

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.

PROOF OF EVIDENCE (1)

OF

JAMES GRUNDY
MLPM, LRTPI

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

1. Introduction

- 1.1 I am James Grundy, Senior Planning Officer at Erewash Borough Council, a post I have held since 2021. From 2015 to 2021 I was employed as a Planning Officer with Erewash Borough Council. I hold a Masters in Landscape Planning and Management from the University of Manchester and am a licentiate member of the Royal Town Planning Institute. I previously worked for Sustrans, the sustainable transport charity, promoting active travel, particularly commuting by bicycle.
- 1.2 During my career I have gained extensive knowledge and experience of matters relating to sustainability of location, in relation to planning applications ranging from small scale proposals to various major development schemes.
- 1.3 In this proof, my evidence relates to the suitability and sustainability of the location, as per the first reason for refusal of the planning application.

2. Reason for Refusal

- 2.1 The first reason for refusal states:

“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.”

3 Policy

- 3.1 The Inspector’s instruction in relation to not reciting the text of policies is noted.

4 Sustainability matters

Consideration of the first reason for refusal is split into two facets. Consideration is firstly given to the location being unsustainable in terms of development plan policy and settlement morphology. Consideration is then given to connectivity to, and accessibility of, services and facilities.

5 Locational unsustainability

- 5.1 The Ilkeston Urban Area (IUA) is the closest to the appeal site of the areas identified in the Core Strategy as being where new housing should be located. The Core Strategy defines the Ilkeston Urban Area as comprising the settlements of Ilkeston and Kirk Hallam.
- 5.2 The appeal site is not in the settlement of Ilkeston.
- 5.3 The appeal site is not in the settlement of Kirk Hallam.

- 5.4 As the site is not within either of the settlements which make up the Ilkeston Urban Area, the site is not within the IUA.
- 5.5 The site does not adjoin the settlement of Kirk Hallam.
- 5.6 The site does not adjoin the settlement of Ilkeston.
- 5.7 The appeal site does not adjoin the IUA because it is neither physically connected to it nor will it read as an extension of it.
- 5.8 In terms of the adopted Core Strategy, and as a matter of physical reality on the ground, the appeal site is not part of a settlement, it is not connected to a settlement, and it is not adjacent to the Ilkeston settlement.

Stanton Regeneration Site and the emerging Core Strategy

- 5.9 The Erewash Policies Map 2014 identifies the extent of the Stanton Regeneration Site. An extract from that is provided below, with the boundary of the appeal site annotated in red and the SRS labelled P20 and shaded purple. A tranche of land was proposed to be retained undeveloped, between the west of the SRS and Ilkeston Road.

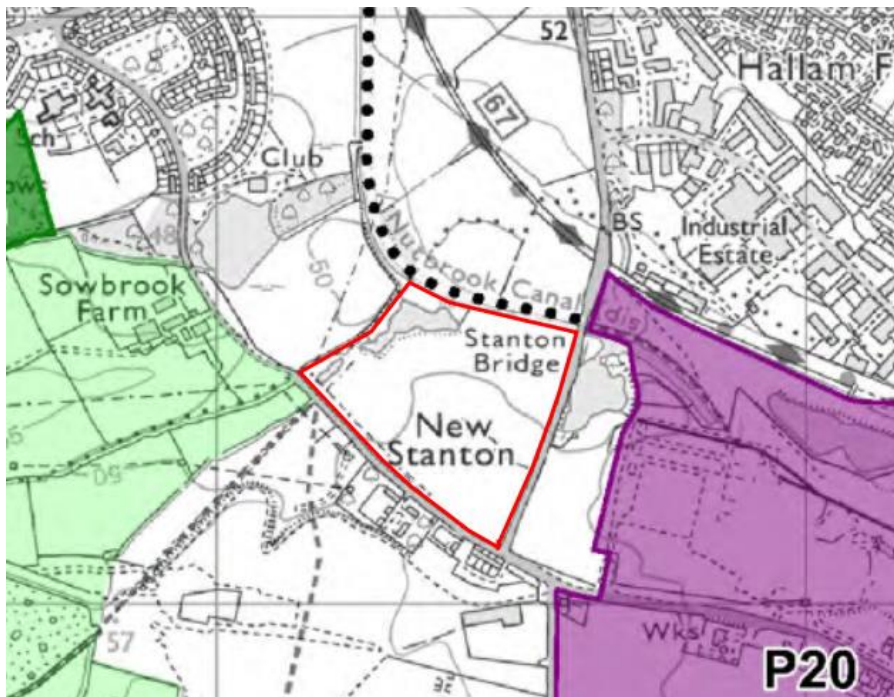


Figure 1 – annotated extract from Erewash Policies Map 2014

- 5.10 More recently, the approach to the SRS has changed, in response to market conditions, the absence of a willing developer for a mixed use development, and the presence of a willing developer for industrial development on the northern part of the site. Stanton North, as it has become known, now has outline and full planning permissions in place for development of industrial buildings to be used for uses falling within Use Classes B2, B8 and E(g)(iii). A reserved matters application for a warehouse has subsequently been approved for part of the site. The approved scheme includes development of the gap

which was proposed to be retained to the west of the SRS, resulting in development in closer proximity to the appeal site than was envisaged in the adopted Core Strategy or the related Supplementary Planning Document.

- 5.11 The Core Strategy Review Policies Map identifies the extent of the *Stanton Strategic Employment Allocation* (purple on the extract below). The boundary of the appeal site is annotated in red. Emerging policies relating directly to the appeal site are shown by green shading (Green Belt expansion) and green hatching (Strategic Green Infrastructure corridor). The appeal site sits on the opposite side of Ilkeston Road to the employment allocation known as Stanton North where planning permissions have been granted as described above. Amongst other considerations, permission was given on the understanding that further development to the west would be prevented by designating that land as Green Belt. The nature and type of land uses on the employment site make the appeal site unsuitable as an area for a residential extension of the IUA as the provision of an entirely new and free floating housing development is not an appropriate or compatible neighbour for an industrial estate.
- 5.12 Allowing the appeal would undermine all of the designations shown on the extract.

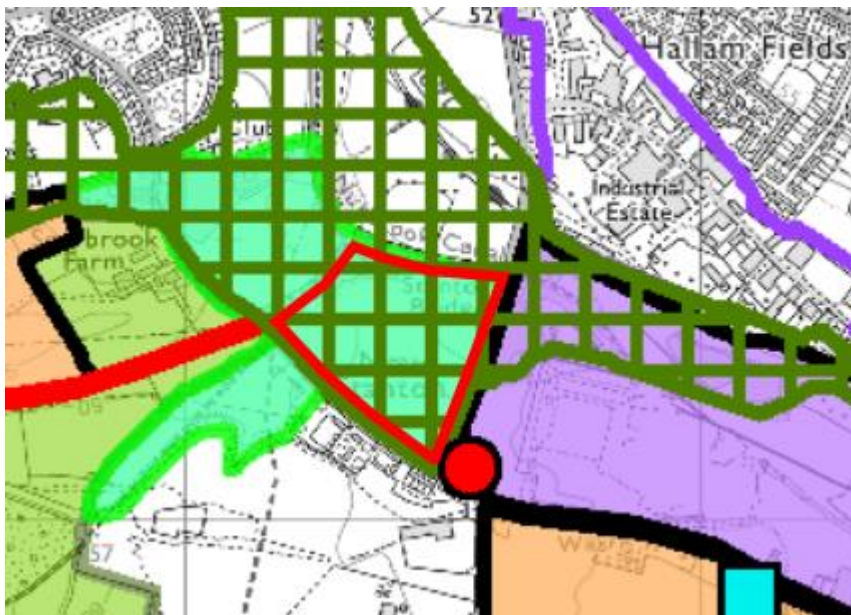


Figure 2 – annotated extract from Core Strategy Review Policies Map

- 5.13 The light orange shading on the above extract indicates parts of Strategic Housing Allocations in the emerging Core Strategy. If both of the sites shown become adopted policy and are developed, the appeal site would remain detached from them.

6 The proposal

- 6.1 The proposal is not compliant with either the adopted or emerging Core Strategies, as it seeks to site housing in a location which is not within any of the areas identified for the accommodation of growth.
- 6.2 Because of the factors described above, the proposed development would be isolated. It would not form part of a settlement.
- 6.3 The proposed development would not be part of an existing neighbourhood, or adjoin an existing neighbourhood.
- 6.4 The residents of the appeal site would not become part of an existing community.
- 6.5 The siting in relative proximity to existing and developing industrial development and the small pocket of houses at Twelve Houses does not offer support for the principle of development of 196 houses in this location, but is a reason why the proposal is unacceptable. The proposal would result in a housing development that is not only physically unconnected with any residential areas but is surrounded by development of a wholly different nature which would accentuate the sense of this proposed community being cut off from any of the adjoining settlements. The permissions at Stanton North are not reasons to approve this scheme, but instead are reasons for refusing it, as housing would be an unsuitable neighbour for this industrial development.
- 6.6 No services are proposed at the site, necessitating the need to travel for all facilities.
- 6.7 A scheme with these factors cannot be considered to be sustainable development.

7 Connectivity

- 7.1 The appeal site lies some distance from Ilkeston town centre, where a range of services and facilities can be found and from the local centre at Kirk Hallam which contains a lesser range of facilities.

Towards Kirk Hallam

- 7.2 The appellant acknowledges shortcomings with the route along Sowbrook Lane to Kirk Hallam and consequently proposes some widening of the pavement, which would entail some narrowing of the carriageway and some use of land to the west of the pavement. The identity and willingness of the respective landowners is not addressed in the submissions, however, the Highway Authority contend that the land forms part of the highway (see appendices).
- 7.3 A table in the Statement of Common Ground identifies the nearest facilities to the site and the distances to them. Distances to the facilities at Kirk Hallam are taken from a point at the western edge of the site. These distances are agreed, but it is important not to lose sight of the fact that journeys from the proposed

houses would entail additional distances, and more so for those living at the eastern end of the proposed development. The implication is that the convenience shop, the takeaway, the surgery and the other facilities at Kirk Hallam are destinations where people would go to spend some time. That is not the case. People travel to those facilities for a brief, utilitarian visit, either to pick up provisions and head home or to fulfil a chore (e.g hairdressers, see the doctor etc). When considering the realism of people walking, it is important to ask whether residents will walk there and back. In answering that question it is important to take the distances in the SoCG, double them, and add on the extra time taken to actually get to one's front door.

- 7.4 The appellant quotes the National Travel Survey as recording that people who already choose to make journeys on foot, do so for average distances of ~1.3km. From the appellant's chosen starting point at the corner of the site, to the local centre at Kirk Hallam is ~1.2km. As such, the journey would be 2.4km, plus the distances between the corner of the field and the actual houses. That is significantly in excess of the average distances undertaken by people who already choose to walk. Moreover, it does not address the fact that development should be sited in locations which encourage those who do not currently walk to do so. This development is proposed to be sited in a location where even those who currently choose to walk will think twice about whether walking is a feasible or attractive option given the duration of a return journey and the limited attractiveness of the facilities/shops as destination to spend leisure time (as compared with, for example, a town centre). It is not feasible, for example, for the Appellant to rely on the convenience shop because in simple terms it is not conveniently located for those who would live at the appeal site.
- 7.5 There are no bus routes along Sowbrook Lane between the appeal site and the local centre.
- 7.6 The appellant's transport addendum makes reference to selected data from the National Travel Survey (NTS). The NTS also includes questions about attitudes to cycling. The most common barriers cited for people not cycling more are "No interest in cycling", "Road safety concerns" and "Too much traffic/traffic too fast". Factors identified as encouragements to cycling more are safer roads, safe cycle lanes and segregated cycle paths. These responses are consistent with the findings of the National Travel Attitudes Study (NTAS).
- 7.7 Sowbrook Lane has a 40mph speed limit. There is no segregated provision for people who cycle and as such they must use the carriageway. The appellant does not propose any such provision. Heading from the appeal site towards Kirk Hallam, the road bends left, then right, then left again, with a number of inclines and declines. This restricts forward visibility distances, thus restricting opportunities for motorised vehicles first to observe and react to cyclists and then to safely overtake people on bicycles. Such restrictions can result in motorised vehicles sitting in close proximity to the rear of people on bicycles, or undertaking unsafe overtaking manoeuvres, contrary to the Highway Code. These factors are not conducive to encouraging people to cycle from the site to

facilities at Kirk Hallam. People who are unconfident on a bike, or who do not currently cycle at all, would be highly unlikely to choose to cycle on this route.

- 7.8 The appellant's transport addendum notes that Sowbrook Lane has a 7.5 tonne weight limit and "so most vehicles on the road would be small in nature". 7.5 tonne lorries could not credibly be called small. The submission does not offer details of any traffic surveys on Sowbrook Lane which have led to the conclusion made.
- 7.9 Whilst the rural character of Sowbrook Lane is in itself attractive, the physical characteristics of the highway and the environs do not represent a pleasant or appealing route for commuting along by foot or bicycle. Sowbrook Lane between the appeal site and Kirk Hallam is not supervised by overlooking from existing properties. It is isolated and it feels isolated. It is noted that the Highway Authority consider that the proposed pavement widening satisfies them in highway safety terms, however, that does not overcome the shortcomings detailed. The shortcomings are illustrated by site photographs in the appendices. The appellant proposes to restrict the width of this road further, and that would make it even more unattractive for people considering whether to cycle along it.
- 7.10 The table of facilities in the SOCG specifies that the closest primary school is 740m from the site. It is suggested by the appellants that the walk of that distance would be undertaken at the same speed as the walk to other facilities. It is considered to be a reasonable observation that parents walking primary age children to school walk at a slower pace than when they are walking alone to work, or to the shop. As such, the contended figure is not considered to be realistic. The shortcomings of the route as detailed above, the 40mph speed limit and the absence of safety railings or any other such infrastructure, would make parents of primary school children unlikely to opt to walk their children to school along Sowbrook Lane, or encourage the children to cycle, or take the children in a seat or trailer attached to a parent's bike.
- 7.11 In summary, whilst there are local facilities at Kirk Hallam, they are some distance from the site. A walk for a pint of milk or a takeaway would take in excess of thirty minutes. The convenience shop offers a wide range of goods, but the carrying of provisions would make the return journey even longer. The physical characteristics of the route make it unattractive and discouraging for walking or cycling. The route presents the factors which provide most discouragement for cycling identified in the NTS and NTAS. Given these factors, it is considered that future residents of the appeal site would be unlikely to find walking or cycling an attractive alternative to driving.
- 7.12 The appellant is reliant on the presence of local facilities at Kirk Hallam to demonstrate that future occupiers would be able to walk or cycle to such provision, in an endeavour to demonstrate that the site is in a sustainable location. The site is significantly detached from Kirk Hallam. As such, it does not represent an appropriate location for an extension to Kirk Hallam. 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.

Route to Ilkeston Town Centre

- 7.13 The greater range of services and facilities in the town centre are even further away. It is noted that the appellant's Transport Addendum does not contend that these are in walking distance. I do not disagree with this position.
- 7.14 Highway routes to the town centre entail travel along Ilkeston Road, a classified road with a 40mph speed limit.
- 7.15 The appellant's position at paragraphs 15.12 & 15.13 of their appeal statement is noted, where it is suggested 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.
- 7.16 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 on either side of the carriageway one can observe evidence of vehicles veering off it. Its narrowness is such that HGV drivers continually pause to allow other HGVs to pass in the opposite direction. The council does not consider that such circumstances are conducive to encouraging new occupiers to commute by bicycle. Even experienced and confident cyclists would find this route uncomfortably challenging. People who are unconfident on a bike, or who do not currently cycle at all, would be highly unlikely to choose to cycle on this route.
- 7.17 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 in detail 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 proposed path within the site could adjoin a proposed short 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 the Nutbrook Canal towpath and shortly thereafter 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 provided amounts to a solid line drawn on a not to scale Ordnance Survey extract.
- 7.18 It is considered reasonable to expect that the Highway Authority would have either produced or been provided with plans to inform their assessment about the acceptability of inserting a crossing in this location on a classified road. Subsequent to a number of requests to the appellant and the Highway Authority for provision of those plans, the Highway Authority confirmed on 29th June 2023 that no such plans have been prepared by or provided to them (correspondence provided in appendices). A request was made to the Highway

Authority for clarification of the assessment which has been carried out with regard to the proposed crossing, in relation to highway safety. They advised that *It is an existing uncontrolled crossing point between the eastern and western canal towpath routes on a 40mph road, therefore any improvement would be beneficial to highway safety and be considered a net improvement by the LHA.* The Highway Authority offered no comment on the advisability of encouraging circa. 500 new residents to be crossing the road at this point.

- 7.19 Notwithstanding the lack of detail, given the Highway Authority's indicative siting of provision in their consultation response, it is possible to give consideration to the route:

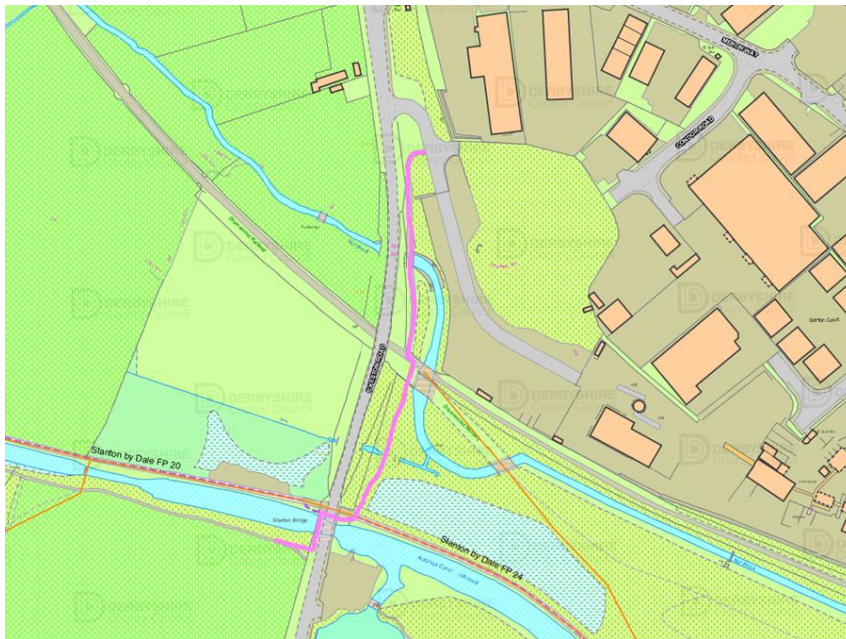


Figure 3 – taken from consultation response email from Derbyshire County Council, pink line indicating location of proposed infrastructure

- 7.20 Starting at the north east corner of the appeal site, on the western side of Ilkeston Road it is proposed to re-surface some rough surfaced land adjacent to the carriageway and provide a crossing across the carriageway.

It has not been specified who is the owner of the land to the western side of the carriageway, which is proposed to be resurfaced. Consequently their willingness to be involved and, therefore, the deliverability of this proposal, is unknown.

- 7.21 As no details have been provided, the type of crossing is unknown. Moving west to east over the proposed crossing, users would have reasonable visibility to the south. Visibility to the north is partially hampered by a hump back bridge, the brow of which sits approximately 104m from the proposed crossing point if it is located as described by the Highway Authority, between the sections of the canal towpath.
- 7.22 Moving east to west over the crossing, there is again reasonable visibility to the south. Visibility to the north is extremely hampered by a hedge immediately

adjacent to the carriageway. Approaching vehicles cannot be seen until they are within a few metres of the crossing point. People do currently cross Ilkeston Road in the vicinity of this location. However, at present when emerging from the east, one would be inclined to travel some distance south to gain better visibility to the north. The siting of a crossing at the point indicated would clearly give people the impression that it must be safe to cross there and that someone had given this due consideration before siting a crossing there. However, the Highway Authority have clarified that no assessment in relation to highway safety has been undertaken. A pedestrian endeavouring to peer around the hedge into the narrow, 40mph carriageway could quite easily lean into the path of an HGV.

- 7.23 Once on the opposite side of Ilkeston Road, the route follows the canal towpath for a short distance, then turns north along land described by the Highway Authority as follows:

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.

The Highway Authority recommends the following:

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.

- 7.24 The land is not the route of a public right of way. It is in third party ownership, with the appellant having no control over it. It is proposed over contaminated land associated with the former Stanton Ironworks site. However, condition 18 of the outline permission for the Stanton North site relates to biodiversity enhancement. The Biodiversity Plan which forms part of the requirements of condition 18 includes the establishment of a formal path along the route referred to here, to be maintained in good condition and facilities such as benches to be provided. No lighting is required. The detail of this proposal is at a similar level to that provided by the Highway Authority in the plan at Figure 3 above.
- 7.25 The identified route would run across this 100m long stretch of unlit and unsupervised path, with thick vegetation on both sides. It is isolated and feels isolated. These conditions are not considered to be conducive to encouraging people to walk or cycle.
- 7.26 Notwithstanding the requirements of the planning permission for Stanton North, the Highway Authority considers it necessary for the appellant to fund works to improve this path. Despite requests, no evidence of willing on the part of the third party landowner has been provided and, therefore, the deliverability of this proposal to support the appeal proposals has not been demonstrated.

- 7.27 The proposed path would join the Nutbrook Canal towpath with the Nutbrook Trail, a leisure route. At that junction, a path running further north is already present, which leads to the Quarry Hill Industrial Estate. People using the route would remain a significant distance from the town centre. The Nutbrook Trail is unlit. It is largely unsupervised and much of it feels isolated. It does not provide a route into the town centre.
- 7.28 In summary, deliverability of the route over third party land has not been demonstrated. The route identified would not lead to the town centre. The unlit, unsupervised and isolated facility would not be conducive to encouraging people to commute on foot or by bicycle. The shortcomings are illustrated by site photographs in the appendices.
- 7.29 It is noted that the Transport Addendum specifies “The number 14 bus service will be upgraded with developer funding to provide an hourly service between 0700-1900 Monday to Saturday. Should council funding be removed in the future the developer will provide additional funding to ensure the service operates for 5 years post final occupation on the site”. The submissions lack specificity in detailing how many additional services the commitment equates to. What the latter commitment means is unclear and it is noted that it has not been made by the appellant in the draft heads of terms.
- 7.30 It is noted that even if additional services are provided between the times indicated, the service would remain limited. Venturing out for an early evening in Ilkeston or Sandiacre by bus might just be possible, but one would have to find alternative means of making the return journey. Sundays and bank holidays would remain without any bus provision. This is a poor level of provision and further demonstrates the unsuitability of this location for a housing development.
- 7.31 Given these shortcomings in the form of the routes for walking and cycling and the distances involved to reach services, and in the absence of a bus route to Kirk Hallam and the limitations of the bus service to Ilkeston, it is inevitable that considerable reliance would be placed on the use of private motor vehicles.

8 Summary

- 8.1 The site is not in an area identified for growth in the development plan and as such the proposal is contrary to the development plan. The site is not in a sustainable location. It is remote from services and facilities. Links to those are poor and not conducive to active travel. The development would inevitably place considerable reliance on use of private motor vehicles. As such, the development would not achieve the aims of chapter 2 of the NPPF on achieving sustainable development, chapter 9 of the NPPF on promoting sustainable transport and would fail to meet the related objectives specified in paragraphs 110 and 112. It would also be contrary to Core Strategy Policy 14, Managing Travel Demand.
- 8.2 Siting housing as a free floating development, with no on-site services and remote from services does not accord with the sustainability aims of the NPPF

or the Core Strategy and does not meet the recommendations of the National Design Guide.

- 8.3 Given all of these shortcomings, if the site had been promoted earlier in the Core Strategy Review process, it would clearly not have been favoured. When considering sites for an extension to the settlement at Kirk Hallam, a site which is contiguous with that settlement would plainly be preferable to one which is significantly detached from it. The proper place for the contrary view to be considered is within the Core Strategy examination process, rather than through an isolated appeal.

9 Consequence

- 9.1 The council acknowledges that the strategic housing policies of the Core Strategy are out of date and the council cannot demonstrate a 5-year housing land supply. In such circumstances, NPPF Paragraph 11 establishes that decisions should apply a presumption in favour of sustainable development. This means that planning permission should be granted unless either para.11(d)(i) or 11(d)(ii) applies.
- 9.2 The proof of evidence in relation to reason for refusal 7, regarding harm to the listed cottages, identifies several areas where the proposals would cause harm to the setting of the listed building, but ultimately concludes that the harm is at the lower end of the Less Than Substantial Harm scale. With regard to the test laid out in para 202 of the NPPF, it is not considered that the development would provide any benefit to the heritage asset, making no contribution to its optimum viable use. Greater consideration is given to the public benefits below, however, it is considered that the weight which they attract outweighs the harm to the heritage asset. Consequently, it is agreed that para. 11(d)(i) is not engaged.
- 9.3 Paragraph 11(d)(ii) directs the grant of planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I am advised that case law¹ has established that this paragraph requires an assessment not only against the policies in the Framework taken as a whole, but also against development plan policies. In carrying out the assessment against development plan policies, regard must be had to the extent to which those policies are consistent with the policies in the Framework. I have also had regard to the fact that some of the relevant policies are agreed to be out of date, and this affects the level of weight that can be accorded to them. In carrying out this balancing exercise, I have had regard to relevant case law².

¹ Gladman Developments Limited v SSHCLG & Corby BC & Uttlesford DC [2020] EWHC 518 (Admin) (provided in Core Documents)

² Phides Estates (Overseas) Limited v SSCLG & Shepway DC & David Plumstead [2015] EWHC 827 (Admin) (provided in Core Documents)

Benefits in relation to 5 year housing land supply

- 9.4 The shortfall against the 5-year housing land supply is significant. However, the council's emerging Core Strategy demonstrates a route to overcoming that shortfall in its entirety. In contributing up to 196 houses, the development has the potential to reduce the shortfall. However, the size and location of the scheme would also result in the council having to revisit its plan, delaying examination of it. Consequently, rather than assisting with the deficit in supply, approval of the scheme would result in a prolonging of that deficit.
- 9.5 The application is submitted in outline, with approval of only the matter of access being sought now. If the appeal was allowed, the general condition on the duration of an outline permission would provide three years for submission of the reserved matters and a further two years for commencement of development subsequent to the approval of the final reserved matter.
- 9.6 It is noted that the applicant is not the landowner. The description of the applicant's activities at Companies House is *Management of real estate on a fee or contract basis*.
- 9.7 It is reasonable to conclude that it would be some years before reserved matters would be approved, land ownership resolved, a developer would become involved and eventually any additional housing being habitable. That is in contrast to the Strategic Housing Allocation sites in the emerging Core Strategy, which already have detailed developer interest.
- 9.8 Over the time frame which would be required for delivery of the appeal scheme, the emerging Core Strategy provides a more appropriate mechanism for meeting the housing needs of the borough.
- 9.9 In summary, the scheme would not reduce the shortfall with any speed. Instead, it would result in the shortfall persisting for a longer period through delaying examination of the emerging plan. On consideration of these factors, the weight which the contribution to housing supply would attract would be moderate.

Other benefits

- 9.10 The appellant has provided a summary of economic benefits which would arise from the scheme. These are not disputed. They would also be provided by more appropriately located schemes. I accord them limited weight. Financial contributions made via a Section 106 Agreement and through Council Tax are not considered to represent benefits; as they are directly linked to provision of services to the future occupiers, those elements would provide a neutral benefit.
- 9.11 The provision of affordable housing on a policy compliant basis is proposed. I consider that to be a moderate benefit.
- 9.12 It is proposed to make a financial contribution to the running of an existing bus service to provide additional services over a limited number of additional hours

for a temporary period. This would primarily be for the benefit of future occupiers of the appeal scheme, although the wider public could use it. I consider the benefit to be limited.

- 9.13 Some widening of the pavement on Sowbrook Lane is proposed, which the appellant and the Highway Authority consider to be necessary to make the scheme acceptable, so that future occupiers could walk along Sowbrook Lane. The public benefit is limited.
- 9.14 The notion of formalising an informal path through the site has been raised, but not proposed as it does not relate to the one matter for which approval is sought. If proposed at reserved matters stage and subsequently delivered, it could provide a moderate benefit.
- 9.15 Submissions made with the appeal indicate that biodiversity net gain could be achieved, largely through the provision of off site mitigation which would not be publicly accessible. BNG is a requirement of the Environment Act. It would provide a limited benefit.
- 9.16 The notion of providing some public open space within the site has been raised, but again would form part of the reserved matters. It could provide a moderate benefit.

Assessment of most important development plan policies

- 9.17 The most important development plan policies for determination of the appeal are those referred to in reasons for refusal 1 and 5. These are Core Strategy Policies 10: Design and Enhancing Local Identity and 14: Managing Travel Demand and Saved Local Plan Policy H12 – Quality & Design.
- 9.18 Policy 10 presents a set of design-based criteria that all new development must meet. Its first criterion (1a) requires new development to make a positive contribution to the public realm and sense of place. 1b requires the creation of an attractive, safe, inclusive and healthy environment. 1c requires new development to have regard to the local context and reinforce valued local characteristics. Criterion 1d addresses the need to reduce the dominance of motor vehicles. Criteria 1a, 1b & 1c are consistent with the aims of chapters 8 (promoting healthy and safe communities) & 12 (achieving well designed places) of the framework. Criterion 1d is consistent with the principles of sustainable development set out in the NPPF and chapter 8 on promoting sustainable transport.
- 9.19 Policy 14 establishes the Council's approach to reducing the demand for car-based travel arising from new development. It sets out a framework in which the Council will make decisions on the sustainability of proposals to secure developments in accessible locations. It is consistent with the principles of sustainable development set out in the NPPF and chapter 8 on promoting sustainable transport.

- 9.20 Saved Local Plan Policy H12 requires that proposed housing development is compliant with the following criteria: the proposals (1) are in scale and character with their surroundings; (2) have regard to distinctive landscape features and provide supplementary landscaping where appropriate, particularly where the development is visually prominent or situated on the established urban fringe; (3) provide adequate amenity space for each dwelling; (4) an acceptable standard of privacy within private garden areas is achieved by visually appropriate boundary treatment; (5) are located so as to avoid being unduly affected by noise or smells from nearby uses that would be expected to generate such effects. These aims are all consistent with the aims of chapter 12 of the framework (achieving well designed places).
- 9.21 Policies 10, 14 and H12 are consistent with the NPPF. Therefore, in accordance with the approach established through the case law referred to above, when taken as a whole, the policies of the development plan attract significant weight and should be considered up-to-date for the purposes of paragraph 11 of the NPPF and the appeal falls to be determined by means of a straight planning balance, i.e. in accordance with the development plan, unless material considerations indicate otherwise.

Direct harms arising

- 9.22 The site is in an unsustainable location, contrary to the principles of sustainable development running through the NPPF. The development would not be part of an existing place and would have no sense of place, being disconnected from any settlement.
- 9.23 It is remote from services, with poor options for walking and cycling to services and settlements. Occupiers would be heavily reliant on the use of the private car to access the nearest convenience retail facilities and all other facilities and services beyond, causing an unsustainable pattern of travel. These factors attract great weight against the proposal.
- 9.24 The proposed visibility splays would necessitate the removal of considerable lengths of hedgerow, harming visual amenity. The existing open field, in conjunction with the surrounding open space, provides a high level of visual amenity in itself, and provides an important gap between built up development. Although matters of layout, scale, appearance and landscaping are reserved matters, the addition of up to 196 houses into that field would have a harmful visual impact. It would have an urbanising effect which would be visible from a range of vantage points and which would be amplified by the engineered accesses themselves and the additional visibility which would arise from the removal of boundary hedges to provide the accesses. These factors attract great weight against the proposal.
- 9.25 Harm would be caused to the setting of the listed New Stanton Cottages. Whilst it is agreed that the benefits would outweigh the harm for the purposes of carrying out the balancing exercise required by para 202, harm would be caused. The courts and the NPPF are clear that all such harm, regardless of its extent and degree, should be accorded 'great weight' and require 'clear and

convincing justification'. In the planning balance exercise required under para. 11(d)(ii), the harm which would be caused attracts that great weight against the proposal.

Planning balance

- 9.26 As considered above, the provision of this housing development in this location would result cause the 5 year housing land supply shortfall to be continued, through delaying examination of the emerging Core Strategy. This weighs against the development.
- 9.27 Some limited and moderate benefits have been identified. The combined weight which they attract is limited.
- 9.28 The relevant local plan policies are consistent with the framework and as such attract great weight.
- 9.29 The harms which would be caused attract great weight individually and collectively.
- 9.30 With reference to paragraph 11d of the NPPF, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits identified, when assessed against the policies of the Framework as a whole.
- 9.31 There are no material considerations that would justify determining this application other than by reference to the development plan.
- 9.32 As the proposal is clearly contrary to the development plan, it should be refused.

Summary

- 9.33 It is a matter of great importance that a 5 year housing land supply is provided. It is acknowledged that policies relating to housing are out of date and as such they attract reduced weight. However, that does not justify the abandonment of the fundamental elements of good planning, which the provision of a large scale housing development unconnected to any existing settlement would be contrary to.
- 9.34 Approval of this scheme would delay the plan making process, resulting in the housing shortfall persisting for a longer period.
- 9.35 The most important policies of the development plan are consistent with the NPPF and as such attract significant weight.
- 9.36 The harms which would be caused would be contrary to those policies.

- 9.37 A limited number of benefits have been identified. The weight which can be accorded to them does not provide a counter-balance to the weight accorded to the identified harms, the weights of which are increased by the policies being consistent with the framework.
- 9.38 The tilted balance in para. 11(d)(ii) is engaged, but, as a result of the factors identified, the test set out in it is not passed.