at Policy CS1 take between 18 months – 2 years to start delivering homes that can be occupied. In so far as the Site Allocations and Development Management Policies DPD will be expected to supplement the 5 year supply it will not be adopted until June 2015 and is already 8 months behind schedule.[3.22]

8.26 Mr Morley accepted that until the Site Allocations and Development Management Policies DPD was adopted it was only through development control decisions such as this that an attempt can be made to achieve a 5 year housing land supply that paragraph 47 of the NPPF requires. Mr Stone's Appendix 18 includes the Council's Assessment of 5 Year Housing Land Supply as at 31 March 2013. At page 5 of that Assessment Figure 1 line c shows expected completions in CBC in 2013-2014 will total 536 homes. This is against an annual housing requirement of 1,014. From these figures it is clear to me that not much progress is being made.[3.23]

8.27 All of these factors combine to create a compelling case for urgency of action and lend considerable weight to the merits of this proposal. There is no doubt that paragraph 14 of the NPPF is engaged in this case because, as Mr Morley accepted, the housing policies of the CBCLP are "out of date" because the plan is 7 years beyond its intended life span. He also accepted that in so far as Policy CT/4 restricts the supply of housing it is "out of date" (as the Committee Report in APP8 accepts). This admission represented the abandonment of what he said there at paragraph 8.3 of his proof of evidence.[3.24-3.25]

8.28 In my view, Policy CT/4 is inconsistent with the cost benefit analysis set out in the Colman case. It fails the paragraph 215 test and is therefore "out of date" as far as paragraph 14 is concerned. The saved policies of the CBCLP are "silent" within the meaning of paragraph 14 as to where the admitted housing need should be located: it only says where development cannot go. Moreover, the emerging CS itself acknowledges that Policy CT/4 is "out of date" because it anticipates a review of its boundaries as part of the Site Allocations and Development Management Policies DPD.[3.35]

8.29 Because paragraph 14 of the NPPF is engaged, the balance identified therein is required. Mr Stone has carried out that exercise and his Table at paragraph 43 of his proof demonstrates that the case in favour of grant of planning

permission is overwhelming. The SoS should also be aware that no paragraph 14 footnote 9 "specific policies" apply to the site.[3.26-3.27]

8.30 On the second issue I conclude that the release of this site is necessary to meet housing needs of the Borough.

Issue (iii) The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;

8.31 It is common ground that if the appeal succeeds there would be a reduction in openness. The minimum length of the separation would fall from about 800m to 240m. By building up to 250 dwellings on a greenfield site, the proposed development would clearly affect the existing ALS between Mountsorrel and Rothley and the character of the appeal site would be radically changed. The appeal site is relatively well contained. There is consequently a limited visual envelope within which the effects of potential development may be experienced. However, as can be seen from the representative viewpoints, there would be significant visibility of the new development from the existing settlement edges along Mountsorrel Lane, Oldfield Lane, Halywell Nook and further to the south east, at Homefield Lane, beyond the Rothley Brook. Furthermore, operational development in the form of the proposed new relief road would connect Mountsorrel Lane and Loughborough Road across the ALS. [2.31-2.34, 3.37, 6.9, 6.15, 6.19, 7.1]

8.32 However, in my opinion, there are several reasons for thinking that the impact of the development on the ALS would be quite limited and not very harmful-much less fatal - to its overall purpose, integrity or character. First, the main built component of the proposed development would extend Rothely in a primarily eastward direction out from Mountsorrel Lane, contained to the north by Rothley Cemetery. This would mirror the westerly most extent of the village towards The Ridings. The retained ALS distance between the northern edge of the expanded Rothley would be entirely consistent with the separation which exists to the west of Mountsorrel Lane at its narrowest point. However, in the case of the proposed development, the sense of separation is reinforced by the more prominent ridge so the level of harm arising from landscape and visual matters is no more than limited in overall terms.[2.31, 2.38-2.39, 3.35, 6.9, 6.15, 6.19, 7.1]

8.33 Secondly, I accept that the designated ALS referred to in Policy CT/4 covers a total of 121.4 hectares and was defined in 1995. It encompasses all the undeveloped land extending west from the A6 Quorn - Mountsorrel Bypass across to The Ridings on the edge of Swithland, merging with the Ridgeway Separation Area. However, it is noteworthy that the residential component of the appeal proposals would account for only 6.8% of this total combined ALS. Even taking the eastern area of the ALS in isolation (59.7hecatres) the proposed development would account for only 14% of the area leaving 86% free from residential development. In short, only a small percentage of the total ALS would be lost to development. [3.38, 3.40]

8.34 Thirdly, it is clear that CBC and many local people, including members of RMGPG, UMLRA, MPC, Councillor Wise and others, greatly value this green area of open countryside and want to preserve its status as ALS which has protected it hitherto from development. Whilst I appreciate that the appeal site is considered attractive at a local level it is also true that it has never been

designated as a result of its perceived landscape character or quality. It consists primarily of grazing pasture subdivided by a comparatively intact hedgerow framework. The existing settlement edges provide the context to the north, west and south with the A6 corridor and employment zones to the east and the Soar valley floodplain beyond. Topographically, the bulk of the site comprises the south facing valley slopes of the Rothley Brook. It is significant that the appeal site was not included within the Areas of Particularly Attractive Countryside designations as defined in the CBCLP. It is not a valued landscape as set out in the NPPF and it is not a NPPF footnote 9 site.[3.29]

8.35 Fourthly, the master plan has been sensitively designed to ensure that the built development components can be successfully assimilated into the local landscape context in a manner which is consistent with the key characteristics of the national character area known as the Trent Valley Washlands and the key characteristics of the local assessment – the Rothley Brook Character Area. Specifically this includes retention of a broad area of green separation utilising the higher land along the southern fringe of Mountsorrel and avoiding built development on the ridge. At its narrowest point, a gap of 240m between new built development is maintained. It also includes retention of the Rothley Brook within the proposed Biodiversity Park, thus protecting a second broad area of green separation along the Homefield Lane edge of Rothley. At its narrowest point this is 330m wide.[3.32]

8.36 Importantly, containment of the residential development would be within existing field compartments, subdivided by retained hedgerows forming greenways. Built development would be on the valley slopes which is identified as being characteristic of the Trent Washlands and the Rothley Brook Character Areas. The long sections demonstrate that from Homefield Lane the built development would avoid the skyline. Although there would be 10 new openings created in the existing hedgerows and the removal of a length of 250m it is fair to report that as part of the mitigation 1km of new hedgerow would be planted along the relief road and the new access road serving the northern boundary of the main housing area.[2.36, 3.35]

8.37 The creation of a very robust and well connected green infrastructure framework reinforcing and enhancing the existing network of hedgerows with new woodland planting would also be in accordance with the specific management guidelines for the Rothley Brook Character Area. In my view, this would ensure that there would be a strong layering effect of natural vegetation filtering views of settlement edges. The delivery of the Biodiversity Park under Appeal B and the comprehensive green infrastructure framework would also bring significant recreational and wildlife benefits which are consistent with the emerging CS aspirations for green infrastructure.[3.35]

8.38 Finally, the Council expresses concern about the location of the relief road on the ridge which I agree is the most visually prominent part of the site. However, I note that the detailed design of the relief road includes significant areas of new planting, the use of shallow cutting and carefully designed lighting of very high environmental quality in order to minimise disruption. The design has also been agreed with the County Highways Authority. In my view the road can be sensitively assimilated and would be perceived by users as a semi-rural route for the majority of its length. Whilst I accept that the proposed housing could be adequately accessed from Mountsorrel Lane it is also true that the new road would bring benefits to existing residents in the

area and enjoys the support of the MPC. The SoS should note that Policy CT/4 is not a landscape quality policy and that any harm arising from its location in the ALS would be mitigated in perpetuity by the operation of the s106 Agreement which would keep the adjoining land in agricultural use. [2.31, 2.40-2.42, 3.47, 6.9, 6.15, 6.19, 7.1]

8.39 For all those reasons on the third main issue I conclude that the proposed development would not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider ALS. The countervailing environmental benefits more than outweigh the loss of ALS and the limited landscape harm caused by the loss of green field land.

Issue (iv) whether any permission should be subject to any conditions and, if so, the form these should take;

8.40 A list of suggested conditions for Appeal A was discussed at the Inquiry at a round table session. These conditions were subsequently revised and document APP22A represents a high level of agreement between the Appellant and CBC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95.[3.42]

8.41 Conditions 1-4 are necessary to ensure that the development will not start until all reserved matters are approved and that the development should be carried out in accordance with the revised plan for the link road. Condition 5 relates to the submission of a phasing scheme and is necessary to ensure that all elements of the scheme are carried out in a timely manner. Conditions 6-8 relate to drainage matters and are necessary to ensure that the site can be properly drained without flooding. Condition 9 is necessary to ensure a satisfactory development of the site. Condition 10 is necessary to ensure that a detailed ground investigation is undertaken together with details of any remediation strategy to avoid pollution of ground and surface waters. Conditions 11-13 relate to landscaping and are necessary in the interests of visual amenity. Conditions 14 -15 relate to open space and play provision and are necessary to ensure a satisfactory development. Condition 16 relates to the closure of existing accesses and is necessary in the interests of highway safety. Condition 17 relates to the provision of public art and is necessary to ensure a satisfactory development in the interests of visual amenity.[3.42]

Issue (v) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

8.42 APP9 is a signed and completed s106 Planning Obligation Agreement, dated 13 December 2013, between the Appellant, the LPA and LCC. The Agreement covers the following matters: Schedule 1, additional sustainable transport improvements, bus pass, travel pack, education, highways, libraries and sustainable transport contributions; Schedule 2, affordable housing; and Schedule 3, Open Space. Document LPA2 is a statement which has been agreed by the Appellant, the LPA and LCC. It provides a summary of the obligations contained in the Agreement and how each complies with the legal requirements of Regulation 122 of the CIL Regulations 2010. All of these contributions were discussed at the Inquiry. I consider that all of the provisions

of the s106 Agreement are necessary. They meet the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the s106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions.[3.44, 4.1-4.6]

8.43 The Appellant has also submitted two s106 Unilateral Undertakings in respect of financial contributions requested by the Police and Crime Commissioner for Leicestershire Police (LP) and NHS England (Leicestershire and Lincolnshire). The Appellant is not satisfied that these contributions are CIL compliant. The LPA has indicated that it is neutral in relation to both requests. Both Unilateral Undertakings were discussed at the Inquiry in relation to their CIL compliance. [3.45, 5.1-5.12]

8.44 APP10 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and the LP. The sum of £106, 978 is sought by the LP towards Police infrastructure to mitigate the impact of the development. Schedule 1 of the Undertaking provides details of the contribution and how it would be used to deliver adequate infrastructure and effective policing. Document LP2, prepared by the LP, provides a statement of compliance with the CIL Regulations 2010. [3.45, 5.1-5.12]

8.45 In my view the sum of £106,978 has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. The LP has confirmed that the contribution would be spent on infrastructure to serve the appeal development and is not required to meet a funding deficit elsewhere or to service existing development.[3.45, 5.1-5.12]

8.46 I consider that the contribution is necessary to make the development acceptable; it is directly related to the development and to mitigating the impacts that it would generate and it is fairly and reasonably related in scale and kind to the development. The Undertaking therefore meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the Undertaking significant weight and I have had regard to it as a material consideration in my conclusions. [3.45, 5.1-5.12]

8.47 APP13 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and NHS England (Leicestershire and Lincolnshire). The sum of £111,095.82 is sought by the NHS to provide for an extension to the Alpine House Surgery, 86 Rothley Road, Mountsorrel. The contribution request is based on current capacity issues at the surgery. It is calculated on the basis of an indicative size of premises and recent new surgery projects. Whilst I accept that the proposed development could result in an increased patient population and patient consultations, I am not persuaded by a claim that is entirely based on a `formula' approach. The claim is made in respect of a Mountsorrel surgery which is not included in the agreed GP premises investment plan and therefore there is no `live' scheme to support the claim. Moreover, the precise cost of any improvements is not known or whether any claim for funding would be approved by the NHS. There is also an issue in relation to the capital sum that would be paid and whether, or not, that may increase the capital value of the premises and how the Appellant would be credited for this. I agree with the Appellant that the basis for making the request, in terms of internal decision making procedures

remain somewhat obscure and the total sum cited is not sufficiently clearly related to the proposed development. Overall, I consider that the basis of the request is not adequately justified. I therefore find that this Undertaking does not meet the tests of Regulation 122 of CIL Regulations and I have not taken it into account in this appeal.[3.46, 6.3-6.6]

Overall Conclusion on Appeal A

8.48 The proposed development would have a somewhat harmful effect on the purpose and integrity of the ALS. However, this harm would be limited and would not be sufficient to undermine its continuing planning function or to cause the coalescence of Mountsorrel and Rothley. There would be some slight harm to be weighed in the overall planning balance. The proposed development is not consistent with a strict interpretation and application of Policy CT/4 of the CBCLP and there would be some limited conflict with this policy. However, due to its accordance with all other policies, I consider there is no overall conflict with the development plan. However, even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of the balancing exercise required by paragraph 14 of the NPPF.

8.49 The NPPF at paragraph 49 advises that policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five year supply of deliverable housing sites. In this case there is no disagreement about the matter. As the SoCG confirms there is only 2.6 years supply of housing land and these figures do not allow for a non-implementation discount. One of the main purposes of the NPPF is to stimulate the delivery of housing nationally and particularly in those areas where there are demonstrable shortfalls. The housing policies of the CBCLP are therefore clearly out of date. In my view, this significant shortfall in the Borough's housing land supply is an important factor which counts strongly in favour of the appeal scheme.

8.50 The balancing exercise carried out by the Appellant at page 43 of Mr Stone's proof is compelling. It demonstrates that the case in favour of granting planning permission is overwhelming. The proposed development would deliver tangible benefits in the form of much needed market and affordable housing (30%) in an accessible location adjacent to both Rothley and Mountsorrel. Both settlements are recognised as service centres in the emerging CS. The site is well related to facilities and would further support the development of economic and social capital in the locality. The proposed relief road and traffic calming would be beneficial and the overall environmental benefits would be significant with enhanced biodiversity and new pedestrian and cycle links. In all circumstances the development represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

Appeal B – Land off Mountsorrel Lane, Rothley

8.51 The Council resolved that planning permission would have been granted against non determination for the Biodiversity Park subject to conditions. The Council considers that Appeal B is acceptable on its own terms and in the event that planning permission is granted for Appeal A the Council agrees that Appeal B should be allowed also.[1.14, 2.1]

8.52 The submitted documents and plans provide what works are envisaged for this site. The proposal is to maintain the area as informal open space with a footpath network linking Mountsorrel Lane in the west, the sports field to the south (Homefield Lane), Loughborough Road to the east and the proposed residential development to the north. The footpath onto Loughborough Road would involve the removal of some trees to allow access and a suitable visibility splay.[1.16, 1.18]

8.53 Document CBC04 provides details of the responses from statutory consultees and other responses. The central issue is whether a biodiversity park is considered acceptable in this location. Management and enhancement of the Biodiversity Park would safeguard biodiversity interests in the local area, limit the impacts of development on biodiversity in the surrounding environment and provide opportunities to create new habitats. The proposal would benefit both existing local residents and those who would move to the area if permission is granted for the proposed residential development immediately to the north of this appeal site.[1.14, 2.1]

8.54 A list of suggested conditions for Appeal B was discussed at the Inquiry at a round table session. These conditions were subsequently revised and document APP22B represents a high level of agreement between the Appellant and CBC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95. All of the conditions are necessary to ensure that the appearance of the completed development is satisfactory and will be assimilated into its surroundings.[3.42]

Overall Conclusion on Appeal B

8.55 The proposal is wholly in accordance with the provisions of the NPPF and the aforementioned policies of the CBCLP, which in this instance are in accord with the NPPF, and there are no other material considerations which indicate planning permission should not be granted.

9. RECOMMENDATIONS

9.1 I recommend that Appeal A be allowed and planning permission be granted subject to conditions.

9.2 I recommend that Appeal B be allowed and planning permission be granted subject to conditions.

Harold Stephens

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel	Instructed by Mr Richard Thurling, Head of Strategic Support, Charnwood Borough Council
He called	Mr Michael Morley BSc (Hons) Dip TP MRTPI Mr Peter Radmall MA BPhil MLI

FOR THE APPELLANT:

Mr Jeremy Cahill QC Assisted by Nina Pindham	Instructed by Mrs Lizzie Marjoram Messrs Bird, Wilford and Sale, Solicitors, Loughborough
He called	Mr Phil Rech BA (Hons) BPhil LD CMLI Mr Paul Stone BSc (Hons) Dip TP MRTPI

FOR LEICESTERSHIRE COUNTY COUNCIL: (a Rule 6 party)

Ms Nisha Varia	Solicitor with LCC
She called	Andrew Tyrer BA (Hons) MSc MRTPI Developer Contributions Officer, LCC Sharon Townsend - Strategic Officer Children & Young Peoples Services (CYPS) (Education) LCC Steve Kettle - Moderning Service Manager, Adults & Communities (Library services) LCC Younus Seedat - Senior Engineer, Highways Service, LCC

FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE: (a Rule 6 party)

Mrs Thea Osmund-Smith of Counsel

She called	Mr Michael Lambert Dip TP MRTPI

FOR MOUNTSORREL PARISH COUNCIL

Mr David Allard	Chairman of the Parish Council

INTERESTED PERSONS:

Mrs Amanda Anderson	NHS England (Area Team) Leicestershire and Lincolnshire
Mr Julian Deeming	Rothley – Mountsorrel Greenbelt Preservation Group
Mr David Kendall	Upper Mountsorrel Lane Residents' Association
Councillor Diane Wise	Local Councillor for Rothley and Thurcaston

INQUIRY DOCUMENTS

INQ1 Notification Letter
INQ2 Written representations submitted following the issue of the SoS's Direction to recover the applications
INQ3 Statement of Common Ground Appeal A
INQ4 Statement of Common Ground Appeal B

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF CHARNWOOD BOROUGH COUNCIL

LPA1 T/APP/5302/A/81/131/G6 Appeal decision map
LPA2 Statement of Compliance with CIL Infrastructure Regulations 2010
LPA3 Charnwood Borough Council SPD Section 106 Developer Contributions
LPA4 Closing Submissions
LPA5 Costs Submissions

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANT

APP1 Updated light spillage diagram - 11 December 2012
APP1A Email from LCC to William Davis Ltd's traffic consultants BWB Consulting re. Mountsorrel Lane, Rothley Street Lighting - 11 December 2013
APP2 Appellant's representations in relation to objection to emerging CS - 19 July 2013
APP3 Plan 7 and Plan 8 relating to William Davis' previous application
APP4 Cotswold DC v SSCLG, Fay and Son Ltd/Cotswold D.C. v SSCLG, Hannick Homes and Developments Ltd [2013] EWHC 3719 (Admin)
APP5 Tewkesbury BC v SSCLG, Comparo Ltd, Welbeck Strategic Land LLP [2013] EWHC 286 (Admin)
APP6 Land at Willow Meadow Farm, Ashbourne, Derbyshire Dales DC Appeal Decision APP/P1045/A/13/2195546 - 9 October 2013
APP7 Land off Barford Road, Bloxham, Cherwell DC – SoS decision 23 September 2013
APP8 Land north of Ling Road, Committee Report - 8 January 2013
APP9 Section 106 Agreement between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, Charnwood Borough Council and Leicestershire County Council
APP10 Section 106 Unilateral Undertaking between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, the Council of the Borough of Charnwood and the Police and Crime Commissioner for Leicestershire
APP11 Land west of Allendale Road, Loughborough, Leicestershire - Committee Report - 8 January 2013
APP12A Agreed amendment to description of development - Appeal A -12 December 2013
APP12B Agreed amendment to description of development - Appeal B - 12 December 2013
APP13 Section 106 Unilateral Undertaking between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, the Council of the Borough of Charnwood and the NHS England (Leicestershire and Lincolnshire)
APP14 List of plans for both Appeal A and Appeal B -12 December 2013
APP15 Note regarding loss of hedgerows - 11 December 2013

APP16 List of documents for both Appeal A and Appeal B -12 December 2013
APP17 Core Strategy Key Diagram
APP18 Overlay Diagram (Allendale Road development and Area of Separation)
APP19 Note regarding Schedule of Agreed Distances and Areas between the Appellant and Charnwood Borough Council - 12 December 2013
APP20 Statement of compliance with Wheatcroft principles
APP21 Note regarding statistics
APP22A List of Suggested Conditions for Appeal A
APP22B List of Suggested Conditions for Appeal B
APP23 Opening Statement
APP24 Closing Submissions
APP25 Costs Submissions

ADDITIONAL DOCUMENTS SUBMITTED BY LEICESTERSHIRE COUNTY COUNCIL

LCC1 Rothley new school site diagram
LCC2 Proof of evidence of Andrew Tyrer with Appendices

ADDITIONAL DOCUMENTS SUBMITTED BY LEICESTERSHIRE POLICE

LP1 Melton Borough Council Core Strategy: Inspector's Conclusions
LP2 Statement of compliance with CIL Regulations 2010
LP3 Mr Lambert's Proof of evidence and Appendices
LP4 Mr Lambert's letter dated 14 November 2013 amending the total sum sought in respect of Police vehicles
LP5 Closing submissions

INTERESTED PERSONS' DOCUMENTS

IP1 Statement by Amanda Anderson on behalf of Leicester, Leicestershire County and Rutland PCT Cluster - October 2012
IP2 Statement by Julian Deeming on behalf of Rothley-Mountsorrel Greenbelt Preservation Group
IP3 Statement by David Kendall on behalf of Upper Mountsorrel Lane Residents' Association
IP4 Upper Mountsorrel Lane Residents' Association leaflet
IP5 Extracts from "Rothley: Then and Now"
IP6 Statement by Diane Wise, Councillor for Rothley and Thurcaston
IP7 Email from NHS England (Leicestershire and Lincolnshire) regarding Deed of Unilateral Undertaking – Land off Mountsorrel Lane, Rothley - 12 December 2013

ANNEX - RECOMMENDED CONDITIONS

APPEAL A - Appeal Ref: APP/X2410/A/13/2196928

Time limit Full application

1) Insofar as this decision grants full planning permission for the relief road as indicated in the application, the development, hereby permitted, shall be begun not later than 2 years from the date of this permission.

Details of road

2) The development of the relief road shall be carried out only in accordance with the details and specifications included in the submitted application, as amended by the revised drawings Nos. NTT/2033/HD/104 rev P3, NTT/2033/HD/104 rev P4, NTT/2033/HD/105 rev P4, NTT/2033/HD/106 rev P4, NTT/2033/HD/100 P11, NTT/2033/008 rev P2 showing the layout and design of the relief road.

Reserved matters

3) Insofar as this decision grants outline planning permission for those parts of the development other than the relief road, details of the layout, scale, appearance, access, landscaping and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins, in accordance with the phasing scheme as agreed under condition No. 5 below and the development shall be carried out as approved.

Reserved matters time limit

4) The application(s) for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the final approval of the last of the reserved matters.

Phasing

5) No development, including site works, shall take place until a phasing scheme in respect of the relief road, pedestrian/cycle access routes to the site, public open space, recreational, children's play areas, Biodiversity Park and the residential areas has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.

Drainage

6) No development, including site works, shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

7) No development, including site works, shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year critical storm plus an appropriate allowance for climate change will not exceed the run-off from the undeveloped site following the corresponding rainfall event.
The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
The scheme shall also include:

- details of how the scheme shall be maintained and managed after completion
- sustainable drainage techniques or SuDS incorporated into the design in line with The SUDS manual C697. A development of this type should incorporate at least two treatment trains.
- details to show the outflow from the site is limited to the maximum allowable rate, i.e. greenfield site run-off
- design details of the proposed balancing ponds, including cross-sections and plans. This includes all connections to any receiving watercourse.

8) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision B and the mitigation measures detailed within the FRA produced by BWB Consulting and dated March 2013.

Construction method and tree/hedge protection

9) No development, including site works, shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-

(i) the routing of construction traffic;
(ii) the times of construction work;
(iii) the parking of vehicles of site operatives and visitors;
(iv) loading and unloading of plant and materials;
(v) storage of plant and materials used in constructing the development
(vi) measures to control the emission of dust and dirt (including a scheme for wheel cleaning) during construction to ensure that the highway is kept free of mud, water and stones;
(vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
(viii) measures to protect the trees and hedges to be retained on the application site during the duration of the construction works;
(ix) measures to protect the wildlife habitats and wildlife corridors during the duration of the construction works.

Land contamination

10) No development, including site works, shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of

any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the Local Planning Authority for their assessment and written approval. Any remediation works required by the approved strategy shall be carried out in accordance with the approved remediation strategy.

Landscaping

11) No development in any phasing as agreed under condition 5, including site works, shall take place until a landscaping scheme for the respective phase, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:

(i) the treatment proposed for all ground surfaces, including hard areas;
(ii) full details of tree planting;
(iii) planting schedules, noting the species, sizes, numbers and densities of plants;
(iv) finished levels or contours;
(v) any structures to be erected or constructed;
(vi) functional services above and below ground; and
(vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.

12) The landscaping schemes for the development shall be fully completed, in accordance with the details agreed under the terms of condition No. 11, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

13) No development, including site works, shall take place until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules, including ecological measures for all landscape areas, other than domestic gardens, has been submitted to and agreed in writing by the Local Planning Authority. The agreed Green Infrastructure Biodiversity Management Plan shall then be fully implemented.

Recreation

14) The details to be submitted in accordance with condition No. 3 shall include open space/children's play area provision at a rate of 200 square metres per 10 dwellings of which 75 square metres per 10 dwellings must include play equipment.

15) The details to be submitted in accordance with condition No. 3 shall include open space provision for recreational use by adults, youth and for general amenity purposes.

Existing accesses

16) No development, including site works, shall take place until all existing vehicular accesses to the site have been identified and details submitted to and approved in writing by the Local Planning Authority to show how and when the accesses that are to become redundant as a result of this proposal shall be closed permanently and the existing vehicular crossings reinstated.

Public Art

17) No development, including site works, shall take place until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

Archaeology

18) No development, including site works, shall take place until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the Local Planning Authority, and no development shall take place except in accordance with the approved details.

RECOMMENDED CONDITIONS

APPEAL B - Appeal Ref: APP/X2410/A/13/2196929

1) The development, hereby permitted, shall be begun not later than 3 years from the date of this permission.

2) The use hereby permitted shall not commence until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:

   (i) the treatment proposed for all ground surfaces, including hard areas;
   (ii) full details of tree planting;
   (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
   (iv) all existing trees, hedges and other landscape features, indicating clearly those to be removed.

3) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the commencement of the use or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

4) The use hereby permitted shall not commence until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules for the area, has been submitted to and agreed in writing by the Local Planning Authority. The agreed landscape management plan shall then be fully implemented.

Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

LOCALPLAN
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WARWICK DISTRICT COUNCIL

Publication Draft Representation Form 2014

For Official Only	
Person ID	
Rep ID	

This consultation stage is a formal process and represents the last opportunity to comment on the Council's Local Plan and accompanying Sustainability Appraisal (SA) before it is submitted to the Secretary of State. All comments made at this stage of the process are required to follow certain guidelines as set out in the Representation Form Guidance Notes available separately. In particular the notes explain what is meant by legal compliance and the 'tests of soundness'.

This form has two parts:

- Part **A** – Personal Details
- Part **B** – **Your Representations**

If you are commenting on multiple sections of the document, you will need to complete a separate Part B of this form for each representation on each policy.

This form may be photocopied or alternatively extra forms can be obtained from the Council's offices or places where the plan has been made available (see the table below). You can also respond online using the Council's e-Consultation System, visit: www.warwickdc.gov.uk!newlocalplan

Please provide your contact details so that we can get in touch with you regarding your representation(s) during the examination period. Your comments (including contact details) cannot be treated as confidential because the Council is required to make them available for public inspection. If your address details change, please inform us in writing. You may withdraw your objection at any time by writing to Warwick District Council, address below.

All forms should be received by 4.45pm on Friday 27 June 2014

To return this form, please deliver by hand or post to: Development Policy Manager, Development Services, Warwick District Council, Riverside House, Milverton Hill, Leamington Spa, CV32 5QH or email: newlocalplan@warwickdc.gov.uk

Where to see copies of the Plan

Copies of the Plan are available for inspection on the Council's web site at www.warwickdc.gov.uk!newlocalplan and at the following locations:

Warwick District Council Offices, Riverside House, Milverton Hill, Royal Leamington Spa
Leamington Town Hall, Parade, Royal Leamington Spa
Warwickshire Direct Whitnash, Whitnash Library, Franklin Road, Whitnash
Leamington Spa Library, The Pump Rooms, Parade, Royal Leamington Spa
Warwickshire Direct Warwick, Shire Hall, Market Square, Warwick
Warwickshire Direct Kenilworth, Kenilworth Library, Smalley Place, Kenilworth
Warwickshire Direct Lillington, Lillington Library, Valley Road, Royal Leamington Spa
Brunswick Healthy Living Centre, 98-100 Shrubland Street, Royal Leamington Spa
Finham Community Library, Finham Green Rd, Finham, Coventry

Where possible, information can be made available in other formats, including large print, CD and other languages if required. To obtain one of these alternatives, please contact 01926 410410.

Part A - Personal Details

	1. Personal Details*		**2. Agent's Details** (if applicable)
	* If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in section 2.		
Title	Mr		
First Name	Andrew		
Last Name	Morgan		
Job Title (where relevant)	Estate Strategic Planner		
Organisation (where relevant)	Warwickshire Police and West Mercia Police		
Address Line 1	Estate Services HQ		
Address Line 2	Hindlip Hall		
Address Line 3	PO Box 55		
Address Line 4	Worcester		
Postcode	WR3 8SP		
Telephone number	01905 332885		
Email address	andrew.morgan.60139@westmercia.pnn.police.uk		

3. Notification of subsequent stages of the Local Plan

Please specify whether you wish to be notified of any of the following:

The submission of the Local Plan for independent examination	Yes	X	No	
Publication of the recommendations of any person appointed to carry out an independent examination of the Local Plan	Yes	X	No	
The adoption of the Local Plan.	Yes	X	No	

For Official Use Only	
Person ID:	Rep ID:

Part B - Your Representations

Please note: this section will need to be completed for each representation you make on each separate policy.

4. To which part of the Local Plan or Sustainability Appraisal (SA) does this representation relate?

Local Plan or SA:	Local Plan
Paragraph Number:	2.9 - 2.12
Policy Number:	Strategic Policy DS3: Supporting Sustainable Communities
Policies Map Number:	

5. Do you consider the Local Plan is :

5.1 Legally Compliant?	Yes	X	No	
5.2 Complies with the Duty to Co-operate?	Yes	X	No	
5.3 Sound?	Yes		No	X

6. **If you answered no to question 5.3, do you consider the Local Plan and/or SA unsound because it is not: (please tick that apply):**

Positively Prepared:	
Justified:	
Effective:	X
Consistent with National Policy:	X

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7. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty co-operate. Please be as precise as possible. If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to cooperate, please also use this box to set out your comments.

Please see the enclosed sheets.

Continue on a separate sheet if necessary

8. **Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the test you have identified at 7. above where this relates to soundness. (Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be** helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

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Continue on a separate sheet if necessary

Please note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested modification, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. **After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues** he/she identifies for examination.

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Person ID: Rep ID:

9. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination?

No, I do not wish to participate at the oral examination [X]

Yes, I wish to participate at the oral examination [ ]

10. If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

Whilst we consider that these representations present our case fully, we would be prepared to participate at the examination should the Council and/or the Inspector consider this beneficial to proceedings.

Continue on a separate sheet if necessary

Please note: This written representation carries the same weight and will be subject to the same scrutiny as oral representations. The Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination.

11. Declaration

I understand that all comments submitted will be considered in line with this consultation, and that my comments will be made publicly available and may be identifiable to my name/organisation.

Signed: Andrew Morgan

Date : 26 June 2014

Copies of all the objections and supporting representations will be made available for others to see at the Council's offices at Riverside House and online via the Council's e-consultation system. Please note that all comments on the Local Plan are in the public domain and the Council cannot accept confidential objections. The information will be held on a database and used to assist with the preparation of the new Local Plan and with consideration of planning applications in accordance with the Data Protection Act 1998.

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Local Plan or SA:	Local Plan
Paragraph Number:	
Policy Number:	TR1 Access and Choice
Policies Map Number:	

5. Do you consider the Local Plan is :

5.1 Legally Compliant?	Yes	X	No	
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