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# Appeal Decisions

Inquiry opened on 30 April 2024

Site visits made on 03 May 2024 and 10 May 2024

**by Mike Robins MSc BSc(Hons) MRTPI**

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

**Decision date: 5<sup>th</sup> July 2024**

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## **Appeal A Ref: APP/W3710/W/23/3329913**

### **Land West of Higham Lane, Nuneaton, Warwickshire, CV10 0TX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Richborough Estates Ltd and Mr Robert Jones against the decision of Nuneaton and Bedworth Borough Council.
  - The application Ref is 038602.
  - The development now proposed is for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved)
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## **Appeal B Ref: APP/R3705/W/23/3329915**

### **Land West of Higham Lane, Nuneaton, Warwickshire, CV10 0TX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
  - The appeal is made by Richborough Estates Ltd and Mr Robert Jones against North Warwickshire Borough Council.
  - The application Ref is PAP/2022/0049.
  - The development now proposed is for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved) (Cross Boundary NBBC 038602)
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## **Decision**

1. The appeal is dismissed.
2. The appeal is dismissed and planning permission for up to 650 residential dwellings and land for a 1FE primary school including a new access roundabout, with associated parking, access roads, public open space, landscaping, sustainable drainage and associated works (with access only, all other matters are reserved) (Cross Boundary NBBC 038602) is refused.

## **Procedural Matters**

3. The Inquiry opened on the 30 April and sat for 9 days in total, including one day held virtually.
4. I am conscious that there are three separate Inquiries underway for large housing proposals in the general area north of Nuneaton. I have noted some

- discussions that they could have been considered together if called in by the Secretary of State, although it was confirmed that this was not pursued.
5. I am also aware that there were common factors in terms of the evidence presented by the Council, as well as the housing land supply evidence presented by the various appellants, who used the same witness. However, because of the timings of the events it is likely that even this evidence may have changed. The other two schemes are not being led by the same appellant as here and, as acknowledged by all parties in the discussions held during this Inquiry, there are agreed to be material differences between the sites. Accordingly, I have only considered the merits and potential effects of this scheme based on the evidence presented to me with no reference to evidence presented at the other Inquiries, other than that supplied directly as part of the core documents.
  6. Both appeals before me are made in outline with all matters other than access being reserved for future determination. Although there are two linked appeals, they relate to the same scheme, with two applications required due to the proposal straddling the boundary between Nuneaton and Bedworth Borough Council (NBBC) and North Warwickshire Borough Council (NWBC) areas. Only a very small part of the proposal site lies within the boundary of NWBC, and, although they submitted a proof of evidence, and contributed to discussion in relation to conditions and obligations, they did not formally take part in the Inquiry. As a consequence there is no need to consider the linked appeals separately in this decision.
  7. Alongside NBBC, Warwickshire County Council (WCC) submitted evidence in relation to the locational accessibility of the site as well as the effects on the local road network in support of the Council's position. References to 'the Council' throughout this report are to NBBC.
  8. National Highways (NH) were granted Rule 6 status and took part in the submission and presentation of evidence in relation to the Strategic Road Network, in this case specifically the A5. However, following their witness's evidence, they chose to take no further part in the Inquiry, although they did contribute to discussion regarding conditions and obligations.
  9. During the course of the appeal, the appellants chose to vary their application in response to advice relating to revised requirements for education contributions. Accordingly, the proposal was changed from up to 700 residential dwellings to up to 650 with the inclusion of a single form entry primary school.
  10. While normally an appeal should consider the application as put to the Council, in light of the circumstances and the consultation carried out on this revised scheme, I was prepared to accept the change having found that there would be no prejudice to any party from doing so. I have reflected this change in the banner headings above.
  11. I carried out a number of unaccompanied site visits both before, during and after the submission of evidence, informed by the views of the main parties. These included an overview of the site from surrounding roads, its relationship to the strategic and local road network including a number of junctions associated with the A47 route from the A5 towards Nuneaton. I also walked along and observed the site from the Weddington Country Walk (WCW), a

footpath and national cycle route to the northwestern side of the site, and visited its connection to the town via Weddington Way.

### **Preliminary Matters**

12. The Inquiry was originally scheduled to be heard in January 2024, but delayed to allow for the proper assessment of, among other matters, revised and new modelling work, notably in relation to highway capacity matters. In the run up to and following the submission of proofs, a number of Statements of Common Ground (SoCG) were produced, including some that reached full agreement and were signed by the main, relevant parties. These included one relating to ecology and biodiversity net gain (BNG), one with NWBC, which addressed their concerns regarding noise and highway capacity, notably the A5, an overarching one with NBBC, as well as ones regarding Housing Land Supply and Sustainable Accessibility.
13. As a result, a number of matters initially identified as main issues in the appeal were addressed, or agreed to be able to be addressed, through conditions or legal undertakings.
14. To that extent, at the Inquiry the appellants, NBBC and WCC submitted an agreement under s106 of the Town and Country Planning Act 1990. Further Unilateral Undertakings were submitted by the appellants to WCC in relation to highway improvements, and to NWBC, in relation to open space provision.
15. Community Infrastructure Levy (CIL) Compliance schedules were sought and provided by the relevant Councils and while there was broad agreement, some matters remained in dispute. I consider whether or not those matters meet the tests set out in the CIL Regulations (as amended) and deal with this matter later in the decision.
16. The various Proofs of Evidence, Appendices, and Rebuttals, as well as core documents and those submitted in the course of the Inquiry, can be found at: [Watling Street - 038602 - OneDrive \(sharepoint.com\)](https://www.sharepoint.com/:document?d=1038602).

### **Main Issues**

17. Accordingly I now set out the main issues in this case as:
  - Whether the proposal complies with the development plan and, if not, whether there are any material considerations that would justify a departure from it, including the extent of the housing land supply shortfall;
  - The effect of the proposed development on highway capacity and safety; and
  - Whether the benefits of the proposed development are significantly and demonstrably outweighed by any identified harm, the planning balance.

### **Reasons**

#### Background and Policy Position

18. The appeal site runs to some 42.7 Hectares and is currently in agricultural use, comprising a number of fields divided by existing hedgerows with access points off the A5 and Higham Lane. Described variously as land west of Higham Lane, East of Elms Farm or adjacent to Watling Street, the A5, this is a long but relatively narrow site enclosed by the A5 to the north, the WCW cycle

path/footpath to the west, which is also part of a Local Wildlife Site (LWS), Higham Lane to the east and a large, allocated site, referred to as Top Farm, to the south. To the west of the WCW, the open agricultural fields are proposed to be developed as an extension to the MIRA employment site, as allocated in the North Warwickshire Local Plan, adopted 2021, (NWLP). While not now contested, there were initial concerns from NWBC over the relationship between the residential properties proposed and the employment uses on this site.

19. Top Farm, identified in the Nuneaton and Bedworth Borough Plan 2011-2031, adopted 2019 (the Local Plan), as a significant part of the strategic housing allocation HSG1, is a new neighbourhood under development to include up to 1,700 new homes, a primary school and secondary school, as well as a local centre with retail and community facilities.
20. To the east of the site, across Higham Road, are recent housing developments in later construction and sales phases, identified as Heritage Fields and Eaton Place. Granted permission in 2018, these developments comprise some 650 houses.
21. On site, the latest illustrative parameters plan<sup>1</sup> indicates housing through the spine of the site running roughly west to east, while a new primary school is proposed for part of the site where it extends southward into the Top Farm site. A strip of open green infrastructure is shown between the houses and the A5, through which the vehicular access is proposed via a new roundabout on the A5.
22. Other connections are for pedestrian or cycle access to WCW at the point nearest to the A5 and the tunnel through which that route extends to land beyond it, and from Higham Lane where a bus gate is proposed to allow a new bus route through the site; no other vehicular use is proposed through this access, other than in emergency situations. What is identified as a further emergency access route is indicated with details to be secured later connecting from the western part of the site to the A5.

### **Compliance with the Development Plan**

23. The development plan for the site includes the NWLP and the Local Plan. However, for the purposes of the majority of issues for the two linked appeals, it is compliance with the Local Plan that forms the main points of contention; the position of NBBC is endorsed on that basis by NWBC.
24. The Council's concerns centre on their view that the proposal would conflict with their overall housing strategy. In effect, they consider that it represents development outside of the settlement boundary in an area they consider to be unsustainably located away from employment, services and facilities and contrary to the express focus of their approach in the Local Plan. In addition, they argue it would be contrary to the strategy of the emerging Borough Plan Review (the BPR) and of such a scale that it would be premature and prejudicial to that strategy. The site, they say, was considered under both the extant Local Plan and the emerging BPR and found not to be suitable.
25. There are a number of components to these concerns, which the appellants refute. They argue that the Local Plan housing land supply demonstrates a

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<sup>1</sup> n1680\_004 Rev F

significant shortfall over the plan period and a need for additional housing sites now. These components include the current and emerging policy position and settlement hierarchy, the housing land supply and the location of the site and its sustainability, both in policy and accessibility terms.

### **Policy Position and Settlement Strategy**

26. The Local Plan sets out an overarching presumption in favour of sustainable development, aligned with the National Planning Policy Framework (the Framework). Policy DS2 seeks that most development will be directed to Nuneaton, with Bedworth, Bulkington and other settlements being considered as secondary or tertiary settlement where development should come forward only at a scale reflecting their role and function.
27. The Key Diagram shows the Plan's ambition of large-scale allocations to the north and south of Nuneaton and on the fringes of the other settlements. In a Borough relatively constrained by Green Belt land, these ambitions led to specific Green Belt releases<sup>2</sup> and revisions to the settlement boundaries to reflect the allocations. Consequently, Policy DS3 promotes development within the settlement boundaries and restricts that outside of them to a limited range of uses that require such locations. The proposal before me represents housing outside the settlement boundary and would therefore conflict with Policy DS3.
28. However, the Local Plan, as a result of a modification introduced during the Examination, includes some flexibility to respond to housing delivery over the plan period. Policy DS8 sets out actions to be taken where it is apparent that the delivery rates are falling short. Much of the evidence in this Inquiry focussed on compliance with Policy DS8.
29. Nonetheless, the Council argue that the strategy, even with the flexibility of Policy DS8, would still not support further development to the north of Nuneaton. To support this, they referred me to commentary from the Examining Inspector's Report, arguing this shows such development would not meet the expectations of the policy. They refer to comments regarding the area north of Nuneaton, which included: "*Whilst it can accommodate an appreciable proportion of the Borough's growth to 2031, there are sound reasons why the Plan should not allocate further development in this direction.*"; and specifically, in relation to further development, that: "*Additional peripheral development at this location would result in a disjointed and unsustainable pattern of development.*"
30. Notably the Council argue that in Policy DS8, edge of settlement means development within the boundary, not outside, and that any such development has to be sustainable, which, based on the Inspector's comments, they say development beyond the allocated HSG1 site would not be. I address the matter of site-specific sustainable accessibility below.
31. Furthermore, the Council argue that this proposal would be premature. I deal with this matter and the weight to be afforded to the emerging plan later, but the BPR is promoting a reduced level of housing need, citing that, amongst other matters, the expectations of meeting Coventry's housing needs were overstated. The emerging development strategy promotes a number of allocated sites to meet a need based on that assessed<sup>3</sup> with additional housing

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<sup>2</sup> Policy DS7

<sup>3</sup> Through the Housing and Economic Development Needs Assessment (HEDNA)

numbers responding to economic growth. Put simply, the figures presented suggest that the current Plan target of 812 per annum (pa) should be 442pa under the Standard Method, 408pa under the HEDNA and 545pa in the BPR. The BPR is proposed to include similar flexibility to Policy DS8 in an emerging policy. However, these housing figures are disputed in specific objections to the emerging Plan.

32. At the heart of the arguments here is the delivery of housing, so I turn to the housing land supply and the assessment of shortfalls.

#### Housing Land Supply (HLS)

33. The Council initially argued that they could demonstrate in excess of a 4-year HLS, which, under relatively recent changes to the Framework, is what they considered they were required to demonstrate. Despite falling behind the Plan's housing trajectory, and accepting that Policy DS8 was engaged, the Council stated that they have taken steps to address a small shortfall they anticipated at the end of the Plan period. These actions included increased levels of resourcing, working with developers and working with others, including Homes England, to secure funding for infrastructure to unlock development.
34. The appellant challenged that the Council only needed to demonstrate a 4-year supply and pointed out that the Council's assessments of their supply have reduced considerably over the past few months. The SoCG on this matter set out that the Council position going into the Inquiry was 4.06 years, the appellants' 2.74.
35. During the Inquiry, some concessions have led to the Council now accepting their supply could drop below 4 years and that new permissions will be required for alternative sites, outside of the strategy, to deal with the shortfall against housing requirements. Consequently, they accept that Policy DS8 is engaged, as is the tilted balance<sup>4</sup> and that, dependant on the level of shortfall, this might require sites outside of the settlement boundary.
36. The supply must be assessed against the 5-year requirement plus an appropriate buffer, whether considered against the 4 or 5-year supply. In this case, there is common ground on this and the requirement against which the supply is to be addressed is agreed as 6078 dwellings, including a 20% buffer. The matter of whether a 4 or 5-year supply should be considered was set out in proofs and in a note submitted to this, and reportedly, the other Inquiries, by the Council's advocate. However, as noted, the Local Plan was on the cusp of reaching the 5-year mark where the Framework's requirements do change.
37. Consequently as the Plan at the time of this decision will be in excess of 5-years old, Framework paragraph 76 does not apply, and paragraph 77 confirms that a supply needs to be demonstrated subject to paragraph 226. The Council have presented ongoing reviews of their HLS, and made no argument that the requirement after the 5-year threshold should now be based on local housing need; consequently I have accepted that the requirement is that set out by the adopted strategic policies<sup>5</sup>. Paragraph 226 confirms that where a Council have submitted an emerging Local Plan for examination, which NBBC have, then

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<sup>4</sup> As prescribed in paragraph 11 of the Framework

<sup>5</sup> In accordance with Framework Footnote 42

they need only demonstrate a supply of deliverable sites sufficient to provide 4 years' worth of housing.

38. Following the round table session on the HLS, I requested an updated version of the parties' housing positions<sup>6</sup>. This confirmed the shortfall, as at 1 April 2023, was 1603 dwellings, which the Council argue, accepting the circumstances regarding HSG4 Woodlands<sup>7</sup>, would reflect a shortfall, subject to their actions of some 524 at the end of the plan period. Conversely on the basis of their own review of the 10 contested sites and the 'SHLAA Sites'<sup>8</sup>, the appellants argue that the shortfall would increase to 2553 dwellings.
39. The onus on demonstrating whether housing is deliverable rests with the Council. The Framework assists in confirming that deliverable sites should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered within the Plan period. In these circumstances, where sites have full planning permission there is agreement that they are deliverable, the difference between the parties here is with the sites with outline permission and the major allocations.
40. From my perspective there is always an element of judgment in considering deliverability and there will always be uncertainties ranging from resourcing pressures within a Council to variations in market conditions or the timing of necessary infrastructure delivery. Nonetheless, this judgment needs to be supported by clear evidence to show a realistic prospect of housing completions, such evidence must be specific and not just reflect ambition or assertion. It should always be based on the latest available evidence and is not tied to the base date. However, while the simplistic use of proformas was discussed<sup>9</sup>, I consider that a Council can legitimately be expected to rely on statements made by developers as a reflection of their actual intentions.
41. The parties' positions were set out in tabular form accompanying the HLS SoCG; I set out below my findings based on this and discussions at the round table session.

*Discovery Academy*

42. The Council identify 58 dwellings contributing to the supply. The appellants note that there is no evidence of progress on reserved matters (RM) with no delivery partner identified and consider there will be no dwellings delivered.
43. The Council reported that a very recent s73 permission had been granted, simplifying the delivery of the two phases, that funding was accessible and that the tendering process was underway for a delivery partner.
44. That there have been significant delays in the past with this scheme is clear, and the Council's anticipated submission of RMs in June seems optimistic. Nonetheless, this appears to be a case influenced by under-resourcing in the Council and the Warwickshire Property and Development Group (WPDG), the development arm of WCC. I am satisfied that the Council have committed resources to this and there does appear to be progress with the s73 permission

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<sup>6</sup> ID6

<sup>7</sup> Addressed below

<sup>8</sup> Strategic Housing Land Availability Assessment (SHLAA) Sites promoted by the Council as part of their actions under Policy DS8

<sup>9</sup> and the appellants referred me to CD7.23, APP/Q3115/W/20/3265861

and anticipated completion of the tendering process; I note the commitments that are made in relation to this site by WPDG.

45. Furthermore, the trajectory indicates a timetable to deliver a relatively small number of dwellings that allows for some flexibility and overall, I am satisfied that the 58 dwellings can be considered part of the supply.

*Callendar Farm*

46. The Council have identified 658 dwellings as part of the supply, this is challenged by the appellants who consider that there is only clear evidence for 543, a difference of 115.
47. This is part of the Council's largest allocated site, HSG1, which for this part has outline permission and RM approval for 543. The Council accept that while a RM application for 190 units was refused last year, a recent, new application has been made. The developer is near to completion on the neighbouring site and have confirmed their intention to transfer over to this site. The appellants accept that RM approvals are in place but do not consider sufficient evidence is made out to support the final 115 units.
48. The submission of the new RM application in April is noted, as is the positive ongoing permissions and delivery of infrastructure, including the link road. With a developer committed to the site and the availability of construction teams reaching completion on the neighbouring site, I consider that there is a strong likelihood of housing completions, and I note the developer's confirmation of that commitment, subject to timescales for completion of RMs and conditions.
49. However, the appellants point to the length of time for the previous refusal of RMs and question whether the site can deliver the build out rates to achieve the anticipated supply.
50. In this case, I am satisfied that the evidence of communication and closer working between the Council and the developer, coupled with the recent submission of the RMs and the favourable conditions to support an early start to construction means that there is a reasonable prospect of dwellings being delivered on this site. However, I do not find the evidence sufficient to confirm the anticipated start dates and an additional one-year delay is more realistic, reducing the delivery to 75 dwellings.

*Remainder of Top Farm*

51. This is another part of the HSG1 allocation and the Council report 560 dwellings within the supply. The appellants argue against any being included.
52. This is an allocated site with developers delivering housing across a number of phases and significant infrastructure agreed and under construction. I note that with confirmation of School construction being underway, with delivery in 2025, as well as the link road progress, there are positive signs for delivery of housing on this site. Nonetheless, based on the evidence before me, I am concerned that this does not support the optimistic early delivery of housing in this financial year. Furthermore, despite the Council referring to some examples of such high proposed build out rates in their rebuttal evidence, linked to some extent to the proposed timber construction methodology, I am not convinced that such rates are realistic here, not even with the proposed



mix of market, affordable and self-build units. I also note that while there are clear statements anticipating delivery from the developer, there is also acknowledgment of slippage in the programme.

53. To my mind there is a realistic prospect of housing delivery on this site, but insufficient evidence to support the start date and build out rates promoted by the Council. Realistically, and this can only be a judgment, a delay of a year and a lower build out rate, reduced to 100, would suggest a more likely supply of 250 dwellings.

*Gipsy Lane*

54. The Council identify 345 dwellings from this allocated site (HSG3) within the supply. The appellants accept RM approval is in place for part of that, but consider that the delays, which they originally considered may reduce the figure to 250 are now so pronounced that they argue they will lead to a lower figure of 159 dwellings.
55. This is an allocated site which the Council report as having outline permission for 575 units and RM approval for 158 and an RM application pending for 418. The appellants question the delivery, referring to a lack of evidence to support potential resolution of highway matters, in particular. Importantly, I note that recent and ongoing meetings are reported that would appear to confirm that the outstanding matter to complete the RM approval relates solely to a highway matter and does not require further committee approval. I also note the latest information relating to the Road Safety Audit. Furthermore, the developer confirms that they anticipate delivery of 80 units per year from two outlets.
56. Despite the misgivings of the appellants, there is no restriction to delivery initially of the 78 units with full planning permission starting this year and the evidence supports a realistic prospect of resolution of the highway matters allowing for a developer commitment of 80 units per year subsequently.
57. Accordingly, 345 dwellings should be considered in the supply.

*Hospital Lane*

58. The Council identify 280 dwellings from this allocated site (HSG5) within the supply. The appellants consider that with no RM application and no evidence of progress towards one, they argue against any being included.
59. Evidence promoted by the Council indicates pre-application discussions and anticipation of an RM application 'imminently'. The developer has confirmed they could deliver 40 units in 2025 and 100 per year after that.
60. Critically, while I have noted above that weight should be given to developer statements, such anticipated rates remain dependant on the timing of RM approvals. To my mind, there is a greater risk of delay here, with no clear evidence of a timetable for submission or approval of RMs in this case, although a developer is, by their own statements, committed to pursue this. While I have given credit to the Council's commitment to additional resourcing to address backlogs in approvals of existing applications, the early start on site suggested here is not supported by clear evidence.
61. Nonetheless, the commitment made by the developer to comply with the timescales of the promoter's SoCG may give reassurance that some housing

may come through, but that must be evidenced. While it can only be a judgement, based on commitments made by the Council to other development and the realistic timeframes suggested by those, it would appear unlikely that substantial delivery could start, and completions be realised prior to years 4 or even 5. I cannot therefore, at present suggest that there is a realistic prospect of housing completions beyond that in year 5 on this site, and would suggest that the 280 dwellings are reduced to 100.

*West of Bulkington (Vistry)*

62. Part of the wider HSG8 allocation, the Council identify 149 dwellings within the supply. The appellants argue against any being included.
63. The Council argue that the site has full planning permission subject to completion of a s106 agreement and the developer is reported to be able to deliver all of the units within the 5-year period. However, the appellants point out that the s106 has been considered imminent for some time and there may be questions over the deliverability of the site if it cannot be agreed.
64. Notwithstanding this, I have evidence that the s106 has been, or soon will be sealed. I am satisfied that this represents clear evidence that the site can proceed. The build out rates promoted appear reasonable and consequently I consider that the 149 dwelling should form part of the supply.

*West of Bulkington (Elford Homes)*

65. Again this is part of the wider HSG8 allocation, where the Council identify 42 dwellings as part of the supply. The appellants argue against any being included.
66. The appellants point out that it took 3 years to approve the outline permission and there is no clear evidence to show progress towards an RM application. However, I note the Council report that the bidding process is complete, and a developer has been appointed with no constraints to development of the site. While this may be the case, it is still necessary to provide realistic evidence of a timetable for submission and approval of RMs, as well as confirmation of build out rates. While this represents a relatively small development, and there would appear to be flexibility to allow for a delay of at least a year, more evidence is needed to show that there is a realistic prospect of housing being delivered on this site.
67. Accordingly, I would suggest that, at present, the 42 dwellings should not be considered as part of the supply.

*West of Bulkington (Rosconn)*

68. A further part of the HSG8 allocation, the Council identify 80 dwellings in the supply. The appellants argue against any being included.
69. Although the Council suggest that outline planning permission has been approved, the appellants consider that this may be questioned as it was not available at the time of the Inquiry. In principle, even were the outline permission to have been approved, clear evidence is required to show that a developer is prepared to pursue the RM applications, that an application can be approved and that all constraints are addressed prior to construction starting and completions being achieved on site. The Council argue that the developer

has a track record in the area and that this part of the allocation is not constrained by access.

70. Nonetheless, despite the SoCG offered, there is no timetable or clear commitment to one before me, and while this represents a scheme for which the trajectory suggests some flexibility with proposed completions not until 2026, to be considered, there must be clear evidence of a reasonable prospect of delivery. In this case, that evidence is currently lacking.

71. Accordingly, I would suggest that, at present, the 80 dwellings should not be considered as part of the supply

*Phoenix Way/Wilson Lane*

72. The Council identify 73 dwellings from this site (EMP2) in the supply. The appellants argue against any being included.

73. The site has a relatively recent outline permission for 73 units, with a meeting with the appointed developer reported to have taken place recently. In this case, a developer is confirmed as being in place and a SoCG with the promoter also confirms that an RM application will be submitted in 2024. Further steps have been taken to separate the employment and residential elements of the site in terms of conditions and s106 obligations.

74. However, while to my mind this represents a step forward in terms of evidence of progress with the site, the appellants continue to point out that there is no direct evidence of the intention of the developer or timescale for a RM application.

75. While I accept that, with the additional progress steps, the relatively small-scale of the proposal and the potential within the trajectory to deal with some slippage, I consider that in this particular case, there is a realistic prospect of housing completions within the supply period. Accordingly, I would suggest that the 73 dwellings are included in the supply.

*Former Hawkesbury Golf Course*

76. An allocated site, HSG12, the Council indicate 345 dwellings in the supply. The appellants accept that part of the site has full planning permission and much of the remainder has RM approval, but some 66 dwellings do not, and they suggest these should be excluded, identifying only 279 dwellings in the supply

77. The Council confirm that the developer for the contested element is currently that involved in the initial phase of 110 units with RM approval and they say, are already preparing an RM application for the remainder. With ongoing construction throughout the supply period, the Council argue that, following the grant of the RMs, the remaining 66 dwellings can easily be accommodated during the period.

78. That the same developer has expressly confirmed it is their intention to pursue the RMs for the remaining phase following determination of the earlier phase provides confidence that the RM application will be forthcoming. The earlier phase permission is in place, and the existing trajectory shows reasonable capacity to the back end of the supply period to accommodate the additional units.

79. Accordingly, I am satisfied that the Council can rely on the developer commitments and the additional 66 units can be considered within the supply, meaning 345 dwellings in total.

*Conclusion on contested sites*

80. The outcome of these discussions and my appraisal of these sites means that I find there to be a minimum reduction in the housing identified on sites with outline permissions and strategic allocations of some 652 dwellings. This can only be an estimate based on judgment of the evidence provided and will be a figure that could change with changing circumstances and market conditions. Nonetheless, it would mean that on this measure, the Council would be unable to demonstrate a 4-year supply.

*Other HLS matters*

81. The Council accepted that they have fallen behind the projected trajectory at this stage of the Plan. They have also accepted that Policy DS8 was engaged. When discussions at the Inquiry turned to actions they were taking, they highlighted that they had promoted some SHLAA sites and some non-strategic allocations, set out in the BPR but likely to be considered in the supply period, and considered that windfall allowances could be considered at a higher level because of previous year's delivery. They also confirmed additional resourcing and release of additional funding.
82. The appellants considered that the majority of the actions were accounted for in the supply already, or were introduced unreasonably as they related to sites that are draft allocations awaiting examination. In relation to the proposed uplift in windfall allowances, I am with the appellants that this is not reasonable, as windfalls are accounted for on long-term averages and will experience highs and lows throughout a plan period.
83. Resolving the detail of these concerns would add little to the necessary assessment, although I have accepted and reflected on the Council increased involvement and resourcing in some of my findings on the contested sites. However, a point that was specifically addressed was that of Woodlands Farm, (HSG4) Although identified for delivery of some 150 dwellings, the Council accepted that permission had been refused for an application for that number, and the site itself was identified in the BPR as being de-allocated. The Council reasonably accepted that the 150 dwellings at Woodlands should not be considered within the supply.

*Conclusion on HLS*

84. Such assessments are of their time and cannot be entirely precise, but my assessment of deliverability, made against the Framework's expectations, are that there are likely to be some sites that cannot achieve the Council's suggested build out rates. Nonetheless, there is sufficient evidence of progress on others to confirm that they can be considered within the assessment of the 5YHLS. To that end, taking account of my findings, the position on Woodlands and the party's assessments, an alternative supply position can be demonstrated as follows:

Supply to be demonstrated = 6078 (agreed)		
Council Position	Appellants' Position	Calculated Inquiry Position
4941-150 = 4791	3332 - 150 = 3182	4791-652 = 4139
3.94 Years	2.61 Years	3.4 years

85. Consequently, my assessment would suggest a figure which would represent around a 3.4 year supply, I do not suggest that this can be considered a fully accurate representation, and the figure would likely lie between the appellants and Council figures, but it confirms that a 4-year supply cannot be demonstrated and the presumption set out in the Framework is engaged.
86. On this basis, the appellants argue that the proposal before me represents a necessary scheme in compliance with that part of Policy DS8 that allows for further sites to be considered.

Prematurity

87. The Council accept that even on their best figures there would be a shortfall of 524 units, on my figures that would be nearer 1176 and, on the appellants', some 2553. Consequently, I have noted the Council's arguments regarding prematurity, and have considered them in light of the very clear position set out in the Framework in relation to the limited circumstances in which that may arise, and the fact that the Council accept their resolution on this matter related not to a single site but to all three of the appeals currently in play.
88. There are no specific rules that dictate when a plan can be considered at an advanced stage<sup>10</sup>, to my mind, it is very much a matter of context. The BPR has been submitted, Examining Inspectors have been appointed and the first hearing dates have been set up. This would appear to be relatively advanced, but critically there are clear and unresolved objections to policies which are expressly relevant here, notably that of the housing requirement going forward.
89. In some cases, a plan may be considered advanced at an even earlier stage than this, if there were no, or very limited objections for example; however, that is not the case here. Consequently, I consider the BPR is not at an advanced stage sufficient to support a finding that the proposal is premature in the limited circumstances set out in the Framework.
90. Put simply, I consider that the Council need to be considering additional sites to ensure cogent delivery of current plan expectations. While some of the evidence put to me suggests that they are actively pursuing some options for that, and that they believe that the housing requirement will reduce on adoption of the BPR, I am not convinced that these options, or the BPR, are so advanced as to find that this appeal, considered on its own merits, would represent additional housing sufficient to undermine that emerging Plan.

<sup>10</sup> Framework paragraph 49b

## Policy DS8 and additional sites

91. Policy DS8 states that an action that should be considered would be to bring forward additional sites where it can be demonstrated that such sites will assist with delivery to address short-term needs.
92. The Council argued that the Judkins Quarry site could be brought forward, although I note that it is already within the trajectory as delivering some 150 dwellings in the supply period. The Council suggest that this could be extended, and they are considering it as a prospect for the BPR. However, I note that an outline application has been withdrawn, there must therefore be some question over the delivery already anticipated from this site. I also note the appellants' own review of the landscape and other constraints on that site. Nonetheless, even were additional housing to be delivered at Judkins Quarry, this would not address the shortfall apparent within the Council housing supply.
93. I consider it is therefore legitimate to consider whether the appeal site would comply with the expectations of additional sites as sought by Policy DS8. To that end, the expectations are set out within the policy: that initial priority be given to sustainable sites and edge of settlement sites, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Council argue that this is neither edge of settlement nor sustainable.
94. I can see nothing in the policy, read on its face, which suggests that an edge of settlement site must be within it. The Council suggest that it is not logical that an edge of settlement site could only be found sustainable through the presumption approach, before the Policy itself introduces the same balance argument. However, while there may be some overlap of the principles of sustainability, edge of settlement and the tilted balance, this cannot imply the term 'within the settlement' is to be read as part of the Policy. More reasonably it suggests that initial priority could be assessed when comparing the sustainability of sites, this may include sites within the settlement boundary or, as the policy itself refers to, town centre redevelopment opportunities. In practical terms, the Council were unable to readily identify sites that could be brought forward within the settlement boundary, and I am of the view that the policy can include sites for assessment that lie outside of the boundary.
95. The question turns to sustainability, which in part relates to the sustainable accessibility of the site.
96. A SoCG on this matter was agreed following the round table session at the Inquiry<sup>11</sup> confirming that the site would, in principle, have connections to the WCW cycle route and footpath, into Top Farm, and its associated school, mixed use district centre, leisure and community centre uses, and opportunities for access to bus services. As noted above, the proposal also includes routing of bus services directly into the site.
97. The SoCG includes walking distances from the western, eastern and central parcels of the site, necessary because of the long and narrow footprint, and distances were also set out in submitted tables<sup>12</sup>.

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<sup>11</sup> ID10

<sup>12</sup> ID5

98. The parties disagree on the extent and deliverability of the connections, the delivery and management of the bus gate and the extent to which WCW can be considered suitable for commuting. Overall, the Council considered the site to be removed from the town centre, major employment sites, including the hospital, and from good transport links to Coventry. For all of those reasons, they considered that it was not in the preferred areas for housing development and should be considered unsustainable.
99. A plethora of different preferred and desirable walking distances are often gleaned from guidance documents and presented as justification or otherwise for the accessibility of a site. Realistically, the actual use of routes is often a function of their nature, be that surfacing, gradient, perceived safety or lighting, as much as it is about distance, although the concept of the 800m walkable neighbourhood is a useful measure, in my view, when considering such distances.
100. Edge of settlement sites must, by their nature, represent some compromise over an idolised, sustainable site with everything within walkable distance; such sites are rarely, if ever found outside of the larger order town centres in any event. The important matter to consider is whether a site, by location and by design, offers connection to a range of services and facilities as well as realistic options to promote walking, cycling and public transport use, providing a genuine choice of transport modes<sup>13</sup>. Such approaches are promoted in Local Plan Policy HS2, which seeks that proposals target a 15% modal shift providing adequate accessibility, connectivity to strategic facilities and delivery of safe and sustainable transport options to the wider transport network.
101. In this context, I have assessed the site's location, connections and the alternative transport options presented. The site would be further removed from the town centre than the large-scale allocation promoting the new neighbourhood at Top Farm under HSG1. I have noted the Inspector's comments in the Local Plan report and accept that the site would be away from the employment sites and connectivity to Coventry to the south of Nuneaton. However, this does not mean that it would be isolated. The MIRA site, with its significant expansion proposed, would be in close proximity, the Top Farm facilities, subject to connectivity, would be a short distance away, and further education, leisure and retail options are still available to the north of the centre, albeit it not within immediate walking distance. The site itself includes a proposed primary school.
102. Turning to the proposed connections. The Council argue that connections to both the WCW and into Top Farm are insufficient and not secured. I noted the potential difficulties of connection resulting from height differences and the important wildlife and landscape features of much of the WCW alongside the site. The obvious point of connection, which would represent limited disturbance to such features, is the proposed point in the northwest corner of the site. In an ideal world, greater permeability with additional connections could be provided, but while this single connection may slightly increase distances heading to the south from some parts of the site, it is well placed for access to the north for recreational purposes or to link to the MIRA site. WCW itself is well-surfaced down to the A444, but not lit, other than at the tunnel under the A5, but it would provide an excellent recreational route, albeit, other

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<sup>13</sup> Framework paragraphs 108 and 109

than to the MIRA site, I consider that, while offering a choice, it would not be a particularly attractive route for cycle commuting into the town.

103. The southern link, again proposed as a single connection, is questioned by the Council because of the as yet undefined layout of the phase of the Top Farm site it would connect to. This phase is reported to be in the ownership of, and will be delivered by the Council for recreational and leisure use. I can see no reason why a suitable footpath and cycle connection could not be provided here.
104. I am reassured that the secondary school and the district centre are identified in the earlier phases of development at Top Farm, and this connection will provide an important link to the facilities there. Put simply, without this link, the walking distances via the main entrance or even the proposed bus gate, are not, in the majority of cases, viable so as to confirm this as a sustainably accessible site.
105. Beyond these connections, the proposal would also have pedestrian and cycle access through the bus gate and the main entrance, with appropriate crossing facilities. Overall, I consider that a number of educational, retail, employment and day to day services would be within reasonable walking and cycling distance.
106. In terms of alternative transport options, the current bus links are noted and the proposed diversion through the site would enhance connectivity significantly. The Council question the form and management of the bus gate, but I am satisfied that with the location shown, the detail of control, be that road markings, signage or signals, can be agreed and secured. Such bus gates are an increasingly common feature of public transport prioritisation. I am satisfied that the bus links would provide some provision, albeit limited into the evening and on Sundays, to higher order shopping and employment options and to the wider network via the train station.
107. In terms of modal shift, this is a long but narrow site and consequently walking distances and the attractiveness of connections must vary, nonetheless, I consider that the proposal would provide options for alternative transport provision and for walking or cycling, despite the Council concerns that only 10% of car trips are shown going towards the town centres. The 15% is a target and the options could represent links to the wide area, including the MIRA site, or the further bus and cycle routes that may otherwise have been undertaken by car.
108. This by no means makes this location highly sustainable in accessibility terms, but it is clear that its location and design, and particularly its immediate and close relationship to the developing neighbourhood at Top Farm to the south, means that it does present options for genuine alternative transport choices. I consider that it would comply with that part of Policy HS2 related to accessibility.

#### Other matters

109. Before I turn to conclusions on the policy position and settlement strategy, an additional argument put by the Council was that the housing market would be saturated with further delivery on this site, potentially compromising development on the allocated sites within the Local Plan strategy. While I have



noted their position, and I accept this is a large site, the scheme would represent some 80 dwelling per annum. In terms of delivery within this plan period, and noting the likelihood of a shortfall, I do not consider that this would compromise delivery elsewhere on the strategic allocations.

#### Conclusion on the Policy Position

110. I can understand the Council's desire to fulfil on a housing strategy that would provide a broad sweep of development around the centres of Nuneaton and Bedworth and ensure a balance between the large new community to the north with the employment centres and development areas to the south, where the important connections and support for Coventry's needs are also best served. When read in this context, the comments of the Examining Inspector for the Local Plan logically sought to limit additional development to the north of Nuneaton and beyond HSG1. However, I do not think that these comments can be read as excluding all development, if considered necessary, and must be viewed under the lens of the strategy under consideration at that time, and the inclusion of Policy DS8.
111. I have not found that the existing allocations would be materially compromised by further development here, and find that this site, with its strong connections into the emerging community and facilities at Top Farm, and opportunities for wider connections, is sufficiently well located to avoid some of the concerns that legitimately could arise with disjointed and unconnected expansion beyond the A5, for example, or peripheral to Top Farm. Furthermore, while I deal with this briefly below, this proposal would have limited additional effects in terms of the landscape character of the area. Consequently, while there is clear conflict with Policy DS3, it aligns with the relevant requirements of Policies HS2 and DS8, subject to that Policy's, and Policy DS1 and the Framework's presumption, which I address in the planning balance below.

#### Highway Capacity and Safety

112. I turn then to highway matters. Initial objections from NH regarding the Strategic Road Network (SRN) were not maintained, and I am satisfied that there is no material evidence to demonstrate that the scheme would compromise the operation of the A5. Furthermore, initial concerns that the models used had not taken account of the change in the proposal to less houses but a primary school, were not pursued, as NH and WCC accepted that traffic generation would be similar.
113. In relation to the local road network, the appellants initially modelled the impacts of traffic associated with the scheme on an individual junction model basis (IJM). It was reported that, in contrast to the other appeals currently underway in the area, the appellants here then modelled the effects using the Nuneaton and Bedworth Wide Area PARAMICS model (NBWA), a microsimulation model which takes account of driver behaviour, including realignment in response to congestion. This led to the submission of a second Transport Assessment (TA) in December 2023.
114. While this modelling was supported by WCC, who hold the licence for the model, and there is some common ground over the findings in terms of the overall impacts to the road network on the 2031 Reference Case, there is

disagreement over the extent of effects, including on highway safety, and the delivery of acceptable levels of mitigation.

115. Policy HS2 sets out the Council's approach to these matters seeking that proposals meet acceptable levels of impact on existing highway networks and provide mitigation measures to meet this acceptable level. It is common ground that this does not mean that there should be no impact at all from development, nor that development contributing to some increased congestion is unacceptable, but that acceptability is tied to the Framework tests. There are some differences between the parties as regards the application of the Framework, notably paragraphs 114 and 115, but in my view, the test is whether residential cumulative impacts on the road network would be severe, which is accepted to be a relatively high bar, and/or whether the proposal would lead to an unacceptable impact on highways safety.
116. Dealing with capacity first. The issues of the current network were considered by all parties. The appellants considered there to be relatively limited levels of queuing at peak periods on the A5/Higham Lane junctions, more noticeable levels on the A5/Longsoot/Dodwells junctions and, although moderate levels only were reported at Eastboro Way junction, queues were apparent on the A47/Higham Lane junction during the AM peak. WCC provides their own analysis, reportedly using Clearview Intelligent journey time monitoring, finding extensive issues with queueing around both the Higham Lane/A47 and Eastboro Way/A47 junctions. I took the opportunity to visit the junctions and surrounding roads during the AM peak, the PM peak and when schools were closing. I accept my visits were of brief duration, nonetheless, I observed significant queuing, notably at the A47/Higham Lane junction, which was more pronounced in the AM rather than the PM peak, the effects were less pronounced at the Eastboro Way junction. It would appear that the introduction of school traffic in advance of the PM peak may limit the effects.
117. Although WCC raised concerns that there were and would be impacts across the network, the focus of discussions, correctly in my view, were on the effects on the Higham Lane and the Eastboro Way junctions on the A47, leading from the A5 into the centre of Nuneaton. It is common ground that without any intervention there would be, as a result of traffic and development growth, significant pressures on these junctions in the future. Confirming this view, the Strategic Transport Assessment<sup>14</sup>, July 2023 (the STA), found that these two improvements are considered as priority schemes and essential to maintain an acceptable level of network operation. Importantly, the STA accepted that the improvements are not currently within the capital scheme, and it was common ground at the Inquiry that there was no evidence that they could be funded at this time.
118. Without delivery of these improvements, based on planned growth, the model confirms these junctions would significantly exceed their capacity. There are a number of scenarios that can be considered in this case, variously addressing the future network with or without the junction improvements and with or without the appeal proposal. The STA itself sets out the 2031 Reference Case, which includes the two junction improvements, notwithstanding their lack of funding.

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<sup>14</sup> CD 6.56

119. The appellants argue that the appropriate comparison is between the network without the junction improvements and that with the development and the improvements arguing that, in offering to fund the improvements, they not only address the mitigation required to an acceptable level but a general betterment across the network.
120. These matters are challenged by WCC, arguing that further analysis should have been provided in the TA, that the development would have a significant impact when compared against the Reference Case and that the sum offered to deliver the schemes is insufficient and not CIL Compliant. Nonetheless, although WCC conceded that there would be a significant betterment overall were the improvements to be delivered, they still highlighted concerns that the modelling implied impacts would still occur at the Higham Lane junction even with the improvements, and without the additional traffic associated with the development.
121. To my mind, without a very significant change in the funding landscape, the improvement needed are not going to be delivered. There is nothing in the STA or in the responses given at the Inquiry to suggest that such funding is, or will be available. Consequently the question must be whether the appeal proposal with the improvements represents acceptable mitigation for the impacts from the development.
122. There may be other roads and junctions where it can be shown that impacts would occur, and I note the WCC argue that even though there would be a general betterment, the junction improvements proposed were not to address this development, but that from the local plan allocations, and other measures should have been considered and may be required. Nonetheless, this position must be considered alongside a strong argument that without the junction improvements, conditions would become significantly congested, notably at these two junctions, without the development and with no anticipation of the delivery of funding for these.
123. This would be a very large scheme contributing additional traffic along Higham Lane and across the wider network. In terms of capacity, I consider, on review of the evidence, including the A47 Scheme Review and IJM outputs for these junctions, that this demonstrates that the development would have a severe effect at these junctions without the improvements. For clarity, my conclusions on this are not based on the bandings of the model outputs, but reviewed against the Framework tests. While there may be some effects contributing to residual cumulative impacts even with the improvements, as set out by WCC, I do not consider that the evidence has made out that this would be severe, nor do I find that the challenges to the level of detail WCC says was lacking from the TA a determinative factor.
124. While some Inspectors have dealt with cases where existing and future conditions, without an appeal development, are shown to be already compromised, but have found that, in effect, any additional traffic movements from that development would be harmful<sup>15</sup>, the appellants challenge this by reference to *R (Hawkhurst PC) v Tunbridge Wells BC and others* [2020] 3019 (Admin)<sup>16</sup>. *Hawkhurst* deals with incremental small-scale contributions to an already congested network, finding that a blanket objection on such a basis

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<sup>15</sup> Set out in Mr Edwardes Appendix B

<sup>16</sup> CD7.36

was not appropriate. In effect, that a case-by-case assessment was still necessary to judge whether an individual development's impacts can be considered severe.

125. This is perhaps less relevant when the case set out now by the appellants is considered. They accept that their intention is to mitigate significant impacts through funding of the two junction improvements, and that this, alongside the approaches made to support alternative transport modes, which can be secured through conditions, obligations and a Travel Plan, would address any residual cumulative impacts and the effect overall would not be severe.
126. Turning to safety impacts, the appellants argue that this cannot be simply aligned with increased queuing or exceedance of junction capacity; they point to the limited traffic incident levels recorded. WCC argue that the area, particularly around Higham Lane, has retail and significant educational uses. They highlight situations where queuing would lead to the blocking of other junctions and pedestrian crossings, to increased levels of right turns to avoid queues and severance issues for pedestrians caused by the queuing and potentially leading to greater risks.
127. I concur that increased congestion does not necessarily correlate to increased highway safety risks. My own observation of the roads here is that there are reasonable levels of footway provision, good crossing points, albeit I note WCC's position that the one south of Eastboro junction is very close to both the exit and entrance, as well as to the box junction turn to St Nicholas Park Drive. Nonetheless, there may be circumstances, such as pedestrians choosing to cross between traffic when heavily congested, that might result in increased risks. What is relevant, in the scenario where the appellants are offering to fund the junction improvements, is whether there would be such occurrences.
128. Consequently, the provision of the improvements is at the heart of this case and two issues arise: would the improvements be deliverable and if so whether the funding offer would be CIL compliant?
129. The improvements are identified in the STA, including plans for the two junctions and the road between them. Importantly, the STA projects an estimated cost at £9.8 million<sup>17</sup>. The improvements are identified as being<sup>18</sup>: capacity enhancement to the A47/Higham Lane roundabout notably on the northern and western approaches; several new/relocated pedestrian crossings along the A47; and widening to the A47/Eastboro Way roundabout on the approaches, which increases from two to three lanes, and on the circulatory, which increases from two to three lanes.
130. On review of the plans and of the potential costings, there is no clear way to understand how much of that cost is related directly to the junction improvements and how much to the relocation of pedestrian crossings or other improvements to the road linking the two junctions, nor whether the additional works beyond the junctions are considered necessary as part of the capacity improvements or for other reasons. While the appellants refer to other improvements, cycling for example, within the funding, I can see nothing that would suggest that the overall costing set out in the STA is vastly inflated or

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<sup>17</sup> STA Table Appendix H: £4.2M for Higham Lane/A47 and £5.6M for Eastboro Way/A47

<sup>18</sup> STA paragraph 4.52

presenting works that would go beyond that necessary to address the significant capacity impacts modelled on these junctions.

131. I need to set this figure against that now put forward by the appellants as meeting the costs of the improvements. The original TA did not address such improvements. The revised TA indicates that the development would provide a suitable contribution to assist in bringing forward one or more of these improvements. An email to WCC suggested that it was the appellants' intention to fund the improvements, and by the time of the submission of proofs of evidence, this offer was that the appellants proposed to fund, via a s106, a contribution towards the junction improvements described by Sheets 1 and 4 of the Jacobs Drawing<sup>19</sup>, which would appear to represent the junctions and not the interlinking road elements.
132. At the Inquiry, it was confirmed that this funding was intended to be made to WCC for the whole of the junction improvements, but on the basis of the plans referred to, not the interlinking road. The funding for this was calculated as being around £3.5M, for both schemes<sup>20</sup>. This calculation includes some detail and refers to the plans as above. However, there was no substantive commentary in submitted proofs as to the difference between the two costings now presented to this Inquiry.
133. The appellants argue that the Council/WCC should have dealt with this matter in their submission of evidence and that they themselves were confident in their costings. Although I can understand some frustration from the appellants that neither WCC nor the Council expressly challenged their costs initially, I disagree with this position.
134. The gulf in the cost estimates is clear from evidence available to those calculating the costs. However, DWH Project Management, who did not provide evidence directly, did not appear to provide any comments on this, nor did the appellants' highway witness. Furthermore, it is not clear to me or fully explained, why they should have chosen to fund only the plans set out for the junctions. The position on funding and delivery of cycle schemes remains unclear and there is little substantive evidence put to me by the appellants that the other improvements, including what is described as several new/relocated pedestrian crossings, are not an important part of the overall scheme, even if they perhaps related to safety rather than capacity issues. Finally, I do not consider that the appellants' argument that there is no other figure in evidence is correct. There may not be detail in the STA, but it is an important document in which many junction improvements have been costed, and it includes the drawings.
135. To argue that the Council should have known from December 2023 that this offer was in play is also not correct, up until the Inquiry it could be argued that there was some confusion over whether the appellants were seeking to contribute, partly fund, or deliver the improvements, and even now it appears that they are not seeking to deliver all that the STA identifies as part of the essential priority works.
136. While I was referred to suggestions that there may be some funding secured, or some contributory funding from other schemes, the report referred

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<sup>19</sup> Appendix F of the TA, also in the STA

<sup>20</sup> Mr McKinney's Proof, Appendix H18

to<sup>21</sup> predates the STA, and in my view offers no further clarification. The Council/WCC could have entered into more productive conversations about what exactly was meant, but I am conscious that the Council teams were involved in other Inquiries, and had no indication up until a point less than a month before the Inquiry was initially due to open that such an offer was to be made, and no figures until a month before the delayed Inquiry did open. Put simply, I have frustrations that there were potentially missed opportunities to address this matter and explain the very significant differences between the two costings, and while I had no choice but to resist later submissions on this in the Inquiry itself, for reasons of fairness and to avoid undue delays, for such a fundamental part of this scheme, this should have been addressed considerably earlier.

137. The appellants argue that they properly produced the evidence four weeks before the Inquiry. The reality is that this evidence proposes significant offsite highway improvements that go to the heart of the acceptability of the scheme, and the onus is on the appellants to fully justify the need and the costings. In any case, such measures should not be contemplated at such a late stage, in my view, and, while I accept that all parties bear some responsibility for this, such a matter should have been resolved prior to submission of the appeal.
138. I appreciate this may seem unduly critical of parties, but I am faced with an unenviable choice. That is, on the appellants' case, accepting a figure because they say WCC has not justified why it is less than their costings, or rejecting it because the appellants have not justified it will be sufficient for WCC to actually complete the works, but with limited arguments from WCC as to why. If I accept it, doing so would allow delivery of a large-scale housing scheme with unacceptable highway capacity impacts and possibly safety ones too, were the sum be insufficient to meet the cost of WCC delivery. It would create significant questions over management of that funding and potentially impacts on the public purse to rectify such issues.
139. That is not feasible in my view. The solution may entail delivery of the works under a s278 agreement, or must entail engagement beyond anything presented to me at this Inquiry. I am not saying that improvements that would mitigate the development to a sufficient level to mean the impacts would not be severe are not possible for around £3.5M, but on all that I have seen, it has not been demonstrated. While there was some discussion that the improvements could be linked to delivery of the housing under a Grampian condition, in light of my finding, I consider that this would not be reasonable, with the delivery devolved to WCC who are adamant that the sums are insufficient and with the potential for delays that could extend well beyond the realistic implementation of the proposal.
140. I deal with the CIL compliance issues of this funding below, but in conclusion I consider that, in absence of a secured sum demonstrably sufficient to ensure delivery of necessary highway improvements, the proposed mitigation is not cost effectively mitigated to an acceptable degree, and in absence of the improvements, there would be severe residual cumulative impacts on the road network. The proposal would be contrary to Policy HS2 and the Framework in this regard.

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<sup>21</sup> CD7.02 Top Farm

## Other Matters

141. Two further issues were raised in relation to highway matters. Firstly there was concern expressed by NH, but also others, that such a large scheme was to be served by a single access. While I understand and am aware of guidance in some areas that large schemes should be served by more than a single access, often to deal with maintaining access, the appellants point out that the proposed bus gate could be used in emergency circumstances. As the main access would be on the SRN, they say such an occurrence would be highly unlikely. Furthermore, there is an emergency access proposed in the northwest corner of the site, albeit there are limited details on that at present. Overall, I am satisfied that the proposed single-point access would be acceptable in this case.
142. Secondly, that the proposed access would affect the entrance to Kings Lodge. I have limited information from any interested party on this, but from the drawings it is clear that the necessary alignment and form of the junction proposed would restrict right turns in and out of that property. This was addressed in the TA, and I note that it would mean some extra distances for those needing to U-turn at the nearby junctions, and would require a Traffic Regulation Order. This is a separate consent, and I can see no reason why it would represent an insuperable issue in this case.
143. Turning to other issues, I am satisfied that the provision of appropriate conditions could address the matters of noise and agent of change restriction on the emerging development on the MIRA site. Issues relating to ecology and Biodiversity Net Gain have been addressed in the agreed SoCG. I am satisfied that the site could achieve the necessary levels of net gain.
144. A number of interested parties, including the local ward Councillor who spoke at the Inquiry, raised further concerns. These included that the single form entry primary school proposed would not be financially viable or likely to be delivered. However, I have no such evidence from the education authority, who have endorsed this provision, and its delivery can be assured through obligations or conditions.
145. Other concerns included the loss of countryside and harm to the landscape character. The site is currently in relatively open, agricultural use. Its present circumstances are that it is an area of open land some distance from the existing developed edge of Nuneaton. However, that position is changing, and as Top Farm develops, this site will increasingly be seen, in landscape terms, as a strip of land sandwiched between housing and the A5, with well-defined containment to the west and east also.
146. I appreciate that there have been delays in delivery of housing and infrastructure at Top Farm and concerns that there may not be alignment were the appeal site to come forward in advance of Top Farm, but I am reassured that there are commitments to the link road and the secondary school. I note the evidence from the appellants on landscape matters, and the acceptance from the Council on this matter too, that it is seen by both parties as contributing to weight but not a fundamental reason to dismiss the case. I concur, but consider that it is a site that contributes to the landscape character as a large-scale buffer between the settlement and the A5 and a notable component of the Landscape Character Area. With careful design, a buffer can be retained and indeed some positive delivery of public open space and

retention of landscape features could assist to soften the effects of development on the site. Indeed here, the A5 itself represents a strong boundary feature, and the site is, despite its height above the surroundings, well contained in short- and long-range views.

147. Accordingly, there would be some harm though failing to conserve the landscape character and this would represent development in the countryside. It would be contrary to Policy DS3, as set out above and accepted by all parties, and Policy NE5 of the Local Plan, albeit I consider that the harm in landscape terms would be limited.

### **Planning Obligations**

148. I start from the requirements of CIL Regulation 122 that a planning obligation can only be a reason to grant planning permission provided that it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

149. The obligations in this case include a number of matters, most of which are agreed and have been address in the CIL Compliance Schedules submitted by the relevant Councils<sup>22</sup>. There is no dispute in relation to the commitments to libraries, public rights of way, public transport contributions, including bus stops, road safety and sustainable transport, skylarks, parks and open spaces, sports and recreation provision, biodiversity enhancements, sustainable drainage and healthcare. Affordable housing is set out, and compliant in terms of quantum and mix with the requirement of Policy H2.

150. While the principle of education contributions are accepted, the appellants have presented an alternative assessment<sup>23</sup> based on DfE multipliers as opposed to the WCC approach, which does not define different yields based on a presumption that the primary growth will feed into secondary provision requirements. Irrespective of which approach is used, I can be satisfied that a compliant scheme could be delivered that would address the need to mitigate for population growth in terms of education.

151. Finally, I turn to the highway funding. The Council suggest that, irrespective of the appropriate figure, the offer to fully fund the highway works cannot be CIL compliant. This is because the works are required for, and would benefit the wider road network and are not related in scale and kind to the traffic impacts of the development itself, referring me to *DB Symmetry v Swindon BC* [2022] UKSC 33.

152. Factually, the improvements identified in the STA are linked to wider traffic growth associated with strategic development delivery. The increases associated with the development would be a significant additional component of this. Consequently, the improvement works, as opposed to other such contributions found to be unacceptable in other cases referred to, are directly related to the proposal and necessary to make it acceptable in planning terms.

153. The issue here is whether the improvements can be achieved without the full funding by the appellants. No substantive evidence has been put to me that

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<sup>22</sup> ID11 and ID12

<sup>23</sup> S106 Agreement Appendix 4



they would be delivered if only a lower amount, calculated as proportional to the traffic growth of the development itself, for example, was provided.

154. Similarly, partially funding some of the improvements to satisfy solely the increase in capacity needed cannot practicably be delivered. In such circumstances, the CIL duty is to consider whether the sums are fairly and reasonably related in scale. In this case, I consider it reasonable that, with no other options to achieve the improvements, they can be considered reasonably related and CIL compliant.
155. Overall, I am satisfied that all the contributions and obligations referred to above accord with relevant planning policies and guidance and therefore with the requirements set out in the Regulations and the Framework and can be taken into consideration.

### **Planning Balance**

156. I have found that the proposal would be contrary to Policy DS3, Policy NE5 and Policy HS2 of the Local Plan.
157. In terms of the housing strategy, that conflict with Policy DS3 does fall to be considered against Policy DS8. To be clear, were I not having to consider further policy conflict under Policy HS2, on the basis of the evidence before me, including the relative sustainability of the site, my findings on prematurity and the situation regarding the current delivery and anticipated shortfall in housing delivery, I would have found this proposal to accord with that Policy. The matter of conflict with Policy NE5 would have been given limited weight due the relatively contained nature of the site and association with development to be delivered, and would not signify harm sufficient to represent a conflict with the Plan overall.
158. However, I have found harm under Policy HS2 to which I give substantial weight, and Policy DS8 requires an assessment of whether any adverse impacts would significantly and demonstrably outweigh the benefits.
159. My findings on the HLS situation also suggest that policies most important for determining the application are out-of-date and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. To that end I have found the highway impacts on the local road network would be severe.
160. The appellants set out that the site would deliver some 240 houses in the 5-year supply period and 360 in the Plan period. I consider that the market housing element of this represents significant weight in favour of the proposal. Affordable housing would be policy compliant. There is no doubt that the delivery of affordable housing must be a key priority across the country and accordingly it can also be given significant weight, I appreciate that the main parties accepted this as substantial, and I accept that there is a shortfall across the area and some 163 units would be of benefit. In such a location I give only limited weight to the benefits of the proposed bungalows. I find some moderate weight would also accrue from economic benefits, notably in the construction period, as well as the provision of public open space and BNG.
161. There is no doubt that the appeal scheme would offer very significant benefits as I have outlined above. However, there would also be very

substantial harm, harm that would lead to non-compliance with Policy DS8 and the development plan as a whole. My judgement is that the adverse impacts would also significantly and demonstrably outweigh the benefits, when assessed against Framework policy as a whole. In the circumstances of this case there are therefore no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan.

**Conclusion**

162. I have taken account of all other matters that have been raised, but have found nothing to alter my conclusion that the appeal should not succeed.

*Mike Robins*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANTS:

Sarah Reid KC and Martin Carter  
Who called: Instructed by Richborough Estates Ltd

Ben Pycroft  
BA(Hons) Dip TP MRTPI Emery Planning – Director

Gerard McKinney  
MSc TP&M CMILT Hub Transport Planning – Director

Mike O'Brien  
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### FOR THE LOCAL PLANNING AUTHORITY:

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Who called: Instructed by Nuneaton and Bedworth  
Borough Solicitor

Sarah Matile  
BA(MPlan) MRTPI Principal Planning Officer

Karen Watkins  
Highway Development Management  
Engineer – Warwickshire County Council

James Edwards  
BSc SLR Consulting Ltd – Director (Transport  
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Karina Duncan  
MA BSc(Hons) Principal Planning Officer

### FOR NATIONAL HIGHWAYS

Ruth Stockley KC Instructed by National Highways

Who called:

Russel Gray Spatial Planner

### For Conditions and Legal Undertakings Session:

Appellants:  
Mr Knight  
Mr Hammond  
Mr Hunt

Councils:  
Mr Richardson  
Ms Gutteridge  
Mr Hall  
Mr Lowe  
Mr Griffin

National Highways:  
Mr Bellingham

### INTERESTED PARTIES:

Councillor Kondakor

Local Councillor

## INQUIRY DOCUMENTS

Available at [Inquiry Documents - OneDrive \(sharepoint.com\)](#)

ID1	Agenda Report and Minutes
ID2	CLG Select Committee Report and Government Response 2011
ID3	Appellants' Opening Statement
ID4	NBBC Opening Statement
ID5	Table of Agreed Distances to Facilities
ID6	Agreed Note re Housing Shortfall Position
ID7	National Highways Opening Statement
ID8	PINS Letter ref Borough Plan Review Timetable
ID9	Email - Mr McKinney – Highway Improvements Costings
ID10	Sustainable Accessibility SoCG
ID11	NBBC CIL Compliance Statement
ID12	WCC CIL Compliance Statement
ID13	Recommended Planning Conditions – NBBC, NWBC and NH
ID14	S106 Agreement and Unilateral Undertakings
ID15	NBBC Closing Statement
ID16	Appellants' Closing Statement

**Core Documents available on** [Core Documents - OneDrive \(sharepoint.com\)](#)