



## **Town & Country Planning Act 1990 (As amended)**

Appeal by  
Wulff Asset Management Limited

Against the refusal of Outline Application for up to 196 dwellings with all matters reserved other than the means of access.

At  
Land North West Of 1 To 12 Twelve Houses, Sowbrook Lane, Stanton By Dale,  
Derbyshire DE7 4QX.

## **STATEMENT OF CASE**

PINS Appeal Ref: APP/N1025/W/23/3319160  
Council Ref: ERE/0722/0038

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## **1.0 Introduction**

- 1.1 The appeal follows the refusal of outline planning permission by Erewash Borough Council of an application proposing up to 196 dwellings with all matters reserved other than the means of access.
- 1.2 The application was submitted in July 2022.
- 1.3 The application was refused planning permission (Document 6 provided separately) at the meeting of the council's planning committee on 12 October 2022 for the following reasons:
  1. The site is unsustainably located, remote from services, with poor options for walking and cycling to services further afield. As such, the proposal is contrary to the requirements of the NPPF, the National Design Guide, Core Strategy Policy 10: Design and Enhancing Local Identity and Core Strategy Policy 14: Managing Travel Demand.
  2. The proposal would result in the introduction of a significant number of pedestrian movements at a location where no footways provision exists requiring pedestrians and other vulnerable users to use the carriageway, resulting in conflict with vehicles contrary to the best interests of highway safety. As such, the proposal is contrary to the requirements of the NPPF.
  3. The applicant has not satisfactorily demonstrated that approval of the proposed development would not have a significant impact on the operational capacity or condition of safety on the existing transportation network. As such, the proposal is contrary to the requirements of the NPPF.
  4. The proposal would result in the loss of a significant amount of hedgerow and trees which provide habitats, food and commuting routes for a range of species. It would result in the loss of habitats for ground nesting birds including Skylarks which are a Red List species. As such, the proposal would be contrary to the requirement of the NPPF to minimise impacts on biodiversity. It would fail to satisfy Saved Local Plan Policy EV11 and Core Strategy Policy 17, both of which complement the NPPF in their aims to protect biodiversity.
  5. The proposed development would lead to the loss of the open landscape which is characteristic of the area. Development of the site would cause significant harm to the visual amenities of the area. The proposal therefore fails to accord with Section 12 of the National Planning Policy Framework and it would be contrary to Saved Policy H12 – Quality & Design and Core Strategy Policy 10: Design and Enhancing Local Identity.
  6. As a result of the proximity to the approved industrial development at Stanton North, the proposal would lead to unacceptable living conditions for future occupiers, contrary to the NPPF, Policy 10 of the Core Strategy and 'Saved' Policies H10 and H12.

7. The proposal would result in adverse changes to the setting of the Grade II listed building at New Stanton Cottages which would detract from the manner in which it is experienced, appreciated and understood. This meets the threshold of “less than substantial harm” to the designated heritage asset and as no public benefits exist which are sufficient to overcome that harm, the proposal is contrary to the requirements of the NPPF.
8. The site is considered strategic in its scale and the proposed development is considered to be so substantial that granting permission would undermine the plan-making process of the emerging Erewash Core Strategy Review. As such, the proposal is contrary to the requirements of the NPPF.
9. The proposal would be contrary to the emerging Core Strategy, being on a site which is proposed to be included in the Green Belt.
10. The proposal would be contrary to the emerging Core Strategy, compromising the development of land within a proposed Strategic Green Infrastructure Corridor.

## **2.0 Site and Surroundings**

- 2.1 The application site is a sizeable area of open agricultural land north and north-west of the junction between Sowbrook Lane and Ilkeston Road. These two highways provide strong physical southern and eastern boundaries, whilst a section of the disused Nutbrook Canal and two ponds help delineate the northern and western boundaries of the site respectively. The site is relatively flat and at a similar ground level to the adjacent highways. Boundaries consist mainly of established hedgerows with mature trees located at various points along the perimeter of the site. A section of the site adjacent to its northern boundary sits within Flood Zone 2. A Grade II Listed row of cottages at Twelve Houses sits on the opposite side of Sowbrook Lane. The site is not within the Green Belt.
- 2.2 It is anticipated that a description of the site and surroundings will be agreed between the parties in the Statement of Common Ground.

## **3.0 Relevant Planning History**

- 3.1 None.

## **4.0 Planning Policies**

- 4.1 The planning policies considered relevant to this appeal are:

### **National**

National Planning Policy Framework  
National Design Guide

## **Local**

### **Erewash Core Strategy**

Policy A – Presumption in Favour of Sustainable Development

Policy 1 – Climate Change

Policy 2 – The Spatial Strategy

Policy 3 – Green Belt

Policy 8 – Housing Size, Mix and Choice

Policy 10 – Design and Enhancing Local Identity

Policy 16 – Green Infrastructure, Parks and Open Space

Policy 17 – Biodiversity

Policy 19 – Developer Contributions

### **Erewash Local Plan Saved Policies**

H9 – Section 106 Planning Obligations

H12 – Quality and Design

EV11 – Protected Species and Threatened Species

EV16 – Landscape Character

R2 – Rights of Way

GB1 – Green Belt

- 4.2 Copies of all relevant policies have been provided with the appeal questionnaire.

## **5.0 Reasons for Refusal which have been overcome**

- 5.1 The appellant has made a number of submissions with the appeal which seek to overcome some of the reasons for refusal. The council has given consideration to these and considers that some of the reasons for refusal are overcome.
- 5.2 In relation to reason 2, pedestrian safety, the council has consulted Derbyshire County Council as Highway Authority. On the basis of their advice (provided in appendices here), the council considers that the proposal is acceptable with regard to this matter.
- 5.3 In relation to reason 3, capacity of the highway network, the council has consulted Derbyshire County Council as Highway Authority. On the basis of their advice (provided in appendices here), the council considers that the proposal is acceptable with regard to this matter.
- 5.4 In relation to reason 4, the impact on biodiversity, the council has consulted Derbyshire Wildlife Trust and on the basis of their advice (provided in appendices here), the council considers that the mitigation measures proposed are acceptable.
- 5.5 In relation to reason 6, the impact of the approved industrial development at Stanton North, the council has considered the submissions and has consulted the council's Environmental Health section (response provided in appendices here). On the basis of their advice (provided in appendices here), the council considers that the proposal is acceptable with regard to this matter.

## **6.0 The Council's Case**

The council considers that the rationale for the remaining reasons for refusal is clearly laid out in the Planning Committee report which has been provided to the Inspector separately as part of the decision notice.

### **Five year housing land supply**

- 6.1 The council will continue to plainly state that it does not currently have a five-year supply of deliverable housing land. The council will clarify that subsequent to the last reported position (December 2019) of a 3.43 year supply, more up to date assessment records that the current position is 2.65 years.
- 6.2 As part of the ongoing Core Strategy Review process, the Council has published a 5YLS position paper to justify and provide further context to the housing growth-related policies in the CSR, detailing what the position would be if the CSR was adopted. The council notes that the appellant has submitted a statement of case document solely in relation to the 5YLS matter which attacks the paper. As the paper was prepared for the purpose described above, the council does not consider it to suggest the current position. Notwithstanding that, the questions raised by the appellant are addressed in the response prepared by the council's planning policy section, provided in the appendices here.

### **Status of local policies**

- 6.3 The council will continue to accept that as it is now over five years since the Erewash Core Strategy was adopted, and in light of the housing land supply position as detailed above, the National Planning Policy Framework defines the Core Strategy as being 'out of date' and diminishes the robustness and level of weight it carries.

### **Sustainability of location (reason for refusal 1)**

- 6.4 The council will demonstrate the site's detachment from the Ilkeston Urban Area as defined in the adopted Core Strategy, including from any residential neighbourhood of the Ilkeston Urban Area. The council will demonstrate that the proposals would create an isolated residential estate with none of the characteristics or facilities required to produce a sustainable neighbourhood in its own right.
- 6.5 The council will demonstrate the poor level of services available within walking distance, and the poor quality of the walking routes to those services.
- 6.6 The council will demonstrate the poor quality of the cycling routes to services.
- 6.7 The council will demonstrate how the above factors demonstrate that the proposals are not a sustainable form for development.

- 6.8 The council notes the appellant's position at paragraphs 15.12 & 15.13 that it had never been envisaged that people would travel on foot in that direction and that they would have to use alternative means of travel. It is considered that this demonstrates the unsuitability of the location. The appellant contends that people could cycle along this route. Whilst people can and do travel by bicycle there, it is noted that the carriageway on Ilkeston Road has a 40mph speed limit, has no segregated cycle provision, is heavily used by HGVs and is so narrow that either side of the carriageway is evidence of vehicles veering off it. The council does not consider that such circumstances are conducive to encouraging new occupiers to commute by bicycle.
- 6.9 It is noted that some connectivity to off highway footpaths is referred to, including a path within the application site which is indicated on the indicative masterplan, but not proposed as it would form part of the reserved matters. In June 2023 the Highway Authority, in response to a consultation on the additional submissions, has suggested that the path within the site could adjoin a proposed new path alongside the carriageway on Ilkeston Road and a proposed new crossing there, leading to the opposite side of the road where it would adjoin an informal path which the Highway Authority wishes to see formalised. The Highway Authority has indicated that it has discussed these matters with the appellant and has suggested that the appellant should be required to fund them. The level of drawn detail amounts to a solid line drawn on a not to scale Ordnance Survey extract. The appellant has not provided the council with any detail of this proposal.
- 6.10 Noting the appellant's reliance on local facilities at Kirk Hallam to demonstrate that future occupiers will be able to walk or cycle to such provision, the council will discuss the appropriateness of developing an extension to that area which is detached from it. The council will observe that a more appropriate location for housing which is reliant on Kirk Hallam to demonstrate its sustainability would be adjacent to Kirk Hallam, as proposed in Strategic Policy 1.5 of the emerging Core Strategy Review.

Visual impact (reason for refusal 5)

- 6.11 The council will demonstrate how the proposal to develop 196 homes would harm the character of this field. The council will demonstrate the role that this field, in conjunction with adjoining undeveloped land, plays in establishing the local open character of this area and providing a clear and beneficial gap between the developed areas of the wider settlement.
- 6.12 The council notes the extended references to the Derbyshire Landscape Character Assessment in the appellant's submissions. Whilst Core Strategy Policy 10 specifies that proposals for new development outside of settlements will be assessed with reference to that Assessment, in this instance it was not considered that the harm would be caused on a scale which would be detrimental to the Derbyshire Landscape Character. Consequently the committee report and the decision notice do not specify the Assessment as being material to the reasons for refusal.

- 6.13 The council notes the view expressed in the appellant's submissions that views into the site are limited by the boundary hedges which would remain, and that their retention would continue to screen views of the development. Whilst this is currently the case, and noting that scale and appearance are reserved matters, 196 houses would be visible from vantage points all around the outside of the site, where the urbanising impact of the development and its accesses would be observed.

Impact on the setting of the listed building (reason for refusal 7)

- 6.14 The council will demonstrate the importance of the setting of the Grade II listed building, a terraced block known as New Stanton Cottages, which retains to some degree its original agrarian and tranquil characteristics, provided partially by the application site. The council will demonstrate how the addition of up to 196 houses on a field forming part of that setting would harm it. The council will demonstrate how that harm outweighs the public benefits of the proposals.
- 6.15 The appellant has sought to list public benefits which would arise from the proposal, to be considered in the context of NPPF paragraph 202. These limited benefits must also be weighed against the various harms which would be caused by the development and its unsustainable location. The council does not consider that the harm to the setting of the listed building would be outweighed by the benefits arising, with the clear and convincing justification test of para 202 therefore being unmet.

Emerging Core Strategy Review

- 6.16 The council will establish that weight should be given to the policies of the emerging Core Strategy Review.

Further detail on the council's position in relation to the following reasons for refusal (8, 9 & 10) is provided in the Planning Policy section comments as included in the appendices here.

Strategic scale (reason for refusal 8)

- 6.17 It will be demonstrated how the scale of the proposal, being for up to 196 houses, is comparable to the scale of the strategic growth sites proposed through the emerging Core Strategy Review, and the consequent impact that approving this application would have on those proposals in that review.

Emerging Green Belt policy (reason for refusal 9)

- 6.18 The council will explain the importance of the inclusion of this site in the Green Belt in the Erewash Core Strategy Review, and the consequent impact of approving this application on the other proposals of that review.



### Emerging Strategic Green Infrastructure Corridor policy (reason for refusal 10)

- 6.19 The council will explain the importance of the inclusion of the site in the Nutbrook Strategic Green Infrastructure Corridor Zone, and the impact of approving this application on the proposal for that zone.

### The tilted balance

- 6.20 As set out above, the council will demonstrate that the proposals do not constitute sustainable development, and so should not benefit from the presumption in favour of sustainable development. Regard will be had to appeal reference APP/R0335/W/20/3245185 - Land adjacent to Newell Hall, Warfield Street, Warfield, Bracknell (provided in appendices), which considers the application of the tilted balance where harm, including to visual amenity and the setting of a listed building, would be caused.

### Other matters raised in the appellant's statement of case

- 6.21 The council notes the appellant's comments on the pre-application process and the council's omission from its pre-application response of comment on some of the issues which formed the reasons for refusal. Given the fundamental issues with the site, it would not have been an appropriate use of resources to provide detailed consideration of the whole range of challenges at that stage. Notwithstanding that, it is noted that the application was submitted by a multi-disciplinary consultancy, with supporting documents prepared by a number of separate professional advisors. It is considered reasonable to expect that the range of professional input should have been able to result in an application which identified all of the material considerations and addressed all of them completely and competently. It is not considered that the council acted unreasonably in determining the application submitted to it.
- 6.22 The appellant seeks to offer the inclusion of 1,000 homes at the Stanton Regeneration Site in the emerging Core Strategy Review as evidence that the appeal site must be sustainable. That site could be considered sustainable if, in accordance with the related SPD, a local centre was delivered as part of that site. As that development does not currently exist, and no local centre is proposed at the appeal site, it is considered that this factor offers no weight in favour of the appeal proposal.
- 6.23 The appellant states that "the appeal site is not in the middle of nowhere as the council would have us believe". The council considers this to be a mischaracterisation of its position, and is not reflective of the content of the committee report.
- 6.24 The appellant makes reference to the provision of affordable housing. However, the council notes that this is not included in their draft heads of terms for a section 106 agreement, as detailed in the draft Statement of Common Ground.

## Conclusion

- 6.25 The council considers that reasons for refusal 2, 3, 4 and 6 have been overcome by the additional submissions made during the course of the appeal and does not wish to defend those. The council considers that the basis of the other 6 reasons for refusal remains in place and consequently the appeal should be dismissed.

## **7.0 Conditions**

- 7.1 Notwithstanding the council's opposition to the proposed development, if the Inspector is minded to allow the appeal, an agreed list of recommended planning conditions is expected to be contained within the Statement of Common Ground.

# Appendix One

Consultation response during appeal  
relating to 5 year housing land supply -  
EBC Planning Policy

**Planning Policy response to APP/N1025/W/23/3319160**  
**Application - ERE/0722/0038**  
**Proposal for 196 homes at Sowbrook Lane, Ilkeston**

Planning Policy are responding to material submitted by the appellant, which in itself is a response to the information and advice initially provided by the Policy section commenting upon the original refused planning application.

The appellant has submitted a Statement of Case (SoC) that focuses specifically on the Council's five-year housing land supply (**5YLS**). This critiques the approach taken by the Council in demonstrating a 5YLS in support of its submitted Core Strategy Review (CSR) which is presently at the Examination stage. The appellant has examined the Council's 5YLS position paper (**5YLSPP**) which was published to justify and provide further context to the housing growth-related policies in the CSR, querying several aspects which directly impact upon the refused application and its perceived suitability.

The first area of doubt raised by the appellant at **1.3** of its SoC relates to the status of the position presented by the Council's 5YLSPP. It queries whether the presented position is active right now for the purpose of determining planning applications, or alternatively will become the Council's 5YLS position upon the CSR's adoption. The Council can confirm that the **5.2 year housing supply** represents its Core Strategy Review-based housing position.

The SoC then reiterates the guidance concerning what constitutes a deliverable housing site, with the definition found in the NPPF provided.

Common ground between the appellant and the Borough Council concerns the calculation of Erewash's housing need. The appellant is satisfied that the Council has calculated its 5YLS requirement correctly in reaching a total requirement for **2,316 dwellings**.

**Matters of potential dispute:**

The appellant raises four potential matters in its SoC and this response will deal with each matter in turn.

**1. Lapse rates for sites with Planning Permissions:**

The appellant cites the Joint Methodology Report (JMR) for Strategic Housing Land Availability Assessments (SHLAA) that the Borough Council produced alongside all other councils in the Nottingham Core Housing Market Area (HMA) – Broxtowe, Gedling, Nottingham City and Rushcliffe councils. The Council's SHLAA document, providing information on the approach taken to a number of aspects of calculating available housing supply, presents at Table 16 a lapse rate of 8% across all consented sites. The SoC suggests this should be applied to approved housing schemes due to the appellant not having access to the information set out in an appendix to the JMR. The Council wishes to point out that the Erewash-specific appendix referred to in the SoC is available online as part of the CSR Examination library – titled **EBH9a Erewash Appendix B 2021-22**.

**EBH9a** sets out the rationale behind the application of a 6% lapse rate on all consented housing sites. The Council can confirm that it remains committed to this figure for the purposes of calculating its 5YLS, a fact confirmed through the use of a 6% lapse rate as shown in the 5YLSPP.

## **2. Windfall allowance**

Similarly to the matter of Lapse Rates, the appellant has not seen the most up-to-date information on the Council's calculated windfall allowance. This information can also be viewed in the document referred to above which correlates with the figures presented in the 5YLSPP.

## **3. Strategic Sites**

The appellant's SoC contests that these should not be included within the calculated 5YLS as these sites have no planning status for housing and are currently designated as Green Belt. In general, the appellant is of the view that the sites do not fall under any category set out in national planning policy which defines deliverability. As such, all supply attributed to the four allocations which would materialise within the five-year period should be discounted. The Council agrees with this view and confirms that this would reduce the 5YLS figure by 980 homes.

## **4. Surplus land from EBC asset review**

For the same reasons as that set out at **3**, it is agreed that the sites which collectively comprise the 200 dwellings cannot be considered as deliverable when assessed against criterion which defines a deliverable housing site. For information, the use of surplus EBC-owned green space to contribute to the Council's housing supply was also aligned to the Core Strategy Review. The Council agrees that this would reduce the 5YLS figure by 200 homes.

## **Revised 5YLS**

In light of the commentary above, the appellant has set out what the changes to the way in which the various contributing elements of supply to the overall 5YLS has on the final figure. In its SoC, the appellant has reduced the supply down 1,232 dwellings to 1,176 dwellings or 2.54 year supply. As a result of the appellant not having prior access to the numerical data referred to in **1** and **2**, the Council has calculated a slightly different land supply figure to that mentioned above. By maintaining a 6% lapse rate and a 231 dwellings per annum allowance (462 dwellings in total), the 2,408 dwellings supply presented within the 5YLSPP is reduced by 1,180 to a total of **1,228 dwellings, or a 2.65 year supply**. Whilst this is a slightly improved supply compared to the appellant's calculated amount, it still is insufficient in demonstrating the required 5YLS.

## Appendix Two

Consultation response during appeal  
relating to emerging Core Strategy  
Review - EBC Planning Policy

## **Planning Policy comments in response to selected reasons for refusal for ERE/0722/0038 – 196 homes at land at Sowbrook Lane, Ilkeston**

### **Focusing on reasons for refusal 8 to 10 from the Council's decision notice**

#### **Reason 8:**

Amongst other observations made by the appellant in their response to Reason 8, Planning Policy would wish to draw attention to **15.43** of the main Statement of Case. Here, the appellant in assessing the scale of the proposal, attempts to contextualise the housing capacity of the scheme (196 homes) by stating the proposed homes would amount to just 3.4% of the overall 5,800 housing requirement that the submitted Core Strategy Review (CSR) makes provision for.

Whilst the calculated % is correct, EBC Planning Policy feel the argument being made by the appellant is slightly disingenuous. Two of the housing allocations included in the submitted CSR document are very close in terms of capacity to that of the appeal site. In the case of the North of Spondon allocation (Strategic Policy 1.4), the anticipated capacity of 200 homes is to all intents and purposes identical to the housing provision that the Sowbrook Lane scheme would provide. Whilst slightly larger at 250 homes, the North of Cotmanhay allocation (Strategic Policy 1.6) is also broadly in keeping with the size of the appeal site.

As such, the Council are of the view that by identifying and accepting the two above named housing allocations as being strategic in their size, scale and likely impacts arising from development, the appeal site at 196 homes, must also be viewed as a proposed development of a strategic scale. If the Council were so minded that the appeal site represented an appropriate location for new housing development when considered against the wider emerging spatial planning policy framework, then by virtue of its size and scale, it would have felt it appropriate to formally allocate the site within its Core Strategy Review.

By broadening out the argument, the appellant appears to be suggesting that a site of 196 homes should not be considered as strategic. In the Council's view, this would set a dangerous and somewhat harmful precedent insofar as giving rise to an inconsistency in how sites almost identical in their scale are treated in plan-making. With the CSR recognising that development proposals of around 200 homes are strategic and require careful planning to understand and make provision for the impacts arising from such schemes, speculative schemes would undermine the Council's ability to plan effectively for a wide range of infrastructure needs in order to mitigate for likely impacts and secure sustainable development.

#### **Reason 9:**

The appellant in its SoC is strongly of the view that the extension of Green Belt designation as proposed within the CSR between Kirk Hallam and South Ilkeston, and which would encompass the appeal site in its totality, should hold no weight in the determination of the appeal. The Council strongly disagrees with this.

Paragraph 48 of the NPPF enables councils to give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency of the relevant policies. With

the CSR now having passed submission and currently at examination, the Council feels that the advanced stage of the CSR should allow the Council to give a degree of weight to the relevant policies in helping to determine applications. Given the stage reached in plan-making, this demonstrates that the Council as a whole is supportive of the proposal to designate additional Green Belt land. As such, the proposals within the submitted CSR, specifically at Strategic Policy 1.5, represent the Council's position insofar as keeping the area of proposed designation open and free from inappropriate development.

Paragraph 49 further supports the Council's position in respect of its decision to refuse permission for housing at the appeal site. As discussed under Reason 8, the Council are strongly of the view that the development proposed is so substantial due to its size and scale being almost identical to other strategic housing allocations in the CSR, that granting permission would undermine the plan-making process as explained at 49a – whilst 49b is also of relevance due to the emerging plan being at such an advanced stage. The Council therefore feel both circumstances set out under Para 49 have been met.

**Reason 10:**

EBC Planning Policy acknowledges that the appeal site sits entirely within the Nutbrook Strategic Green Infrastructure Corridor (SGIC).

Whilst it is noted that the appellants believes development can help to secure the four objectives SGICs are required to deliver, doubt exists over whether the proposed development can fully achieve the active travel objective and hence satisfy conformity to Strategic Policy 5. Movement across and in/out of the appeal site is compromised by the lack of connectivity to the main trail passing through the centre of the of the Nutbrook SGIC – this sees PROW20 follow the northern bank of the disused Nutbrook Canal on the opposite side of the waterbody to the proposed development site. No connectivity across the Canal to link directly to PROW20 is provided for through the development proposal. As such, those walking or cycling through, or exiting, the appeal site who wish to access the primary trail through the Nutbrook SGIC must exit onto the busy, unlit Ilkeston Road, before continuing their onward journey.

As shown by the submitted Policies Map which accompanies the ECS, all four proposed SGICs in Erewash are largely open and free of any dense form of development. Should development occur at the appeal site, this would serve to significantly urbanise what is currently a relatively wide, open and unobstructed corridor as the SGIC passes between the built-up areas of Hallam Fields (South Ilkeston) and Kirk Hallam. This, together with the absence of a safe non-trafficked route through to where the remainder of the Nutbrook SGIC can be accessed means that proposed development cannot achieve all four objectives that are expected from proposals within SGICs.



## Appendix Three

Consultation response during appeal  
relating to noise assessment addendum -  
EBC Environmental Health



# memo

**To:** Planning, Town Hall, Long Eaton

**Cc:**

**From:** Environmental Health

**Your ref:** ERE/0722/0038

**Date:** 25<sup>th</sup> May 2023

**Our ref:** LW/116911

<b>APPLICATION NUMBER</b>	ERE/0722/0038
<b>PROPOSED DEVELOPMENT</b>	Outline Application for up to 196 dwellings with all matters reserved other than the means of access.
<b>LOCATION</b>	Land North West Of 1 To 12 Sowbrook Lane Stanton By Dale Derbyshire

Further to our comments dated 11<sup>th</sup> August 2022, I understand that the above application was refused planning permission and an appeal against that decision has now been made. As part of this appeal, a further technical note and supporting information has been submitted that we have been requested to review.

The following documents have been considered:

- Technical note: Land Northwest of 1-12 Twelve Houses, Sowbrook Rd, Stanton by Dale, Derbyshire, Reason for Refusal #6 of Application Ref: ERE/0722/0038 (Hepworth Acoustics ref: P21-283-TN01v3 dated 16<sup>th</sup> February 2023)
- Statement of Case, Section 78 Appeal, Land at Sowbrook Lane, Stanton by Dale (Harris Lamb Planning Consultancy ref: P1763 dated 23<sup>rd</sup> March 2023)

## Noise

The technical note has been produced to further consider the noise from the adjacent Stanton Park which is under development. Since this technical note was produced, a reserved matters application has been submitted for Plot 1 Unit 1 of the site which is opposite the proposed development site (ERE/0423/0018).

The noise from external loading/unloading has been considered as the principal issue for consideration as the technical note has concluded that it is generally straightforward to control noise from fixed plant.

Assumptions have been made within the technical note in terms of the type of loading docks that will be constructed. The majority are assumed to be dock levelling bays where most unloading is, in effect, internal as the HGV reverses up to the bay and forms a seal to control external noise. Approximately 15% of the loading bays are assumed to be roller shutter door type with associated forklift activity. 1 HGV has been assumed to enter and exit the site every hour for each loading bay in Units 1-6 24 hours per day. A BS4142 assessment has then been carried out with assumptions of some mid-range corrections added to represent intermittency and impulsiveness. Background sound levels have been used that were presented during the noise assessment submitted during the planning application for the Stanton Park application.

I note that, for the Plot 1 Unit 1 reserved matters application, the number of proposed dock door bays is 4 compared to 36 roller shutter doors with an estimated 80 HGV's entering and exiting the site between 20:00-02:00 which is significantly higher than that estimated within the submitted technical note if the other units are similar when they come into use. In addition, for this plot, trailer parking for 40 trailers is proposed as well as an external vehicle wash area. At present, we do not have any specific details for the other units/phases of the site.

The submitted assessment within the technical note shows that, in the evenings and night-time, that there will be additional noise produced at the Stanton industrial estate that would be considered potentially adverse/significantly adverse during the late evening/night. The technical note further reports that additional mitigation would be required at properties at night, although implies that it would be only 2dB above the required criteria internally with windows open.

However, a second factor is the noise from the adjacent road which has been considered separately within the technical note. As reported within the technical note, the road is busy and, particularly at night, the noise is likely to be significant with HGV's passing by in much closer proximity to the proposed properties. The technical note further reports that the predicted road noise is approximately 10dB higher than the specific sound level used for the BS4142 assessment and considers that this will dilute the impact of the sound from the adjacent industrial estate. The technical note further reports that this noise assessment of transportation noise and measures proposed have been accepted by the Council and therefore represents an acceptable living environment for residents.

Subsequently, the technical note considers additional measures, such as acoustically rated glazing and alternative ventilation measures that could also control noise. No specific details are provided, although the technical note identifies that a suitable condition could be agreed to ensure the measures are suitable. No recommendations regarding potential site layout arrangements have been considered to reduce the noise levels within habitable rooms or similar.

Whilst we would concur with much of the report's recommendations, we would still have concerns regarding the additional assessment that has been carried out. No assessment of external amenity sound has been provided and the proposed development does bring residents significantly closer to the new industrial estate than previously considered within the noise assessment carried out for that development. The noise assessment submitted within the technical note is likely to underestimate noise levels as there is a heavy reliance on a lack of external working and dock door bays which would appear not to be the case for the proposed use currently under consideration.

We would also caution that Environmental Health had significant concerns regarding the noise assessment that had been carried out for the adjacent industrial estate at the time of submission, as it was considered that there could potentially be an underestimation of the overall noise levels for the site. In addition, whilst sensitive receptors were identified within the noise assessment, this did not include the proposed development as that would not have been identified as a potential receptor at the time.

No consideration of maximum noise levels has been carried out ( $L_{Amax}$ ) within the submitted technical report, which are a good indication as to whether or not sleep is likely to be disturbed as a result of the external noise environment. It is likely that the  $L_{Amax}$  levels would potentially drive the mitigation measures required, particularly considering the monitored and modelled noise levels. It is therefore reasonable to conclude that mitigation measures will be required, particularly to achieve appropriate internal noise levels at night or external amenity levels. In addition, no further consideration of the noise from other sources has been included within this technical review, including the adjacent Sateba premises.

As we concluded within our initial response to planning, good acoustic design could ensure that a suitable amenity is achieved. However, we would remain cautious in terms of the level of noise that is likely to be achieved externally and the degree of mitigation required to achieve internal noise levels. In the event that windows are required to remain closed, it is likely that passive ventilation measures such as acoustic trickle ventilation, will be inadequate during warmer weather and therefore, mechanical ventilation is likely to be required to prevent occupants having to choose between thermal comfort and a suitable acoustic environment. Alternatively, further design considerations could minimise sensitive rooms such as bedrooms, from directly facing the road or industrial estate, but this may be complicated and reduce the number of dwellings that could be accommodated on site. In addition, the acoustic mitigation or design alterations could impact on the potential viability of the scheme which has not been mentioned within the documents submitted to us.

Therefore, whilst we would concur that we have recommended a suitable condition, it is considered that this could prove challenging to achieve in reality. However, this would be at the applicant's risk and they should be aware that this could impact on the financial viability of the site. At present, the end use of the neighbouring industrial estate is largely unknown and noise levels could well exceed that currently modelled within the technical note, thus making mitigation more challenging. The noise from the road traffic is already at a higher level than that considered to be acceptable close to residential receptors and it is for the planning authority to determine whether this development, with suitable mitigation, is an appropriate use of this site. The presence of residents closer to the industrial estate could also impact on the future use of the site and what uses are deemed acceptable if phases are brought forward following granting for residential planning permission on this site.

However, in the event that the appeal is successful, we would recommend that our previously recommended conditions be attached to any planning permission granted. These are reproduced below:

- Prior to the commencement of development hereby approved a scheme of sound insulation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed following the completion of a sound survey undertaken by a competent person. The scheme shall take account of the need to provide adequate ventilation, which will be by mechanical means where an open window would

not achieve the following criteria. The scheme shall be designed to achieve the following criteria with the ventilation operating:

Bedrooms	30 dB LA <sub>eq</sub> (15 Minutes) (2300 hrs – 0700 hrs)
Living/Bedrooms	35 dB LA <sub>eq</sub> (15 Minutes) (0700 hrs – 2300 hrs)
All Other Habitable Rooms	40 dB LA <sub>eq</sub> (15 Minutes) (0700 hrs – 2300 hrs)

All Habitable Rooms 45 dB LA<sub>max</sub> to occur no more than 10 times per night (2300 hrs – 0700 hrs)

Any outdoor amenity areas 55 dB LA<sub>eq</sub> (1 hour) (0700 hrs – 2300 hrs)

For the properties facing Sowbrook Road or where the substation is the dominant sound, the following criteria will be achieved with the ventilation operating:

Bedrooms	24 dB LA <sub>eq</sub> (15 Minutes) (2300 hrs – 0700 hrs)
Living/Bedrooms	29 dB LA <sub>eq</sub> (15 Minutes) (0700 hrs – 2300 hrs)
All Other Habitable Rooms	34 dB LA <sub>eq</sub> (15 Minutes) (0700 hrs – 2300 hrs)

All Habitable Rooms 45 dB LA<sub>max</sub> to occur no more than 10 times per night (2300 hrs – 0700 hrs)

Any outdoor amenity areas 49 dB LA<sub>eq</sub> (1 hour) (0700 hrs – 2300 hrs)

The scheme as approved shall be validated by a competent person and a validation report submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full and retained thereafter.

In addition, due to the proximity of local residents and the size and nature of the development, there is the potential for long term disturbance to the amenity of existing local residents as a result of the construction phase of the development, particularly in the event that piling is required.

We would therefore recommend that a construction environmental management plan is required via condition to ensure that best practicable means are employed in controlling noise, dust and vibration from the site as well as ensuring that a suitable waste management plan and working hours are in place for the duration of the construction works.

We would suggest that the following wording for a condition:

- Prior to the commencement of each phase of development, a construction environmental management plan shall be submitted and approved in writing that details how dust, noise and vibration resulting from the development hereby approved will be controlled and mitigated. This shall include, but not be restricted to, suitable working hours, details of the proposed communication strategy, any monitoring required and a waste storage and removal strategy. The agreed plan will be implemented and maintained throughout the course of the construction of the development.

Due to the close proximity of local residents, we would advise that our recommended working hours would be as follows:

- In order to minimise noise disturbance to the occupiers of adjacent residential property construction work and deliveries to the site should only be permitted between the following hours:

7.30 am and 6.00pm, Monday to Friday,  
8.00am and 1.00pm Saturday, and  
no work on Sundays, Bank and Public Holidays

- No burning of any waste should be carried out on site.

We would further recommend that any construction environmental management plan has due regard to BS5228 – Code of Practice for Noise and Vibration Control on Construction and Open Sites and Guidance on the assessment of dust from demolition and construction (IAQM 2014)

### Contaminated Land

I note within the appeal documentation listed above, it is stated that a Phase 2 intrusive investigation has been carried out and has identified that, whilst remediation of the site is necessary, there are no significant issues that would prevent residential development of the site.

This Phase 2 assessment has not been submitted to this office and therefore, we are unable to comment further with respect to the conclusions reached. We have only had sight of the Phase 1 desk based study which indicated that further investigations were required.

Any remediation required will need to be included in any financial viability considerations for the site.

Our comments therefore are unchanged from our previous response and we would recommend the following conditions in the event that the appeal is successful and planning permission is granted:

1. Notwithstanding any information previously submitted, the development shall not commence until a contaminated land assessment to identify and control any environmental risk, including that posed by ground gases, is submitted to and agreed in writing by the Local Planning Authority. This will include a Phase I Desk Study and where potential risks or pollutant linkages are identified, an intrusive investigation (Phase II Investigation) will be undertaken as required. The assessment will be carried out by a competent person in line with current guidance and will consider all risks to potentially sensitive receptors, including human health, groundwater, buildings and ecological systems. In reaching its decision to approve such proposals the Planning Authority will have regard to currently pertaining government guidance including *Environment Agency Guidance - LCRM (Land Contamination Risk Management)*.
2. Where the site investigation identifies potentially unacceptable levels of contamination, a Remediation Strategy detailing the requirements to deal with any environmental risks associated with this site shall be submitted and approved by the Local Planning Authority prior to commencement of the remedial works. The Strategy should be written by a competent person in line with current guidance. All requirements shall be implemented according to the schedule of works indicated on the Remediation Strategy. The Remediation Strategy shall include a Discovery strategy which details

how any unexpected contamination identified during development will be dealt with and verification details for any soil to be imported to site to demonstrate that it is suitable for the intended use. As a minimum, the remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Prior to the development first being brought into use, a Verification Report must be submitted to, and agreed in writing by, the Local Planning Authority. The report shall provide verification that the remediation works have been carried out in accordance with the approved Remediation Strategy and that the Remediation Objectives have been achieved.

**Reasons:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Please note: Any ground gas assessment will need to have regard to the Good Practice for Risk Assessment for Coal Mine Gas Emissions (CL:AIRE 2021) when carrying out the coal mining assessment.

Lucy Withers  
Contaminated Land Officer  
Environmental Protection Team

## Appendix Four

Consultation response during appeal  
relating to highways matters –  
Derbyshire County Council



## James Grundy

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**From:** Nigel Atkinson (Place) <Nigel.Atkinson@derbyshire.gov.uk>  
**Sent:** 05 June 2023 00:12  
**To:** James Grundy  
**Cc:** Planning  
**Subject:** APP/N1025/W/23/3319160 / ERE/0722/0038 – Land North West of 1 to 12 Twelve Houses, Sowbrook Lane, Stanton by Dale  
**Attachments:** RE: ERE/0722/0038 - Land at Sowbrook Lane/Ilkeston Road, Stanton by Dale; 450-TA-02-0-Transport Assessment Addendum-Sowbrook Lane, Ilkeston.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

You don't often get email from nigel.atkinson@derbyshire.gov.uk. [Learn why this is important](#)

Dear James,

**RE: Appeal Reference: APP/N1025/W/23/3319160**  
**Planning Application Reference: ERE/0722/0038**  
**Site Location: Land North West of 1 to 12 Twelve Houses, Sowbrook Lane, Stanton by Dale**

Thank you for advising Derbyshire County Council, as Local Highway Authority, of the planning appeal in connection with the above proposals. Whilst I was not involved with assessing the original submissions, I have reviewed all material submitted in connection with the original planning application submissions, reviewed the additional material supplied by the Appellant, undertaken internal discussion with the Derbyshire County Council Rights of Way Team, Active Travel Team and Passenger Transport Authority. I have also visited the site and general location and walked the current route between the site and the edge of Ilkeston and examined the current footway provision along Sowbrook Lane. On the basis of my assessments, the current position of the Local Highway Authority in connection with the Appeal proposals is as set out below.

Firstly, with regard to the submissions that supported the original planning application, the Local Highway Authority Statutory Consultee response to the planning application was issued by Sue Highley, as set out in the attached email of 23 September 2022. At the time of the Local Highway Authority's response, a Transportation Assessment had been submitted which suggested that the site will generate between up to 150 or so two-way trips during the respective weekday peak hours. The Transportation Assessment included some analysis of the relative accessibility of the site, including access to employment, education, healthcare, food retail and town centres.

It was noted that the active travel strategy for the site concentrated on amenities in Kirk Hallam, although it is likely that residents would be attracted to the more comprehensive facilities in Ilkeston. There are currently no footways on Ilkeston Road for a considerable distance north of the site resulting in the need for pedestrians to walk in the carriageway of Ilkeston Road. No footway provision was proposed as part of the original submissions, nor alternative mitigation suggested at the time of the original submissions.

The transport assessment considered several offsite junctions. These were assessed based on classified turning counts undertaken Thursday 21 October 2021, prior to New Stanton Park (ERE/1221/0002) receiving planning consent. In response to this, the Local Highway Authority requested that a cumulative assessment was undertaken with New Stanton Park included as committed development, together with some modifications to the vehicular access arrangements and provision of improved means of pedestrian access. As an alternative to undertaking

further work, based on what had been submitted to support the original application, the Highway Authority recommended refusal on the following two grounds:

1. *The applicant has not satisfactorily demonstrated that approval of the proposed development would not have a significant impact on the operational capacity or condition of safety on the existing transportation network. For the avoidance of doubt, any further consideration of this development by the Highway Authority would require a cumulative impact assessment to be undertaken on behalf of the developer to understand the impacts of this development along with the approved New Stanton Park development, amended and additional drawings.*
2. *Approval of the proposal would result in the introduction of a significant number of pedestrian movements at a location where no footways provision exists requiring pedestrians and other vulnerable users to use the carriageway, increasing the potential for conflict with vehicles contrary to the best interests of highway safety.*

The Application was subsequently REFUSED (refusal notice dated 13 October 2022) and, the following reasons for refusal included on the basis of the Local Highway Authority's recommendations in relation to the originally submitted scheme:

- " 2. The proposal would result in the introduction of a significant number of pedestrian movements at a location where no footways provision exists requiring pedestrians and other vulnerable users to use the carriageway, resulting in conflict with vehicles contrary to the best interests of highway safety. As such, the proposal is contrary to the requirements of the NPPF.*
- 3. The applicant has not satisfactorily demonstrated that approval of the proposed development would not have a significant impact on the operational capacity or condition of safety on the existing transportation network. As such, the proposal is contrary to the requirements of the NPPF".*

In addition to the Reasons for Refusal recommended by the Local Highway Authority, an additional transport and accessibility reason for refusal, (Reason for Refusal Number One) was also been included on the Decision Notice. This states.

- " 1. The site is unsustainably located, remote from services, with poor options for walking and cycling to services further afield. As such, the proposal is contrary to the requirements of the NPPF, the National Design Guide, Core Strategy Policy 10: Design and Enhancing Local Identity and Core Strategy Policy 14: Managing Travel Demand".*

Whilst the latter Reason for Refusal is transport related, it was not recommended by the Local Highway Authority in its statutory consultee response. It is noted that the site is adjacent to the New Stanton Park employment site that a range of facilities are within reasonable walking distance (up to 2km). Furthermore, the Appellant has agreed to fund an extension to the existing bus service which operates during the middle of the day so that it operates Monday to Saturday 0700-1900 every hour, for a period of 5 years post development. The Passenger Transport Authority has been consulted on this and has confirmed that the proposals would be acceptable. This would offer a benefit to the wider area served by the route. Additionally a development wide Travel Plan would operate on the site.

For clarity on the above matter, the Local Highway Authority's position is that whilst local facilities could be considered to be within reasonable distance from the site (and would be improved further by extending the bus service), the quality of the route to local facilities by active travel modes is currently poor, as set out in Reason for Refusal Number Two.

Pursuant to the above and in line with the Planning Inspectorates guidances which encourages all parties to engage in pre-inquiry discussions, an Addendum Transport Assessment was submitted on behalf of the Appellant on the 31 March 2023 (attached for ease of reference), which sought to address the Highway Authority's comments. The Local

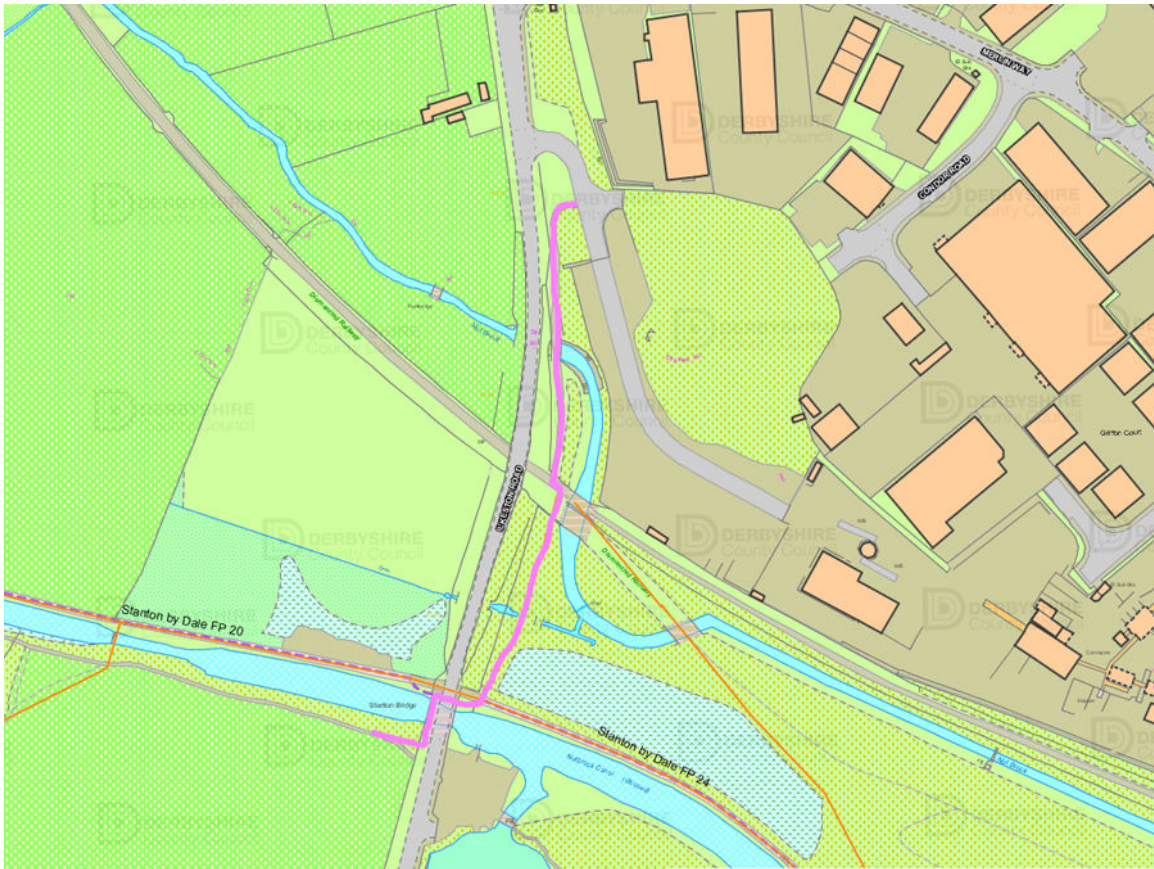
Highway Authority has reviewed matters set out in the Addendum Transport Assessments and offers the following additional comments on the Appeal proposals.

With regard to the first highways recommendation for refusal (reason for Refusal Number 3), it has been noted that the Appellant has now undertaken a cumulative assessment of the local junctions previously identified and as previously requested by the Local Highway Authority. This indicates that the impact of the development on the Local Highway Network is not considered to be considered significant when assessed cumulatively with New Stanton Park and mitigation measures already secured in relation to the latter development, together with highway improvements to be delivered as part of this development by way of Agreement under Section 278 of the Highways Act.

**In consideration of the additional material submitted in connection with the above, the Local Highway Authority considers that its first recommendation for refusal has now been addressed by the Appellant. It may be covered by condition and appropriate legal agreement. The Highway Authority Recommendation for refusal (set out in Reason for Refusal number 3), is therefore withdrawn.**

With regard to the second highways recommendation for refusal (Reason for Refusal Number 2), this relates to current the lack of a section of footway along Ilkeston Road (to the north) and below standard sections of existing footway along Sowbrook Lane. The Appellant has engaged in pre-Inquiry dialogue with the Local Highway Authority and Derbyshire County Council Rights of Way team concerning provision of active travel routes in the vicinity of the site in connection with this matter.

It has been noted as part of the Addendum Transport Assessment that there is an existing Key Cycle Network (KCN) Sustrans route (the Nutbrook Trail) running approximately north-west to south-east a short distance to the north of the site. Within its current Transport Plan, Derbyshire County Council has proposals for a Local Cycle Network (LCN) to link to this southwards to the Nutbrook Canal, with a crossing facility on Ilkeston Road and then a pedestrian / cycle link through the appeal site to Sowbrook Lane. The above is set out on Derbyshire County Council's website: <https://www.derbyshire.gov.uk/transport-roads/transport-plans/sustainable-travel/cycling-walking-plans/cycling-and-walking-plans.aspx>. The intended route of Local Cycle Network is indicated purple on the plan below. It should be noted that it *is routed through the Appeal site*:



Having visited and walked the route of the LCN on Thursday 1 June 2023, it was observed that:

- The Key Cycle Network (KCN) is in place and forms part of a longer distance Sustrans route to the wider area. It is surfaced to a high standard.
- The northern section of proposed LCN (to the north of the Nutbrook Trail linking to Ilkeston Road) is already in place and surfaced to a high standard. There is no requirement for any provision or improvement of this section of the route northwards from the Nutbrook Trail to Ilkeston Road.
- The section of LCN between the Nutbrook Trail and the Nutbrook Canal is in place and although unlit, appears to have significant use by pedestrians, but on an informal basis that would require further surfacing and formalisation to facilitate cycle use.
- There is currently no crossing point on Ilkeston Road from the canal footpath. The section through the site does not currently exist, although the Derbyshire County Council's plan shows its future provision.

Following subsequent discussion with view to setting out matters in Angreed Position Statement, the applicant has indicated that they would provide the following Active Travel improvements in the vicinity of the site to address the original concerns raised by the Local Highway Authority:

- 1) *Section 278 Works to provide footway widening to Sowbrook Lane enabling provision of a 2.0m wide footway with some narrowing. This addresses issues concerning pedestrian access eastwards from the site to Kirk Hallam and is considered acceptable by the Local Highway Authority.*
- 2) *Planning Obligation Agreement for provision of a pedestrian / cycle link between Sowbrook Lane and Ilkeston Road around the northern periphery of the site (southern side of the canal) and western periphery of the site south in line with Derbyshire County Council's transport Plan, to be dedicated as a public right of way. This is considered to be acceptable to the Local Highway Authority and in line with its current Travel Plan as published on the Derbyshire County Council website.*

- 3) *Section 278 Works to provide a footway / cycleway along Ilkeston Road from where the route Sowbrook Lane / Ilkeston Road active travel route exits the site northwards to the canal towpath gate. This is considered to be acceptable to the Local Highway Authority and in line with its current Travel Plan as published on the Derbyshire County Council website.*
- 4) *Section 278 Works to provide a crossing point on Ilkeston Road between the eastern and western sections of the canal towpath. This is considered to be acceptable to the Local Highway Authority and in line with its current Travel Plan as published on the Derbyshire County Council website.*
- 5) *Planning Obligation Agreement to provide funding towards a surfaced route to an appropriate standard between the Nutbrook Canal and the Nutbrook Trail, specification to be agreed with the Derbyshire County Council Rights of Way Team. This is considered to be acceptable to the Local Highway Authority and in line with its current Travel Plan as published on the Derbyshire County Council website.*

The provision of the above works would enable off-carriageway walking and cycling trips through the site between Sowbrook Lane and Ilkeston Road, improve pedestrian access to Kirk Hallam and provide for pedestrian trips northwards into Ilkeston off-carriageway, where there is currently no footway on the existing former railway bridge over the Nutbrook Trail. The proposed active travel measures are considered to be acceptable by the Local Highway Authority as they are in line with its own Transport Plan aspirations and would overcome its concerns in relation to pedestrian and cycle movements to the north along Ilkeston Road.

**In relation to the above, the Local Highway Authority considers that the second recommendation for refusal, (Reason for Refusal Number 2), would be addressed by the measures set out above being delivered.** The Appellant has indicated that they would agree to do so. Having reviewed all the above, the Local Highway Authority considers that any outstanding matters may be covered by planning conditions and appropriate legal agreement which the Appellant has expressed a willingness to enter into. On the above basis, the Local Highway Authority's previously recommended objection to the proposals is withdrawn.

It is noted that a list of suggested Section 106 Obligations has already been circulated by Erewash Borough Council. This needs to be revised to include the active travel measures set out above. We will provide, by separate cover, a list of recommended conditions and planning obligation agreement measures that we request are included on any permission granted.

I trust this clarifies the Local Highway Authority's position with regard to this Appeal. Please do not hesitate to contact me should you wish to discuss further.

Kind regards

**Nigel Atkinson** BSc (Hons) MSc DIC CMILT MCIT | Highway Development Control Team Leader (Interim) |  
Economy and Regeneration | Place | Derbyshire County Council |  
County Hall, Matlock, Derbyshire DE4 3AG |

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# Appendix Five

Appeal decision

APP/R0335/W/20/3245185

Land adjacent to Newell Hall,  
Warfield Street, Warfield, Bracknell





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## Appeal Decision

Inquiry Held on 15 - 24 September 2020

Site visit made on 21 September 2020

**by R Norman BA (Hons) MA MRTPI**

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

**Decision date: 18 January 2022**

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**Appeal Ref: APP/R0335/W/20/3245185**

**Land adjacent to Newell Hall, Warfield Street, Warfield, Bracknell**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Passmore, Hawksbury Homes Warfield Ltd against the decision of Bracknell Forest Borough Council.
  - The application Ref 19/00632/OUT, dated 10 July 2019, was refused by notice dated 28 November 2019.
  - The development proposed is outline application for the erection of a 45no. bedroom care home (details of access submitted).
- 

### Decision

1. The appeal is dismissed.

### Costs

2. Following the Inquiry an application for costs was made by Bracknell Forest Borough Council against Hawksbury Homes Warfield Limited. This application will be the subject of a separate Decision.

### Procedural Matters

3. The application was made in outline with details relating to appearance, landscaping, layout and scale reserved for later determination. Access is the only detailed matter before me for determination.
4. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I gave the main parties the opportunity to comment on the revisions and have taken their points into consideration.
5. I have been provided with a copy of the Council's updated 5 year Housing Land Supply<sup>1</sup> and comments from both parties. I have taken these into consideration when reaching my conclusions.
6. A signed Section 106 Agreement dated 15 December 2020 has been provided which has addressed reason for refusal 4 relating to the need for the provision of a legal agreement to manage the impacts on infrastructure. I will return to this later on.

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<sup>1</sup> Bracknell Forest Housing Land Supply (HLS) calculation as at 1<sup>st</sup> April 2021 (dated 27 July 2021)

## Main Issues

7. The main issues are:

- The principle of the proposed care home and whether the location is appropriate, with particular regard to the open countryside and need;
- The effect of the proposed development on the character and appearance of the surrounding landscape;
- Whether the proposed development would preserve or enhance the setting of the nearby listed buildings; and
- The effect of the development on the woodland and the impact of the loss of the trees both within the site and the adjacent surroundings.

## Reasons

### *Location and Need for Specialist Older Persons Accommodation*

8. It is common ground between the parties that the development is outside, but adjacent to, the settlement boundary<sup>2</sup> and therefore conflicts with the development plan. Policies EN8 and H5 of the Bracknell Forest Borough Local Plan (2002) (BFBLP) and Policies CS2, and CS9 of the Bracknell Forest Borough Local Development Framework: Core Strategy Development Plan Document (2008) (CSDPD) seek to direct development to defined settlements and on Allocated sites, protect land outside settlements, protect the defined gaps within or adjoining from development that would harm the physical and visual separation of settlements and only allow development outside the defined settlement boundaries where it would not adversely affect the character, appearance or function of the land, and meet a list of specific criteria, amongst other things.
9. It is also common ground between the parties that there is a need for additional provision of care and nursing home bedspaces. There is a difference however between the parties in the actual requirement. The Bracknell Forest Housing Needs Assessment (HNA)<sup>3</sup> highlights a significant projected increase in the population of older persons ages 65+ and an increase in those with dementia and mobility problems. The document states that it is important that the Council's planning policies support the delivery of specialist housing, in particular extra care schemes<sup>4</sup>.
10. I have been provided with a number of documents<sup>5</sup> which highlight the national need for care homes in addition to the specific issues facing Bracknell Forest<sup>6</sup> with an ageing population higher than the national average. Taking either the figures of the Appellant or Council, it has been demonstrated that Bracknell Forest has a shortage of care home bedspaces. Despite the disputed matters relating to the proportion of the population over the age of 75, the projected growth and the likely number of those over 75s needing care, I find that the shortage of bedspaces is a potentially significant issue for the area. It has been

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<sup>2</sup> Statement of Common Ground v5 paragraph 2.5

<sup>3</sup> Icení Bracknell Forest Housing Needs Assessment: Final Report dated July 2020

<sup>4</sup> Paragraph 1.23 Icení HNA

<sup>5</sup> HAPPI3: Housing our ageing population: Positive Ideas June 2016 (CD 9.11) Grant Thornton: Care Homes for the Elderly: Where are we now? 2018 (CD 9.12) and Irwin Mitchell: Planning for an Ageing Population (CD 9.15)

<sup>6</sup> Bracknell Forest Joint Commissioning Strategy for Dementia 2014 – 2019 (CD 9.9) and Bracknell Forest Local System Review Report: Health and Wellbeing Board 4 – 8 September 2017 (CD 9.10)



highlighted that both parties do not consider it necessary to reach a precise finding on the specific level of need<sup>7</sup> as in either scenario the shortfall is significant.

11. Policy CS16 of the CSDPD refers to meeting the housing needs of the Community and includes a reference to dwellings designed to meet mobility needs and accessibility principles. Paragraph 184 of the supporting text to Policy CS16 refers to supported accommodation. However, the Policy makes no specific reference to the provision of care homes. I note the limited allocations for care homes within the Site Allocations Plan and emerging Local Plan.
12. The Council have raised concerns over the deliverability of the proposed development. The proposed development would provide 45 bedspaces for care and the Appellant has indicated that it could be delivered on a shortened timeframe. In addition, the Appellant has advised that there has been a potential partner identified, Belmont Healthcare, as well as other interest.
13. Based on the range taken from the Council's and Appellant's figures, I find that there is a demonstrated need for the provision of C2 accommodation within the Bracknell Forest Area which is unlikely to be met without the provision of some new specialist accommodation. In light of the projected levels of unmet need, I therefore give the provision of 45 new specialist accommodation bedspaces significant weight as a benefit.

#### *Character and Appearance*

14. The appeal site is located within a wider area of rural landscape. Adjacent to either side is Newell Hall and a single dwelling, and to the south on Old Priory Lane are some sporadic properties. Higher density development is located from Gibbins Lane and beyond to the east and from Newell Green to the west. As such, I consider that the appeal site sits within an area that is distinct from the two more built up areas and therefore forms a legible and important gap within the landscape which serves to distinguish between the two built up areas to the east and west.
15. The appeal site has no formal landscape designation<sup>8</sup>, however it is located within the LUC Landscape Character Appraisal Area C1: Binfield and Warfield Clay Farmland Landscape Character Area<sup>9</sup>. Within this character area key characteristics include 'small deciduous woodlands and well-managed hedgerows provide rhythm and emphasis to views across the landscape' and 'historic manor houses sited within remnant parkland landscapes, often hidden from view behind high fences or coniferous boundaries'.<sup>10</sup>
16. The appeal site is heavily vegetated, with both mature and younger trees around the site boundaries and within the site. This significantly restricts the views into the site from Warfield Street itself. Nevertheless, whilst the site is not visually open, its nature sets it apart from the nearby built form and relates positively to the rural, countryside character of this part of Warfield Street. Although the site is overgrown, I still consider that it represents an important

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<sup>7</sup> Paragraph 5.9 Closing Submissions of the Appellant

<sup>8</sup> Statement of Common Ground v 5 paragraph 2.6

<sup>9</sup> Bracknell Forest Borough Landscape Character Assessment Final Report Prepared by LUC September 2015 – Figure 4.1 (CD 5.6)

<sup>10</sup> Pages 39 and 40 of the LUC Report

gap between the nearby built forms as well as its importance in the legibility of the adjacent Newell Hall.

17. The appeal site makes a positive contribution to the area in terms of its rural character and distinctiveness from the built form. From Warfield Street and views along Old Priory Lane, whilst the site is largely screened by the frontage trees and hedging, it nevertheless provides a positive visual element within the street scene. There are glimpses through into the wider site which would be fundamentally changed by the introduction of a large building. Within the Landscape Character Assessment<sup>11</sup> it is highlighted that there is a need to protect areas of woodland that provide visual screening functions to existing urban edges, particularly along the northern edge of Bracknell and avoid urbanising features that will erode the rural character.
18. I note the location of the site adjacent to the road, as well as the road signs and other accesses in proximity to the site. The site is considered in the Landscape Sensitivity Appraisal under site reference WAR8<sup>12</sup>. This document gives the appeal site an overall assessment of landscape sensitivity of Low-Medium overall. It notes that the roadside location detracts from tranquillity and takes into consideration the Warfield allocation to the south of the site. However, it also states that the site contributes to the rural setting to the north of the town... by providing an attractive wooded backdrop and to the treed character of Warfield Street and development on the site could narrow the perceived rural gap between the narrowly separated settlements of Newell Green and Warfield Street.
19. Whilst the movement of cars past the site reduces the tranquillity to a degree a site does not have to be set within a secluded countryside location in order to make a positive contribution to the rural character and landscape. Accordingly, I do not find that the presence of the road nor the commonly found road signs undermine the sites contribution to its surroundings to a degree that would justify the development of the site.
20. The appeal site is viewed within the context of Newell Hall and I accept that views of the site incorporate the frontage car park of Newell Hall from several angles. Rather than finding that this therefore justifies the development of the site, I consider that it highlights the importance of the retention of the rural nature of the site and reads with Newell Hall as associated land as a result of the continuation of the frontage wall. I find that the removal of vegetation from within and around the periphery of the site, and the puncturing of the frontage to allow a formal access, would erode the rural nature of the views which would result in a sense of built form beyond that of Newell Hall.
21. The proposal is in outline with only access committed. Accordingly, the submitted indications of the height, scale and design of the building are indicative only and at this stage it cannot be fully determined the extent of the impact of the proposed care home on the visual character of the surroundings and the landscape. The proposed vehicular access would be located towards the south western corner of the site and from the indicative drawings would lead into the car park. I note the Appellant's intentions to introduce new planting in and around the boundaries of the appeal site. Nevertheless, the

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<sup>11</sup> CD 5.6 page 44

<sup>12</sup> Landscape Sensitivity Appraisal of Potential Housing and Employment Sites in Bracknell Forest Final Report Prepared by LUC February 2018 (CD 5.9)

introduction of a large building into the site, with a relatively wide access into the front would provide some unrestricted views into the site which would result in a degree of urbanisation and an irreversible loss of the existing positive rural character. Whilst some screening would remain from some angles along Warfield Street, I find it unlikely that views of the development could be screened to a degree that would prevent a fundamental change in the visual character of the appeal site.

22. My attention has been drawn to the masterplan for the strategic allocation located to the southern side of Warfield Street<sup>13</sup> and an illustrative masterplan for the land between Old Priory Lane and Maize Lane<sup>14</sup>. The Warfield Strategic Development Site<sup>15</sup> will introduce over 2000 new homes, a neighbourhood centre, small scale local retail and community facilities, employment areas, open space, Suitable Alternative Natural Greenspace, and schools into the area. Whilst this will substantially change the character of the southern side of the road, its location, although in proximity to the appeal site, would not significantly alter the legibility of the appeal site in relation to the land to the north and Newell Hall. In fact, I find that as a result of the strategic allocation and future development, the remaining 'gaps' and open land play an increasingly important role in preserving the landscape character of this part of Warfield Street.
23. Consequently, I find that the development of the appeal site as proposed would fundamentally and adversely affect the character and appearance of the area by introducing an urbanising feature which would heavily erode the rural character and the distinct separation between the two areas of buildings. This would not be suitably mitigated as a result of the strategic allocation to the south which will remain distinct from the appeal site, nor am I satisfied that this could be sufficiently addressed by any landscaping and new planting that would come forward as part of any Reserved Matters application. Accordingly, the proposed development would fail to comply with Saved Policies EN1, EN8 and EN20 of the BFBP and Policies CS1, CS7 and CS9 of the CSDPD. Collectively these seek to ensure that development retains a clear distinction between built up areas and the countryside and does not adversely affect, and would be in sympathy with, the character and appearance of the landscape amongst other things.

### *Heritage*

24. The appeal site is located adjacent to the Grade II Listed, Newell Hall. This also comprises a Grade II Listed Stable Block, yard, wall and gate piers and a Grade II Listed Wall which runs east – west along part of the frontage of the appeal site also. Newell Hall is a large building of red brick in Flemish Bond with a number of decorative features. It dates from the early eighteenth century with alterations and extensions taking place in the nineteenth and twentieth centuries. The significance of Newell Hall lies in the degree of survival of a fine example of a Georgian country house in its setting. The surrounding land, being undeveloped, highlights its prominence and historical siting within a parkland setting and the appeal site contributes to this setting through its visual and physical links. The building is set back from the road and the front

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<sup>13</sup> Warfield Central Area Masterplan Document February 2015 (CD 4.11)

<sup>14</sup> 20/00214/OUT Illustrative Masterplan (ID13)

<sup>15</sup> Allocated under Policy SA9 in the Site Allocations Local Plan 2013

- boundary comprises a low wall, brick piers either side of the access and painted railings.
25. The parties agree that the level of harm to Newell Hall and its setting would be less than substantial, however the disagreement relates to the level of harm within this categorisation.
26. Newell Hall, although set back from the road, is prominent visually from both directions along Warfield Street and forms a landmark building within the street scene. Since 2002 Newell Hall has been in use as apartments. Although there have been alterations to the property in later years and changes of use, the main building retains its historic charm and legibility. I accept that the frontage is now used for car parking, which is visible from Warfield Street in both directions, however I do not find that this detracts from the historical merit of the property or diminishes the contribution the site makes to its surroundings.
27. The appeal site is located directly adjacent to Newell Hall and it is therefore necessary to consider any historic links and the contribution the site makes to the setting of the listed building. The appeal site provides a semi-rural and verdant backdrop to Newell Hall when viewed from the west and in its current form, although overgrown with a largely screened front boundary, the appeal site makes a positive contribution to the setting of Newell Hall, complementing it without competing with it in visual terms. Its undeveloped nature means that Newell Hall stands alone within this part of the street scene which highlights its prominence, high status and importance resulting from its formal composition, despite the later additions and alterations.
28. Historically, it is necessary to consider the relationship the appeal site has had with Newell Hall over the years in order to understand its significance in relation to the setting of the listed buildings. I have been provided with a series of maps<sup>16</sup> dating from 1841 to 1972 which show the progression of the site in terms of its relationship with Newell Hall and its demarcation. I note that originally the site was not formally enclosed and appeared to form a small part of the wider parkland area surrounding the formal gardens of Newell Hall likely to have been associated with the building. Moving forward into the late 1800s the site appears to have been partly sectioned off and is shown with boundaries. However, it still appears to have a close link with Newell Hall and I note the shading in the 1913 Ordnance Survey Map which supports this.
29. In addition to the progression on the historic maps, I also consider that it is very likely that the appeal site was linked to the formal Newell Hall site by the presence of the gate in the wall. The Council are of the view that the appeal site may have formed a kitchen garden for the Hall, which the Appellant disputes. Nevertheless, whilst the historic evidence cannot say exactly what the land was used for, the linking gate and the mapping gives a strong suggestion that from the outset, and for many years, the appeal site served a functional link to the main property. It appears that the gate between the two sites has been unused for a long period of time however this does not detract from the historic legibility of the two sites. I therefore find that the appeal site makes a positive contribution to the historic legibility and significance of Newell Hall and forms an important part of the wider setting.

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<sup>16</sup> Proof of Evidence of Jonathan Mullis - August 2020 – Appendix C Tithe and Ordnance Survey Maps

30. Turning to the listed wall to the site frontage, this is a continuation of the boundary wall to Newell Hall. The garden wall is the taller element before it reduces in height to the West Low Wall and the East Low Wall.
31. The proposed development includes details of access and would involve the removal of part of the wall to provide a new vehicular and pedestrian access which would then be reconstructed in a new position on the other side of the new access<sup>17</sup>. The wall shows some signs of structural damage and disrepair resulting from a frontage tree (T1), severe weathering, erosion and spalling<sup>18</sup> and there is an existing access point which is marked by some timber boards which are in a damaged state. There appears to be some evidence of later repair works<sup>19</sup> to part of the wall along the front of the appeal site and parts of it are obscured by overhanging vegetation.
32. Nevertheless, this stretch of wall does contribute to the historic legibility of the appeal site in relation to Newell Hall. The use of some modern materials and the parts which show signs of structural damage do serve to detract from its contribution to a degree. However, I consider that the demolition and rebuilding of part of the wall in a new position would have a much greater adverse impact on the historic character of the setting of Newell Hall than currently and therefore I find that the proposed alterations to this wall would contribute to the less than substantial harm arising from the proposed development.
33. For the above reasons, I find that the appeal site makes a positive contribution to Newell Hall and its setting. The proposed development would see the removal of a significant amount of vegetation, with replacement planting, and the introduction of a large, functional building, which would be partially visible against Newell Hall. This would have the effect of removing the rural buffer, diluting the landmark character of Newell Hall itself by removing its isolation within a wider area of rural land, and significantly impacting on the historic contribution and link between the two sites. Based on the evidence before me, I am not persuaded that careful design, such as a flat roof or replacement planting could sufficiently mitigate against these adverse impacts.
34. The Warfield General Area Masterplan<sup>20</sup> includes the land directly to the south of Newell Hall. The masterplan acknowledges that new development within this area will need to ensure that the setting of the listed building will not be adversely affected. Whilst this would result in changes to the visual character of the area around Newell Hall, the land to the south is distinct from Newell Hall and does not have a historical and functional link with it, unlike the significance of the appeal site to its setting.
35. Accordingly, based on the evidence before me, I find that the appeal site has a functional and historic connection with Newell Hall, emphasised by the walling and the presence of the linking gate. It therefore makes a positive contribution to the setting of the Hall, emphasising its landmark nature and providing a verdant frame to the formal Newell Hall site. The development of the appeal site would therefore undermine the historic legibility of the site and would

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<sup>17</sup> This would require a Listed Building Consent application to the Council and at this stage the Council could not confirm that such an application would be approved.

<sup>18</sup> Conisbee Structural Report dated 17 August 2020 – Appendix C of Heritage Proof of Evidence from Thomas Copp

<sup>19</sup> Heritage Proof of Evidence – RPS Group – Thomas Copp – 18 August 2020 -Paragraphs 3.52 – 3.65

<sup>20</sup> CD 4.11



result in less than substantial harm to the setting of the listed building and associated listed structures, including the harm arising from the relocated wall. Taking the above into consideration, I conclude that the level of harm in this instance would be at a mid-point on the scale of less than substantial harm. Accordingly, in line with Policies CS1 and CS7 of the CSDPD, Saved Policy EN20 of the BFBLP, paragraph 202 of the Framework and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, this harm must be weighed against the public benefits of the proposal, which I will undertake in a later section.

### *Trees*

36. The appeal site is currently heavily vegetated. There are a number of mature trees located around the site boundaries as well as within the north western corner. The front boundary with Warfield Street has a large hedge as well as the trees. Within the majority of the site are self-seeded trees, nettle and brambles. The site itself is overgrown. It is covered by a woodland TPO 1260<sup>21</sup> which protects all of the trees within the area marked on the TPO plan. The TPO was applied in order to maintain the visual amenity the trees afford to the area.
37. The proposed development would necessitate the removal of some of the trees within the site, namely T1 (Tree of Heaven located to the very south west corner of the site), T2 (Pine on the roadside boundary), T8 (Hazel also on the roadside boundary), part of H10 (Laurel and Privet Hedge to the front boundary), W37 the internal self-seeded trees comprising young Ash, Hawthorn, Goat Willow, Hazel and Birch trees) and G38 (a group of Goat Willow set back from the roadside and hedging). The parties are in agreement that the removal of T1 would not be harmful.
38. The Appellant advises that the removal of T1, T2 and T8 from the site frontage is required to enable the provision of the main vehicular and pedestrian access into the site. Tree T2 has been classed by the Appellant as a Category B tree<sup>22</sup>. I have been directed to The British Standard<sup>23</sup> which states that 'when determining the appropriate category for any given tree, group or woodland, the arboriculturist should start by considering whether the tree falls within the scope of category U. Assuming it does not, the arboriculturist should then proceed on the presumption that all trees are considered according to the criteria for inclusion in Category A. Trees that do not meet these criteria should then be considered in light of the criteria for inclusion in Category B'<sup>24</sup>. It then goes on to state that trees of generally high quality or value should not be downgraded as a result of minor imperfections<sup>25</sup>.
39. Tree T2 is prominent and highly visible from Warfield Street for some distance in both directions and makes a positive contribution to the character of the area. In the Statement of Common Ground, the parties agree that there are no apparent defects<sup>26</sup>. Appendix 2 of the Arboricultural Assessment and Method Statement lists the Tree Schedule and Explanatory Notes and in relation to T2

<sup>21</sup> TPO 1260 issued on 9 November 2017 and confirmed on 8 January 2018.

<sup>22</sup> Barrell Tree Consultancy Arboricultural Assessment & Method Statement dated 17<sup>th</sup> September 2019 19156-AA-CA Appendix 2

<sup>23</sup> BS 5837:2012 BSI Standards Publication: Trees in relation to design, demolition and construction – Recommendations (CD 12.2)

<sup>24</sup> BS 5837: 2012 paragraph 4.5.5.

<sup>25</sup> BS 5837:2012 paragraph 4.5.6.

<sup>26</sup> Statement of Common Ground – Arboriculture

it identifies that it is ivy clad with a slight lean. Taking into account the guidance contained within BS 5837: 2012 (Table 1), I find that the Council's approach that trees should be category A from the outset is correct. Based on the evidence before me and an inspection of T2, I consider that the ivy and slight lean are only minor defects, and I am not convinced that this would mean the tree would have a likely lifespan of less than 40 years. Accordingly, it is my view that this tree is a Category A tree which makes a positive contribution to the visual character of the site and its surroundings.

40. Tree T8 is the Hazel tree. Within the Statement of Common Ground: Arboriculture it is agreed between the parties that T8 makes little contribution to the wider character of the area but is a typical component of native woodland. Similarly, H10 the Privet and Laurel Hedges have been identified as an overgrown evergreen hedge and the removal of part of it to facilitate access would be unlikely to be harmful in arboricultural terms.
41. Turning to the interior groups of trees known as G38 and W37 these cover the majority of the site along with ground coverage of nettles and brambles. Group G38 comprising an area of Goat Willow are identified by the Appellant as a Category C of poor quality. The trees within W37 are young, self-seeded and are dominated by Ash trees with other species present. Due to the density, coverage and overall number of trees present in this group however, it has not been possible to determine exactly what percentage of these are ash trees. The Appellant has categorised this area as a Category C wooded area.
42. It has been highlighted that there is evidence of ash dieback within this area which would have implications for tree coverage and is likely to result in a large proportion of these trees being affected and decline. Accordingly, there is a high likelihood that many trees within the W37 group will be affected and could experience leaf loss, dead branches and infection. The proposed development would remove this area of trees and would introduce replacement planting in and around the site. Nevertheless, whilst I do not dispute that there is evidence of ash dieback within the site, the extent or timeframe of the loss is not fully known. I also note the advice from the Forestry Commission<sup>27</sup> which states that in some circumstances, local effects on landscapes and woodlands might be gradual and mitigated by a small proportion of tolerant trees, and by other tree species taking the place of susceptible ash trees. Within this group of trees there are also goat willow, birch, hazel, hawthorn, apple, sycamore and cherry trees which would have the opportunity to flourish in the place of lost ash, however I accept that this may take many years. Nevertheless, the development of the site for a care home would remove all opportunity for any reseedling and growth in the future.
43. The Council have identified the site as 'emergent woodland' due to the natural progression of native tree establishment that has occurred. I have been provided with a series of aerial images ranging from 1993 to 2018<sup>28</sup> which show the progression of vegetation on the site over the years which, in my view, justify this classification and I find it reasonable to refer to the site as an emergent woodland.
44. The Council have raised concerns with the potential for pressure to remove some of the remaining trees within the appeal site. Some of the retained trees

<sup>27</sup> Department for Environment Food and Rural Affairs – Forestry Commission: Managing Ash Dieback in England

<sup>28</sup> Appendix 01: Appendices to the Proof of Evidence of Jan Polnik, Principal Tree Officer of Bracknell Forest Council

would be in proximity to the windows in the care home which would have the potential for overshadowing, and I consider that there is a realistic prospect that there could be potential for future issues in terms of tree works. However, I am mindful that the appeal proposal is in outline at this stage and therefore the location and positioning of the windows and whether they are single or dual aspect is not a matter which has been committed at this stage and is therefore potentially subject to change from any indicative drawings.

45. Taken collectively, the proposed removal of trees and Woodland Groups, as well as the not disputed T1, would result in a significant reduction in the number of trees within and on the boundaries of the site. This would have substantial implications for the emergent woodland classification and sylvan nature of the site and the positive contribution that it makes to the surroundings as a green 'gap' within the street scene. The proposal includes replacement planting, however this would only go part way to mitigating against this loss, of the trees themselves and the visual character, as they would take a significant amount of time to replicate the mature nature of the boundary trees and the whole character of the appeal site would be changed irreversibly.
46. Accordingly, whilst I accept that a number of the trees within the site will be likely to succumb to ash dieback, I have had regard to the presence of the TPO and therefore give the loss of the trees moderate weight. I find that for the above reasons the proposal would fail to accord with the provisions of Policy CS7 of the CSDPD and Saved Policies EN1 and EN20 of the BFBLP. Collectively, these Policies seek to ensure that there would not be destruction of trees and hedgerows which are important to the retention of a clear distinction between built up areas and the countryside or the character and appearance of the landscape, avoid the loss of natural features which are desirable to retain and enhance the landscape, amongst other things.

#### *Legal Agreement*

47. Throughout the Inquiry, the issue relating to the satisfactory drainage of the appeal site following the development, has been discussed and progressed between the Appellant and the Council. I have been provided with numerous plans and correspondence<sup>29</sup> showing the progress and culminating with version 18 of the drainage plan. I have had regard to the position of both the Appellant and the Council in their agreement on the drainage matters and, from the information before me, I am satisfied that drainage matters in relation to easements, technical evidence, impact on trees and legal agreements have been satisfactorily addressed and it has been demonstrated that the site can be drained suitably.
48. The submitted Section 106 Agreement<sup>30</sup> makes provision for a biodiversity/Open Space of Public Value contribution, details of SuDS Management Plan, SuDS monitoring fee, the Council's obligations in respect of biodiversity and includes a draft Deed of Easement.<sup>31</sup>

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<sup>29</sup> Referred to at the end of this decision

<sup>30</sup> Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) in relation to land known as Land adjacent to Newell Hall, Warfield Street, Warfield, Bracknell, Berkshire between Bracknell Forest Borough Council and Harrison Housing and Hawksbury Homes Warfield Limited Ref: S106/19/00632/0010148 dated 15 December 2020.

<sup>31</sup> Deed of Easement relating to Land on the East and South Side of St Michaels Grange, Osbourne Lane, Warfield, Bracknell RG42 6ED between Amanda Jane Johnson-Clarke and Benjamin Bevan Clarke and [name of Grantee] undated as draft.



49. Both parties are in agreement that this meets the necessary requirements arising from the proposed development. I have considered the content of the Section 106 and find that the content is reasonable and fairly related in scale and kind to the proposed development, and I am satisfied that the above contributions have been sufficiently justified and mitigates the potential harm arising from the development in relation to the matters included in the agreement. I have therefore taken this into account when reaching my decision.

## **Other Matters**

### *SPA*

50. The appeal site is located approximately 4.5km from the boundary of the Thames Basin Heath Special Protection Area (SPA). I have been provided with a SPA Position Statement<sup>32</sup> signed by both parties. This statement highlights that the parties agree that, due to the proposed C2 use and the likely limited mobility of the occupants, that they would be unlikely to visit the SPA and therefore the development would be unlikely to lead to significant effects on the SPA subject to the use of the property being limited to C2. An appropriate assessment was carried out by the Council and it was found that, subject to the suitable restrictive condition, the impacts would be sufficiently mitigated. As the determining authority, I am required to also carry out an Appropriate Assessment. However, given my conclusions that the appeal should be dismissed for other reasons, it is not necessary for me to progress this.

### *Tilted Balance*

51. The Appellant has raised issues in relation to the status of a number of the development plan policies and whether they are most important policies and whether they should be considered out of date. According to the Statement of Common Ground<sup>33</sup> the Appellant considers the most important policies for determining the appeal to be Policies EN1, EN8, EN20 and H5 of the BFBLP and CS1, CS2, CS7 and CS9 of the CSDPD. In addition, the Appellant also considers Policies CS15 and CS16<sup>34</sup> of the CSDPD to be most important policies. The Council consider the Policies referred to in the reasons for refusal to be those which are most important in relation to the appeal proposal. Of these Policies the Appellant contends that a number of these are out of date and thereby the 'basket' of Policies is out of date. I have also been provided with a number of court judgements and appeal examples in relation to this matter.<sup>35</sup>
52. I have been provided with an updated position on housing land supply<sup>36</sup> from the Council which concludes that the Council cannot currently demonstrate a 5 year supply. Accordingly, regardless of the current status of the most important policies, the *tilted* balance would ordinarily apply as a result of Footnote 8 to Paragraph 11 d) of the Framework, as the appeal proposal is providing a form of housing.

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<sup>32</sup> SPA Position Statement dated 17<sup>th</sup> March 2020

<sup>33</sup> Statement of Common Ground V5 page 7

<sup>34</sup> Further Note on NPPF 11d 'Most Important Policies' – D Bond 7 September 2020

<sup>35</sup> Bloor Homes v SSCLG [2014] EWHC 754 (Admin) (CD 7.1); Suffolk Coastal v Hopkins Homes [2017] UKSC 37 (CD 7.2); Wavendon v SSHCLG [2019] EWHC 1524 (CD 7.4); Oxtun Farm v Harrogate BC [2020] EWCA Civ 805 (CD 7.9); Peel v SSHCLG [2020] EWCA Civ 1175 (CD 7.19)

<sup>36</sup> Email from Council dated 5 August 2021 and Five Year Housing Land Supply Calculation as at 1 April 2021

53. However, it is necessary to consider the application of paragraph 11 d)i which provides an exception *where policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed...* including, at footnote 7, '*... designated heritage assets...*'. Paragraph 202 of the Framework relates to the consideration of less than substantial harm to the significance of a designated heritage asset and states that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use. It follows that this balance should be carried out before concluding on NPPF 11 d).
54. I have found that the proposed development would result in less than substantial harm to the listed wall and the setting of Newell Hall. If the balancing exercise concludes that the harm would be outweighed by identified public benefits, then paragraph 202 of the Framework should no longer be taken to indicate that development should be restricted and the weighted balance in paragraph 11 d) ii should then be undertaken. However, given my conclusions on the heritage balance below, the tilted balance should not be applied in this case regardless of the Council's 5 year housing land supply or the status of the most important policies. As such it is not necessary for me to reach an express conclusion on whether or not the relevant policies are out of date.

#### *Interested Parties Objections*

55. Local objections have been received concerning, in addition to the above matters, highway safety and surface water drainage and flooding. It is not necessary for me to conclude on these matters as they would not have impacts on my findings above or alter the outcome of this appeal.

#### **Planning Balance**

56. Taking all of the above into account, I have found that the proposed development would be harmful in terms of the character and appearance of the area, the loss of the emergent woodland and that there would be less than substantial harm to the setting of the Grade II Listed Building, Newell Hall. Paragraph 199 of the Framework states that *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* In accordance with paragraph 202 of the Framework the less than substantial harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The Appellant has identified a number of economic, social and environmental benefits arising from the scheme.<sup>37</sup>
57. I have given the provision of a 45 – bed care home significant weight in the planning balance due to the shortfall in spaces and the general projected level of need. The proposal would give rise to economic benefits as a result of new employment opportunities. The proposed development would generate around 50 new jobs for key workers including training opportunities. I find that this would be a benefit arising from the proposal. In addition to the creation of jobs,

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<sup>37</sup> Planning Proof of Evidence – Mr Douglas Bond – August 2020

other economic benefits would arise in terms of opportunities for construction workers. This would be a temporary benefit nevertheless would still merit reasonable weight in the planning balance. There would also be economic benefits for the suppliers to the care homes and the reduction in pressures on existing healthcare settings.

58. The proposal would give the opportunity for some local families to secure care for their relatives whilst reducing the need for travel to care homes outside of the Borough which would provide a social and environmental benefit and I accept that the appeal site would be reasonably accessible in this regard. Furthermore, I accept that the provision of this facility may free up some existing housing stock and I do not dispute that the care home would be run to a high standard in relation to safety and infection control.
59. In terms of environmental matters, I have found harm in relation to the loss of the trees and vegetation and the development of a greenfield site. I have concluded that this would not be sufficiently mitigated by the replanting and landscaping opportunities for the remainder of the appeal site. I accept that part of the listed wall is in poor repair due to the pressures from the adjacent tree and the impacts of freeze thaw weathering due to its proximity to the road. However, I do not agree that the demolition and rebuilding of the wall would represent a heritage benefit in addressing the condition of the wall. Given my findings in relation to the emergent woodland, I do not consider that benefits would arise from the removal of the trees for the reasons highlighted above in relation to the ash dieback.
60. In summary, I have given weight to the provision of care home bedspaces, the economic benefits of job provision, construction work and the supply chain and the social and environmental benefits of removing the need to travel further afield for care provision, removing pressures on existing social facilities and allowing local choice for care. I have identified less than substantial harm at the mid-point of the scale in relation to the heritage impacts of the proposed development and similarly I find harm in terms of the loss of the trees and the impact on the character and appearance of the area through the development of the appeal site. Taking all of the above into account, I find that the public benefits do not outweigh the harms that I have identified and accordingly the tilted balance does not apply. I have therefore taken an 'ordinary' balance in this case. Consequently, the proposed development would fail to comply with the Development Plan as a whole.

## **Conclusion**

61. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

*R Norman*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Melissa Murphy	of Counsel <sup>38</sup>
She called	
Ms Jo Male BA (Hons)	Development Manager Bracknell Forest Borough Council
MA MRTPI	
Mr Jan Polnik Dip For	Principal Tree Officer, Bracknell Forest Borough Council
Mr Graham Pockett BA	Parks and Countryside Manager, Bracknell Forest Borough Council
Dip LA CMLI	
Mr Nick Ireland BA	Director (Strategic Planning Team), Icen
(Hons) MRTPI	Projects
Mr Jonathan Mullis BA	Historic Buildings Consultant, Jacobs
(Hons), MA, IHBC,	
MCIfA	

### FOR THE APPELLANT:

Mr James Corbet Burcher	of Counsel
He called	
Mr Douglas Bond BA	Partner at Woolf Bond
(Hons), MRTPI	
Ms Louise Piper BA	Associate Partner at Woolf Bond
(Hons) MPhil MRTPI	
Ms Fiona Sharman, BSc	Associate Landscape Architect at Indigo
(Hons) PGdip, CMLI	Landscape
Mr Chris Alder FARborA	Consultant at Barrell Treecare
MICFor	
Mr Thomas Copp BA	Director at RPS Group
(Hons) MA AssocIHBC	
Mr Alex Roberts BSc	Director at DLP Consultants
(Joint Hons) AssocRTPI	

### INTERESTED PERSONS:

Ms Maggie Stock	Chair of Warfield Village Action Group (WVAG)
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### DOCUMENTS RECEIVED DURING THE INQUIRY

ID1 – Council’s Opening Submissions

ID2 – Appellant’s Opening Submissions

ID3 – WVAG Objection to Care Home – September 2020

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<sup>38</sup> Now QC

- ID4 – Letter from RPS Ref TC-1000 dated 24 July 2020 including Appendices A – C
- ID5 – Barrell Tree Consultancy Tree Protection Plan Ref: 19156-01
- ID6 – Route for Inspector’s Site Visit Annotated on Drawing Number 911-A-04
- ID7 – SW Drainage Plan RAB2134B/001 Revision 8
- ID8 – Suggested Conditions 17 September 2020
- ID9 – Email from Nick Ireland to Alex Roberts dated 14 September 2020
- ID10 – Council’s response to Conditions
- ID11 – Correspondence from Appellant including Outline Surface Water Drainage Plan Number RAB2134B/001 Revision 13 (superseding Revision 8 above) and Arboricultural Note from Mr Alder, Barrell Tree Consultancy.
- ID12 – Appellant’s response to Conditions and Pre-Commencement Agreement
- ID13 – Warfield Masterplan Application 20/00214/OUT Illustrative Masterplan received 24 September 2020

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY

- Appellant’s Submissions on Drainage dated 30 September 2020 and Plan R16 (RAB2134B/001/16 (superseding previous versions))
- Additional Core Documents CD 7.20 British Railways Board v Secretary of State for the Environment and CD 7.21 Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 2631 (Admin) submitted by the Council on 1 October 2020
- Drainage Legal Note dated 30 September 2020; Drainage Engineer Comments dated 30 September 2020 and Arboricultural Note dated 30 September 2020 submitted by the Council on 1 October 2020
- Letter from Mr D Bond dated 2 October 2020 ref: DB/7985
- Barrell Tree Consultancy Letter dated 2 October 2020 ref: 19156 ARBDrainageNote4-CA
- Letter from Amanda Johnson-Clarke and Ben Clarke dated 2 October 2020 submitted by the Appellant
- Drainage Plan RAB2134B/001/18 (Version 18 contained within v9 of the Flood Risk Assessment)
- Drainage Engineer Comments date 9 October 2020 and Arboricultural Note dated 9 October 2020 submitted by the Council
- Council’s Application for Costs dated 9 November 2020
- Council’s Closing Submissions dated 9 November 2020
- Appellant’s Closing Submissions dated 10 November 2020

Appellant's Response on Costs dated 11 November 2020

Section 106 Agreement between Bracknell Forest Borough Council and Harrison Housing and Hawksbury Homes Warfield Limited dated 15<sup>th</sup> December 2020

Letter and Appeal Decision APP/R0335/W/19/3242594 Land to the north of Tilehurst Lane, and north of Tile House and Honeysuckle Cottage, Binfield, Reading RG42 5JL from Appellant dated 26 January 2021

Email from the Council and Draft Grounds of Appeal re: Land to the north of Tilehurst Lane, and north of Tile House and Honeysuckle Cottage, Binfield, Reading RG42 5JL received 22 February 2021 in response to the Appellant's letter dated 26 January 2021 and APP/R0335/W/19/3242594

Letter from Appellant dated 23 February 2021 Ref DB/7985 in response to email from Council dated 22 February 2021

Letter from Appellant dated 25 February 2021 Ref DB/7985

Tewkesbury Borough Council v Secretary of State for Communities, Housing and Local Government v R Keene & Sons, Robert Hitchins Limited [2019] EWHC 1775 (Admin)

Extract from Binfield Parish Council Binfield Neighbourhood Plan 2015 – 2026 (January 2016) – Protection of Heritage Assets and Policy BF2

City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government and Hart District Council and Historic England and The National Trust for Places of Historic Interest or Natural Beauty [2021] EWCA Civ 320 – submitted by the Council on 6 April 2021

Appeal Decision APP/R0335/W/20/3259307 Scotlands House, Forest Road, Newell Green, Warfield, Bracknell RG42 6AJ – submitted by the Council on 6 April 2021

Appellant's response to Post-Inquiry Submissions on (1) Scotlands House Appeal and (2) Bramshill Judgment - Dated 14 April 2021

Email from Appellant regarding the revised National Planning Policy Framework received 23 July 2021

Email from Council regarding the revised National Planning Policy Framework received 27 July 2021

Bracknell Forest Housing Land Supply (HLS) Calculation as at 1<sup>st</sup> April 2021 (dated 27 July 2021) and letter from Appellant