
Appeal Decision

Inquiry held 13-15 and 20-21 November 2013

Site visit made on 21 November 2013

by Mrs K.A. Ellison BA, MPhil, MRTPI

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

Decision date: 6 January 2014

Appeal Ref: APP/J3015/A/13/2198848

Land adjacent to Hempshill Hall, Low Wood Road, Nuthall, Nottingham, Nottinghamshire NG6 7AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr F Mitchell against the decision of Broxtowe Borough Council.
 - The application Ref 12/00539/OUT dated 12 September 2012 was refused by notice dated 21 March 2013.
 - The development proposed is the construction of 116 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 116 dwellings on land adjacent to Hempshill Hall, Low Wood Road, Nuthall, Nottingham in accordance with the terms of the application Ref 12/00539/OUT dated 12 September 2012, as amended, subject to the conditions set out in Appendix 1.

Preliminary Matters

2. The application was made in outline with access, appearance layout and scale to be determined at this stage and landscaping as a reserved matter.
3. A number of amendments to the scheme were proposed in the period between the Council's decision and the opening of the Inquiry. The main changes related to the alignment of the proposed tram route through the site, the use of embankments in place of cribblock walling and the identification of the full affordable housing provision within the site in place of the original intention to make some off-site provision. The Appellant initiated a consultation process which was said to include letters and emails to all parties notified of the original application and those who had responded to the notification of appeal as well as site notices and press adverts. In fact, this consultation appears to have been directed primarily at members of the public since it did not include statutory consultees and other organisations. The main thrust of the responses received to the reconsultation has been to reiterate previous objections.
4. Of the changes proposed, I consider that the one relating to the tram alignment is of greatest significance. The operator of the tram system was not included in the reconsultation exercise. However, the third of the Council's reasons for refusal identifies a failure to reserve a satisfactory route through the site for the Nottingham Express Transit (NET) and the Council's witness in

support of this part of its case, Mr Gibson, leads the technical team supporting Nottingham City Council, the operator of the NET system. His evidence addresses the amended scheme as well as the refused scheme. As such, the NET operator has not suffered disadvantage due to any deficiency in the reconsultation process. The Council's evidence addresses the use of embankments in place of criblock walls. Since the other amendments were not intended to address specific objections, there is no reason to expect the stance of other organisations might have changed had they been consulted again. Having regard to the Wheatcroft principle¹, it is my view that no interests are likely to have been unduly prejudiced as a result of these amendments so that I have determined the appeal on the basis of the amended plans.

5. It became clear during the Inquiry that there was an unresolved issue regarding the effect of the proposal on the setting of nearby listed buildings. The Appellant provided an additional witness, Mr Brown, in order to address this matter.
6. The Inquiry was adjourned to allow for the completion of a Planning Obligation. Following receipt of a completed Obligation, the Inquiry was closed in writing by letter dated 2 December 2013.
7. An application for costs was made by Broxtowe Borough Council against Mr Mitchell and this is the subject of a separate Decision.

Main Issues

8. In the light of the reasons for refusal and the matters addressed during the Inquiry, I consider that the main issues in the appeal are:
 - (i) the effect of the proposal on the character and appearance of the site and its surroundings, with particular regard to the designation as a Protected Open Area, the presence of nearby listed buildings and the contribution of trees within and around the site;
 - (ii) whether the proposal makes appropriate provision for the potential extension of the Nottingham Express Transit (NET) system, with particular reference to the operational requirements of the system and the likely effect on the living conditions of future residents;
 - (iii) whether any part of the proposal should be regarded as inappropriate development in the Green Belt;
 - (iv) whether a five year supply of housing land can be demonstrated and the implications of this for the assessment of the appeal proposal;
 - (v) whether the proposal would accord with national policies for the provision of housing having regard both to its adverse impacts and to its benefits.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another, (1982) 43 P. & C.R. 233: identified the main principle as whether the development was so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation. It also refers to circumstances where a proposal produces root-and-branch opposition to a development and whether it should be necessary to go again through the process of further consultation if this could not have resulted in more opposition.

Reasons

9. The appeal site is, broadly, an L-shaped piece of land some 6.5ha in size lying on the north western edge of Nottingham. The adjacent Hempshill Vale estate is mostly made up of modern residential development. The site is bordered by the A6002 Low Wood Road to the west and the A610 dual carriageway to the south. It wraps around three sides of the grounds to Hempshill Hall, a Grade II listed building and borders Hempshill Hall farmhouse, barn and stable range, which are also listed (I refer to these as 'the Hempshill Hall group'). The Borough boundary with Nottingham City runs along the inner edge of the site so that, although Hempshill Hall itself is within Broxtowe, the other listed buildings and Hempshill Vale are within Nottingham City. A Tree Preservation Order identifies individual trees, groups and woodland areas within and adjacent to the site. The eastern part of the site is identified as a Site of Importance for Nature Conservation (SINC).
10. Under this proposal, access would be taken from Low Wood Road, with the residential development being arranged in three areas, broadly corresponding to the existing fields. The proposed road through the site is intended to allow for an on-street tram route as part of a potential extension to the tram network (the NET) towards Kimberley. An acoustic fence is proposed between the housing development and the existing highway.

Issue 1: character and appearance

11. The three fields are predominantly open areas of grassland within a woodland framework. Their immediate context is dominated by the local road network, particularly the A610 which is a main route into Nottingham and carries significant volumes of traffic. A number of the residential properties within the Hempshill Hall group and the Hempshill Vale estate have views towards the site but, with the exception of the public footpath which passes through the site, views from public vantage points are quite limited. Within the site, the landform is largely shaped by a watercourse that runs from west to east, with the land generally rising to the north of it. Along with the embankments for the A610 and A6002 to the south and west, the overall effect is that the site sits in a hollow in relation to its surroundings.
12. The appeal site makes up the greater part of an area designated under Local Plan² policy E12d as the Hempshill Hall, Nuthall Protected Open Area (POA). The policy does not permit development which would detract from the character or function of a POA. The functions of a POA are to provide an important break in the built-up area and to contribute to visual amenity and recreational opportunities. In addition, the Hempshill Hall POA is specifically identified for its importance to the setting of listed buildings and to the approach on a major route into Nottingham.

An important break in the built-up area

13. At present, the POA forms a clear, physical break between Hempshill Vale and the residential area to the south of the A610. Development of the scale proposed would lead to a substantial loss of openness and the incorporation of the fields into the adjacent urban area. Although those parts of the POA

² Broxtowe Local Plan 2004

beyond the appeal site would not be developed, they would no longer be sufficient to represent an effective break within the built-up area. Undoubtedly, therefore, the proposal would have a significant adverse effect on this function.

Contribution to visual amenity

14. The loss of openness would be particularly obvious to users of the public footpath, most notably in relation to the open views presently available across the northernmost field but also at the point where the footpath would cross the access road between areas 2 and 3. However, the site generally sits at a lower level than the surrounding land so that any development within it would not be particularly conspicuous. From the south there are very few views into the site through the trees alongside the A610. Although there would be a little more opportunity for views of the development from Low Wood Road, these again would be heavily filtered by the vegetation alongside this road. Given the enclosed nature of the site therefore, I consider that, notwithstanding the severity of the harm in relation to openness, there would be a relatively limited impact on the contribution which the site makes to the visual amenity of the area as a whole.

Contribution to recreational opportunities

15. Many of the representations from residents living nearby draw attention to the recreational value of the site in its existing state, a point reiterated by some who spoke at the Inquiry and which is supported by the informal paths which can be seen within the site. However, even though it appears that this may be quite widespread, I note that it takes place in the face of attempts on the part of the landowner to restrict access, as indicated by the signage and the damaged fencing where the site adjoins Anders Drive. Thus, whilst I appreciate the high value which local residents place on these recreational opportunities, I am also mindful that the only lawful recreational function which the site fulfils at present relates to the use of the public footpath.
16. Although there would be some adverse effect on users of the footpath in relation to visual amenity, its availability for recreational purposes would be unaltered. Moreover, a substantial area of new, publicly accessible amenity open space some 1.19ha in size would be provided as part of the appeal proposal, along with a link to Anders Drive. In this way, I agree that the development would enhance the contribution which the site makes to recreational opportunities in the area.

The setting of listed buildings

17. It was common ground that there were no objections from the Council in relation to designated heritage assets³. Nevertheless, and in apparent contradiction of this position, it was part of the Council's case that the harm to the POA arose, to some degree, on the basis of its contribution to the setting of listed buildings. In this regard, the Heritage Impact Appraisal submitted in support of the proposal also states that the development would impact on the setting of all the listed buildings, a point confirmed at the Inquiry by the Appellant's witness.

³ Statement of Common Ground, paragraph 3.34

18. National policy⁴ defines the setting of a heritage asset as the surroundings in which it is experienced. It goes on to note that the extent of a setting is not fixed and may change as the asset and its surroundings evolve.
19. The listing description for Hempshill Hall notes that it is a two storey country house dating from the sixteenth century with a number of subsequent alterations. However at the Inquiry I also heard that considerable works have been undertaken in recent years to restore the Hall and that further information has become available which indicates the historic importance of this heritage asset may be greater than previously thought⁵.
20. The Hall stands in its own grounds, with its principal elevation to the south and is generally well-screened by trees to the east, south and west. There are views towards the Hall from a number of points, particularly within Area 3. The land is open and retains much of its agricultural character so that, despite the residential development elsewhere in the locality, this part of the site still serves to convey the original rural setting of the Hall. The proposed development would be suburban in form and character so that, in effect, the Hall would become absorbed into the urban area. The loss of this historic relationship between the Hall and the countryside would have an adverse effect on the setting of this building.
21. Hempshill Hall Farmhouse sits immediately to the north of the Hall and faces west, towards Area 1 of the proposed development. There are views towards the farmhouse from the adjacent public right of way. Whilst the modern properties of Barn Close crowd up to the eastern boundary, there is a direct visual relationship between the farmhouse and this field. Its open, agricultural character therefore continues to make an important contribution to the setting of this building. In this respect, I note that the POA designation was extended to include Area 1 through the 1994 Local Plan.
22. The third element of the group, the Barn and Stable Range, sits to the north of the farmhouse. These buildings have been converted to residential use and are separated from the adjacent public footpath by a brick wall with the result that they have very little visual connection with the appeal site. Although the relationship between the barns and the fields is still discernible in longer distance views the field identified as Area 1 makes a limited contribution to their setting.
23. This part of the site would contain suburban housing developed at a higher density than the other areas, with dwellings and domestic gardens abutting the public footpath. In conjunction with the development along Haise Court, the approach to the farmhouse, barn and stable range would become wholly suburban. Whilst a small area of open space would be provided between plots 14 and 15 which would permit some medium range views of the farmhouse and stable range, I consider that the setting of these listed buildings would be much diminished, particularly since the farmhouse would no longer enjoy any visual connection to the countryside.

⁴ National Planning Policy Framework, Annex 2: Glossary

⁵ Mrs Hunt drew attention to the findings of a building historian and the results of dendrochronological testing

The approach to Nottingham

24. The A610 where it passes the appeal site is a dual carriageway which connects Nottingham to the M1 and is clearly the major route into the city, notwithstanding that it may also be possible to approach the city along Low Wood Road. There is a rural quality to that stretch of the A610 from the M1 to the Nuthall roundabout. However, once past the roundabout views towards the tree belt are mainly experienced within the context of high levels of traffic and associated congestion in and around the roundabout. Thus, the locality is already beginning to take on the characteristics of the city outskirts, a location where an acoustic fence would not seem out of place. Moreover, a number of examples have been provided of potential screening to the fence, including planting, which would enable it to be assimilated within the tree belt. For this reason, I consider that the presence of an acoustic fence along the roadside would not detract unduly from the character or appearance of the locality, provided care was taken as to its visual impact. This could be dealt with through a suitably worded condition.

The contribution of trees within and around the site

25. The initial intention to manage the changes in levels within the site by means of cribblock walling gave rise to a series of objections from the Council as regards the implications for tree root systems and the long term health of trees within and adjacent to the site. The amended scheme proposes a series of embankments in place of those walls. It was confirmed at the Inquiry⁶ that these are to be considered at this stage, despite being denoted as indicative on the plans. In the light of this and other amendments, the Council advised that its remaining concerns related to: T12; woodland area W2; tree 29 and tree group TG4; and the position of trees in relation to the dwellings proposed to be situated on the south side of the road within Area 2.
26. The Council contended that the true eastwards extent of the canopy of T12 was 13.2m rather than the 11m stated in the tree survey. However, even if this is taken as the correct measurement, the proposed dwellings would still be several metres beyond such a canopy. Since the embankment would address a difference in level of about 0.5-1m, I consider that the separation which could be achieved would be acceptable. In this regard, it was accepted at the Inquiry that there was sufficient scope for any potential risk to this tree to be addressed as part of any reserved matters application.
27. There would be residential development along the western and southern sides of woodland area W2⁷. In this part of the site, the land falls quite steeply from the footpath towards the watercourse so that, as the Council points out, the age and disposition of these trees means they lean towards or appear weighted towards the site. In that context, had the nearest of these trees been surveyed it would have assisted in reaching a more informed judgement as to their relationship with the proposed development. On the evidence before me and in the light of my own inspection of the site, I consider there is some merit in the Council's assessment that these trees could come to be perceived by future occupants as presenting a risk to safety, particularly in relation to plots

⁶ Inquiry Document 4, Clarification on amended drawings V3

⁷ Identified as W1 on Tree Preservation Order (Hempshill Hall Area Number One) 2007

47-50 and 53-66. On that basis, I consider that the proposal would be likely to give rise to future pressure to manage or remove trees, particularly along the southern boundary of the woodland. This woodland occupies a sensitive location within the site and would help ensure some separation between the proposed development and Hempshill Hall⁸. If it was to be diminished due to the pruning or removal of trees, it would represent considerable harm to the character and appearance of the area as well as some harm to the setting of the listed building.

28. Plots 93-103 would be located to the north of the proposed access road, with their rear gardens rising towards the properties on Hempshill Vale beyond. The TPO identifies one individual tree and a group (G2) on this part of the site. The tree survey identifies two trees of higher value (Bi) in this group, described as TG4. The trees on this part of the site would lie within private gardens and would sit at a higher level than the associated dwellings. Again, there would be scope for any embankment works to be carefully considered as part of the reserved matters. Nevertheless, it seems to me that in some cases the dwellings would sit uncomfortably close to the trees, the consequence being that a high proportion of the garden would be affected either by the trees or an embankment. The relationship would be particularly noticeable with T29 and would probably be such as to lead to future pressure for the management or removal of the trees on this part of the site.
29. Plots 73-82 would be located north of the A610, at the foot of the existing embankment which rises towards the road. In this location, I agree with the Council that the height and density of the tree belt here could be expected to have a significant shading effect. This is confirmed to some degree by the shadow path analysis, which indicates that in midsummer the shade would increase as the day progressed, to the extent that there would be a substantial degree of shade by 15.00, with the gardens being in full shade by about 18.00. In this connection, the advice is that open spaces such as gardens should be designed to meet the normal requirements for direct sunlight for at least part of the day⁹. The parties disagree as to whether the timing of the shadow path analysis is a fair representation of the likely impact on residents, bearing in mind the height of the sun and that the trees at that time of year would be in full leaf. I recognise that residents may well look favourably upon a well-shaded garden during the height of the summer. However it seems to me that some of these dwellings would be subject to excessive amounts of shade in the winter months when the sun is lower, even though there would be fewer leaves on the trees. Consequently, it seems to me quite probable that the proximity of these dwellings to the tree belt would lead to pressure to reduce the density of tree cover alongside the A610 which, in turn, could open up views into the site, with consequent harm to the character and appearance of the area.

Conclusion on first main issue

30. The proposal would have a significant adverse effect on the function of the POA with regard to the loss of an effective break within the built-up area. Harm would also occur in relation to the setting of the listed buildings, especially to the Hall and Farmhouse, with a more limited degree of harm to visual amenity

⁸ The TPO refers the connection with an historic building

⁹ CD10 BS5837:2012 Trees in relation to design, demolition and construction – recommendations, paragraph 5.3.4

generally. I have also found that on some parts of the site the development would be likely to give rise to pressure from occupants for a reduction in tree cover and this may have further adverse implications for the setting of Hempshill Hall and the amenity value of the trees themselves as well as the character and appearance of the area. Although the proposed area of open space would represent an enhancement over the present recreational opportunities, this would not be sufficient, in my view, to outweigh the adverse effects identified. On balance therefore, I conclude on this issue that the proposal would have an adverse effect on the character and appearance of the site and its surroundings. It would detract from the character and function of the POA, contrary to Local Plan policy E12.

Issue 2: the potential extension of the NET system

Policy context and the materiality of the Kimberley extension

31. Local Plan policy T6 supports proposals that facilitate the expansion and operation of the NET system into the Borough and does not permit development which would inhibit its extension. Only the route for phase two is identified on the Policies Map. However, the supporting text discusses the NET system as a whole and makes specific reference to an eventual route towards Kimberley, noting that this could be an extension of the Phoenix Park spur. The policy itself is framed in general terms, which appears to reflect the wider analysis set out in the supporting text. To my mind therefore, the safeguarding provisions of the policy should be taken to be of general application within the Borough, so that the policy is relevant to the appeal proposal.
32. In such circumstances, it is necessary to consider both the desirability of the potential extension and the prospects of it coming forward¹⁰.
33. The Council was unable to identify any specific reference to the Kimberley extension in the emerging Local Plan. Moreover, it was confirmed at the Inquiry that the only technical assessment of a tram route from Phoenix Park westwards to Kimberley is that prepared in 2001¹¹, when it was concluded that the justification for such a route was undermined by the lack of a strong patronage base. However, that study also concluded that infrastructure costs were competitive and recommended that a corridor be safeguarded¹². The Council points out that the area is currently anticipated to be the focus of substantial residential development, with sites at Eastwood and Kimberley having potential for up to 2000 homes¹³, indicating that the prospects are good for a stronger patronage base in the foreseeable future. Given the conclusions of the 2001 study, I consider this would add to the desirability of the extension.
34. Although there are no formal proposals at present to finance or implement this extension, it was pointed out that land for a route through the adjacent Business Park has been reserved through a S106 Agreement¹⁴. More recently,

¹⁰ Doc 10: Nottinghamshire County Council v SSETR and another [2001] EWHC Admin 293, paragraph 36

¹¹ CD4 – Nottingham Express Transit Network Extensions Study (Stage 1) Kimberley Route Options April 2001

¹² Ibid 7.2.3-7.2.4

¹³ CD3 – Draft Site Allocations Issues and Options, September 2013

¹⁴ CD5 – a 7.5m corridor was safeguarded through planning permission 93/00113/OUT dated 5 November 1993

the 2011 Concession Agreement¹⁵ also refers to the possibility of this extension, which indicates that it is of continuing interest to the operator, as further evidenced by the degree of interest shown by the NET operator in the appeal proposal. Finally, it was noted that a strong or supportive local government environment appears to be an important factor in the implementation of high cost items of transport infrastructure such as tram systems. The implementation and continuing expansion of the NET system is evidence that it seems able to benefit from such an environment.

35. Taking all of these factors into account, I consider that the potential extension to Kimberley should be regarded as both desirable and enjoying reasonable prospects of being brought forward. In my view therefore, it is appropriate to have regard to the question of whether the proposal might prejudice the implementation of the extension.
36. At the time of its decision, the Council's view was that the proposal failed to reserve a feasible alignment for the NET system. At the Inquiry, it was confirmed that although the revised layout provided an acceptable alignment in principle, objections remained in relation to the suitability of the safeguarded corridor and the construction and operation of a tramway within the proposed area of residential development.

The suitability of the safeguarded corridor

37. The safeguarded route would be provided within that part of the spine road which would serve areas 2 and 3 of the proposed development, permitting a link from Phoenix Park to the east and passing beneath Low Wood Road towards Kimberley to the west. On this part of the route, a tram would operate in street mode, subject to normal speed restrictions which, in this instance would be approximately 35kph (20mph). The highway at this point would have a width of 5.5m, with a further 1.5m strip to the south being safeguarded to allow for future widening to accommodate a tramway. Together with footways, the corridor would have a width of 11m in total. In support of the proposal, the Appellant provides an exemplar design using criteria drawn from the Manchester Metrolink, with which the Appellant's advisers are more familiar, to show that the construction of a tramway at a later date would be practicable.
38. However, the NET operator states that a typical kerb to kerb width of 7.34m is necessary, with a preferred minimum of 7.7m. Allowance is made, within this, for adequate clearance between trams travelling in opposite directions (the developed kinematic envelope or DKE) as well as sufficient offset to encourage other vehicles not to drive on the tram rails, a measure for the safety of other road users. When such a corridor is overlaid on the proposed layout, it indicates that the route would not be fully safeguarded since the corridor would encroach into the front gardens of the proposed dwellings.
39. Although some national guidance on tramways is available¹⁶, it was explained at the Inquiry that the parameters of each system vary according to design factors such as floor height and the relationship between the tram bogey and

¹⁵ Mr Gibson explains that in December 2011 NCC was authorised by the Secretary of State to enter into a 22.5 year public works concession with Tramlink Nottingham Ltd concerning the operation and extension of the tramway with optional provisions for further extensions.

¹⁶ CD11 - RSP2: Guidance on Tramways, ORR 2006

the carriage. In addition, although comparisons were also made with other systems including Edinburgh and Croydon, it was acknowledged that expertise between systems is not always transferable¹⁷. In particular, the Appellant points out that the DKE of 3.32m applied by the NET operator appears surprisingly large in comparison to the worst case DKE of 2839mm calculated by the Appellant, especially bearing in mind that the tram body of the NET system is not so wide as those in use elsewhere. However, whilst I recognise that the 3.32m DKE has not been demonstrated by calculation, I consider it is nevertheless the more authoritative assessment, since it is based on direct experience of the system currently in use in Nottingham.

40. For the Appellant, it was pointed out that parameters may be set out in a hierarchy, being described as 'desirable', 'limiting' or 'exceptional', in response to the physical circumstances encountered in the design of a particular system. Thus although the preferred minimum width in this case may be 7.7m, it appears that the NET operator considers a route would still be achievable within a width of 7.34m, indicating that it may not be necessary to encroach into front gardens to the extent shown¹⁸. In this respect, I note that a corridor of 7.5m appears to have been deemed acceptable through the adjacent site to the east. In addition, the corridor would have an overall width of 11m when account is taken of the footways. As such, it may not be necessary for the operator to acquire additional land if the extension went ahead through the development as proposed. However I note that should additional land be required, it is anticipated that relevant powers would be sought to acquire necessary land within the site¹⁹.
41. It was also suggested that the design fails to make sufficient allowance for a tram stop within the site. In view of the possibility of a park and ride site on land immediately to the west of Low Wood Road, the prospects for a stop in this location and its desirability are uncertain, so that it can carry limited weight in relation to the assessment of this proposal. However, it appears that even if the park and ride did not materialise, there would be other opportunities for a stop where the route passed beneath Low Wood Road, albeit some compromise may be required in relation to environmental quality and platform design.

The construction and operation of a tramway within the appeal site

42. For the Appellant, it was contended that the proposal would facilitate a possible extension since the intention is for the spine road to be designed and constructed to a standard which takes proper account of the requirements of the potential tram route, for example in relation to the crossing of the watercourse and the location of utility apparatus. This is not supported by the only published information as to costs²⁰ which indicates that a street track would be considerably more expensive than a segregated track. However it would seem reasonable to expect that if the road infrastructure was already in place, there would be some savings against the likely implementation costs if

¹⁷ Mr Dolan in response to Inspector's question, stated that transferability was 'less than one would hope'

¹⁸ As shown on Dwg MMD-305248-C-DR-00-XX-0001, C Gibson Appendix 2

¹⁹ Mr Gibson's proof, 1.2.8

²⁰ CD4 – Nottingham Express Transit Network Extensions Study (Stage 1) Kimberley Route Options April 2001, Appendix 2

the site was in an undeveloped state. By its very nature, residential development would also add to the patronage base.

43. On the other hand, it was also acknowledged that objections are likely where residents live in close proximity to the route. I note that a major housebuilder has been involved in the design of this scheme and that the potential tram route is not viewed as a cause for concern²¹. However, the NET operator suggests the construction phase could endure for a period of up to 6 months so that it would be likely to disrupt access arrangements for residents within the development during that time. In addition, any temporary vehicle link to Anders Drive would have implications for residents on the neighbouring estate. The indications are that an extension may not come forward for many years, by which time the residential community would be well established, with expectations as to patterns of movement, access to properties and the quality of the local environment. In such circumstances, fears that residents may lose a part of their front garden – even if no more than a ‘sliver’ – would be likely to add force to objections from those directly affected. Although I agree that the NET system could be seen to benefit from the proposal in respect of an increased patronage base and lower construction costs, I consider that these would not, in all likelihood, outweigh the probable additional costs associated with the introduction of a tram route through an established residential area. On balance therefore, I consider that the proposal could not be said to facilitate the expansion of the NET.

Conclusions on issue 2

44. Although the width of the safeguarded corridor is less than that which the operator regards as necessary, it does not necessarily follow that additional land would have to be acquired, once account is taken of the scope for the use of exceptional parameters. Since there are reasonable prospects that detailed design solutions could be arrived at, I consider that the proposal makes suitable provision for the operational requirements of the NET system. Whilst there would be benefits with regard to the patronage base and construction costs, these may well be offset by costs in dealing with concerns from residents directly affected. Thus, whilst I consider that the proposal does not gain support from Local Plan policy T6 since it has not been shown to facilitate the expansion of the NET system, I consider that it nevertheless complies with the policy, in that it would not inhibit its extension.

Issue 3: whether a five year supply of housing land can be demonstrated

45. National policy states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites²².
46. The Council’s Core Strategy is under examination at present. It has been prepared and is being examined in conjunction with two other authorities,

²¹ Mr Robson, in response to Inspector’s question

²² NPPF paragraph 49

Nottingham City and Gedling Borough. The Aligned Core Strategies²³ identify the overall housing requirement to 2028²⁴ and seek to manage the delivery and distribution of this across the three authorities. The Inspector examining the Aligned Core Strategies has stated that she considers the overall requirement of 30,550 to be sound²⁵. At the time of the Inquiry, her findings were not available as to the soundness of those aspects of the policy which set out the quantum for Broxtowe and its rate of delivery.

47. At paragraph 3.2.7, the Aligned Core Strategies document states that the housing provision equates to that in the former East Midlands Regional Plan, rolled forward to 2028. In effect therefore, no change to the overall requirement of 340 dwellings a year is anticipated as a result of work on the emerging plan. Taking 2006 as the base date and allowing for completions up to 2011, Aligned Core Strategies policy 2 sets a minimum figure of 6,150 for Broxtowe for the period 2011-2028. The common approach of the three Authorities is that a lower requirement should be set for the period 2011-2013, in recognition of housing market difficulties during that period, with higher rates for 2013-18 and 2018-23, before easing back slightly for the final five years of the plan period.
48. I recognise that it is integral to the production of the Aligned Core Strategies that a consistent approach is taken across all three authorities. However, the indication at present is that a rate of 340 dwellings a year is necessary to meet the full, objectively assessed need in Broxtowe. The lower requirement in the early years of the plan period appears to be based on economic conditions rather than need. It seems to me that this would, in effect, allow the higher rates necessary to meet that shortfall to be deferred to a later stage of the plan. It may be that such an approach will be shown to be sound through the Local Plan examination. However on the evidence before me it does not reflect the requirement in current national policy to meet the full objectively assessed need for housing²⁶. As such, it can carry only limited weight at this stage.
49. In a similar vein, the Appellant contended that the shortfall in provision during previous years should be addressed over the immediate next five years (the Sedgefield approach) whereas the Council argued for a longer period, as promoted in the emerging plan (the Liverpool or residual approach). Again, I recognise the merit of all three authorities following a common approach through their development plans. However, the proposition that the Liverpool approach is most appropriate has not yet been shown to be sound as part of the Local Plan examination. Until that principle has been established, it seems to me that it is the Sedgefield approach which more closely reflects the aim in national policy to significantly boost the supply of housing. This would be consistent with the advice from PAS²⁷, that such an approach is more closely aligned with national policy. Moreover, it is one which has been favoured in all but one of the other appeal decisions referred to by the parties.

²³ Broxtowe Borough, Gedling Borough and Nottingham City Aligned Core Strategies, Publication version June 2012

²⁴ Ibid policy 2

²⁵ Doc 9 Note from Inspector dated 23 October 2013

²⁶ NPPF paragraph 47

²⁷ LGA/PAS 2013: Ten key principles for owning your own housing number

50. For the purposes of this appeal therefore, I consider that the five year requirement should be based on the figure of 340 dwellings and should aim to address the full shortfall within the next 5 years. This would create a requirement for 1700 dwellings to which a shortfall of 799²⁸ should be added.
51. Levels of housing delivery within the Borough²⁹ have been below the level of 340 since 2008/9. However immediately before the recession they had been in excess of that figure. Thus, although the Appellant quotes a seven year average of 220 dwellings, the performance in better times shows that this should not be taken as indicating a pattern of persistent under delivery. On that basis, I consider that the requirement should include a buffer of 5% or 125 dwellings so that it would stand at 2625. The approach in the Aligned Core Strategies policy 2 would yield a lower backlog of 259 but a slightly higher requirement for 2014-2019 of 1,740, so that the five year requirement would stand at 1999. With a buffer of 5%, it would be 2,099.
52. According to the Council, the supply of identified sites for 2014-19 stands at 1,584 dwellings. To this, it argues that an allowance for windfalls should be added of 199, based on past completions. Given the high levels of provision on windfall sites in previous years, and having regard to the advice at paragraph 48 of the Framework, this seems to be a reasonable approach. Nevertheless, with a supply at best of 1,783, a five-year housing supply cannot be demonstrated so that NPPF paragraph 49³⁰ is engaged. On those figures alone therefore, it is clear that the appeal proposal would make a valuable contribution to the supply of housing in the Borough.
53. The Appellant suggests the position on supply is significantly worse than portrayed by the Council. Having winnowed out various sites due to doubts as to availability and applying discounts to the number of dwellings on sites with planning permission or which are specifically allocated, it is suggested that the supply should be taken as 848. Whilst this would point to an even more serious shortfall, it seems to me that it would not materially add to the value to be placed on the contribution which the appeal proposal would make to the supply of housing in the Borough.
54. The Council also points to measures in hand to bring forward other land for housing, notably at Field Farm. However, notwithstanding the Council's support, this site is subject to considerable public opposition. At best, if the Core Strategy is found sound, the Secretary of State may revise his decision to call in the current application for development of that site so that it could be determined by the Council. In that case, the Council suggests, development might commence in 2014/15 with the site being built out by 2018/19. However, even if more than one housebuilder was involved, I consider that the Council's estimate that all 450 dwellings could be delivered within such a relatively short period of time appears overly optimistic. Similarly, although the work to identify sites at other locations such as Toton is a clear indication of the Council's commitment to address the housing land situation, at this stage it appears unlikely that any dwellings would be delivered in the short term.

²⁸ Mr Robson's proof, paragraph 5.37

²⁹ Housing Land Availability Report 31/3/2012, Table 7

³⁰ That relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites

55. As such, whilst I recognise the work which is being undertaken to address the shortfall in supply, this does not alter the significant weight which must attach to the benefit associated with this proposal.
56. There was some dispute at the Inquiry as to the reliance which could be placed on some of the sites which the Council identified as deliverable in the period 2014-2019 as well as its reliance on windfall sites. However, even at best the identified supply of 1,783 indicates the supply stands well short of the five year requirement. As the Appellant states, the shortfall in the five-year housing supply is incapable of remedy without the grant of consents. In that context, it seems to me, the provision of 116 dwellings should be viewed as an important contribution to the supply of housing in the Borough and should carry significant weight.

Issue 4: the Green Belt

57. The Policies Map shows the Green Belt boundary running along the eastern side of Low Wood Road so that the site access and the acoustic fence along the boundary with Low Wood Road would be within the Green Belt.
58. Local Plan policy E8 states that planning permission will not be granted for development in the Green Belt except where it constitutes appropriate development. Various forms of appropriate development are then set out at E8(a) – (g). Since neither the site access nor the acoustic fence would fall within any of these forms of development, they would both represent inappropriate development according to the development plan.
59. National policy identifies those forms of development which are not inappropriate provided they preserve openness and do not conflict with the purposes of including land in the Green Belt³¹. It also states that inappropriate development is by definition harmful and should not be approved except in very special circumstances. Unlike the Local Plan, the Framework allows that local transport infrastructure which can demonstrate a requirement for a Green Belt location is not inappropriate. It was contended that the site access and fence should be regarded as not inappropriate on the basis that they would fall within the category of local transport infrastructure which could demonstrate a requirement for a Green Belt location.
60. Since the most suitable point of access for the site would be from Low Wood Road, I consider that the access would represent local transport infrastructure which requires this particular Green Belt location so that it is not inappropriate under the terms of national policy. However, although the fence would reduce noise levels associated with the road network, it would not be required directly for the operation of that network. The requirement would arise from the need to protect the living conditions of future occupants of the proposed residential development. To my mind, therefore, the fence could not fairly be described as local transport infrastructure. Consequently, this element of the proposal would constitute inappropriate development in the Green Belt which, by definition, would be harmful. Although there would be some harm to openness, I have already noted in relation to the impact on the POA that this would be slight.

³¹ National Planning Policy Framework paragraph 90

Issue 5: whether the proposal, taken as a whole, would accord with national policies for the provision of housing

61. I have found that the proposal would be contrary to Local Plan policy E12 due to its impact on the POA and to policy E8 with regard to that part of the site which is within the Green Belt. Whilst some aspects of the development would facilitate the expansion of the NET, in other ways it would be likely to add to the costs and challenges of establishing a route through the site. I consider that the proposal would have a neutral effect overall in relation to policy T6.
62. For the Appellant it was contended that in any event the extension of the NET through the POA under policy T6 would substantially destroy the purpose of the POA designation, once account is taken of the built form of the tram corridor, the severance effect and the noise and disturbance from a regular tram service through the site. Although such a development would lead to some reduction in openness, I consider that this would not be so extensive as to mean that it would no longer fulfil its ability to act as a break in the built-up area. As such, I consider that the two policies are not in conflict so that the standing of policy E12 is not altered in this regard.
63. Taking all of these matters into account, I conclude that the proposal does not accord with the development plan as a whole.
64. However, national policy states³² that weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
65. There is no direct equivalent in national policy for a Protected Open Area policy but the Council suggests these spaces could be identified as Local Green Spaces³³. It was also suggested that the Hempshill Hall POA might be linked to other areas of open space³⁴ to form a recreational network but, since this appears to have no formal status in public policy as yet, I am unable to attach any weight to it at this stage.
66. It may well be that the approach in E12 could be carried forward by means of a policy for local green spaces. However, I agree with the Appellant that in such an event, it would be necessary also to show that the designation of each proposed Local Green Space was appropriate. The Hempshill Hall POA is close to the adjacent residential area and is local in character. Also, the public responses both to the planning application and the appeal indicate it is of value to many members of the local community. However, there were other representations, including one made at the Inquiry from the local ward member and on behalf of Nutthall Parish Council, which expressed a view held by others in the community that it would be preferable to permit housing development on this site so as to ensure protection of other open areas of higher value. In addition, part of the Hempshill Hall POA is identified as a possible candidate site for residential development in the work on the emerging Local Plan³⁵. These considerations raise substantial questions as to the likelihood that the Hempshill Hall POA could attain Local Green Space status. This is sufficient, in

³² Ibid paragraph 215

³³ Ibid paragraph 76-77

³⁴ Evidence of Graham Allen MP

³⁵ See Doc 7, Extract from Draft Site Allocations Local Plan

- my view, to demonstrate that Local Plan policy E12 is out of date insofar as it relates to the Hempshill Hall POA.
67. Policy E8 differs significantly from the guidance for the Green Belt contained in NPPF paragraphs 89-90 so that very limited weight can be attached to the conflict I have identified in relation to this Local Plan policy. The harm to the Green Belt would relate only to the acoustic fence so that it would be necessary to demonstrate very special circumstances in order to justify that element of the proposal.
68. With regard to listed buildings I recognise that, since these are in use as private homes, the harm to their setting and the proximity of residential development may lead to some reduction in their appeal to potential owners³⁶. However I am not convinced this would be so extensive as to materially affect their prospects in the longer term. Nonetheless, in accordance with S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I must pay special regard to the desirability of preserving their setting. I accord substantial weight to the harm to the setting of the Hall and farmhouse although less weight attaches to the harm to the barn and stable range, given the more limited adverse effect on the setting of those buildings. However, since the heritage interest resides in the buildings rather than the adjacent fields, I consider this would amount to less than substantial harm to the significance of the heritage assets, which should be weighed against the public benefits of the proposal³⁷.
69. Where relevant policies are out of date, the Framework requires that 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 taken as a whole³⁸. Although there are some exceptions, including in relation to land designated as Green Belt, it seems to me that the very small proportion of this site which is so designated is not sufficient to justify such an exception being made in this instance. Thus, to assess the proposal against the policies in the National Planning Policy Framework as a whole, it is necessary to consider whether the harm to the setting of the listed buildings would be outweighed by the public benefits, whether the harm to the Green Belt would be clearly outweighed so as to establish very special circumstances and whether the adverse impacts which have been identified would significantly and demonstrably outweigh any benefits which the development would bring.
70. In the context of the situation on housing land supply, I have already noted that the proposal should carry significant weight. This is further reinforced by the support for new housing in national policy³⁹, including the socio economic benefits with which it is associated. Moreover, 25% of the dwellings would be provided on an affordable basis, against a background of a rising need for such housing⁴⁰. The development would also bring with it a substantial area of public open space. Whilst the Appellant suggests that the landscaping proposals would deliver some enhancement to biodiversity, it appears that

³⁶ See Doc 12, Summary statement of Mrs Hunt

³⁷ NPPF paragraph 134

³⁸ NPPF paragraph 14 and footnote 9

³⁹ CD15: Laying the foundations: A housing strategy for England, November 2011

⁴⁰ M Robson proof, paragraph 5.33

these measures would be directed towards addressing the harm in relation to trees and mitigation of impacts on the identified biodiversity interest of the site in relation to its designation as a SINC and the presence of the Common Toad within the site. To my mind, it has not been shown that the proposal would deliver any net improvement to biodiversity so that these aspects of the proposal cannot be said to weigh in its favour.

71. In my judgement, the public benefits in relation to housing and open space would be sufficient to outweigh the harm to the setting of the listed buildings. Although not a piece of local transport infrastructure, the supporting information provides a clear locational justification for the acoustic fence⁴¹. Together with the other benefits identified, I consider that this would be sufficient to clearly outweigh the limited nature of the harm to the Green Belt, so as to support a finding that there are very special circumstances to justify this development. In the round therefore, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. From this, it follows that the proposal would accord with national policy for the provision of housing.

Other Matters

72. A number of representations refer to the nature conservation value of the site, part of which is designated as a Site of Importance for Nature Conservation (SINC). However, the Ecological Appraisal notes that the grassland habitat has deteriorated due to the dumping of pond sludge onto the land surrounding the pond. Also, the County Council's ecologist confirms that sufficient information has been provided to allow proper consideration of the impact on the Common Toad, a UK BAP species which has been shown to be present on the site. The Appraisal indicates measures to protect the various ecological features of the site during the construction period as well as mitigation measures to avoid further decline in diversity in the future. Such matters could be addressed as part of the reserved matters and by condition so that I am satisfied that the proposal would not have an adverse effect on biodiversity.
73. The road network carries significant volumes of traffic and a number of representations from residents expressed concerns at the impact of additional traffic associated with this proposal. However, no technical evidence is before me which would call into question the view of the Highway Authority, that the scale of development would not have a material impact on the already congested network. Concerns were also raised as to flood risk and these were accompanied by photographs showing standing water on parts of the site. Mitigation measures were identified in the Flood Risk Assessment (FRA) which was submitted in support of the proposal and the Environment Agency advises that it has no objection providing these measures are secured.

Conditions and Planning Obligation

74. An agreed list of suggested conditions was submitted at the Inquiry and I have considered these in the light of the advice in Circular 11/95, *The Use of Conditions in Planning Permissions*.

⁴¹ Noise and Air Quality Assessment

75. I have imposed the standard conditions concerning commencement, identifying the reserved matter and requiring submission of details, including standard timescales, since no planning reason was provided for the shorter periods contained in the suggested conditions. A condition to define the plans to which the permission relates is necessary for the avoidance of doubt and in the interests of good planning.
76. Given the potential impact on the local toad population, a condition is necessary to protect its status. The site is of known archaeological interest so that a scheme of treatment should be submitted to ensure this is properly investigated. Conditions relating to the safeguarded tram corridor and utility protection zone, as well as one to take account of the potential impact from tram vibration, are all necessary in order to ensure that the proposal will not inhibit the potential extension of the tramway. Noise mitigation measures, including the acoustic fencing, are necessary to ensure satisfactory living conditions for future residents and to ensure any impact on trees is properly mitigated. Information as to potential contamination within the site is necessary in the interests of public health and safety.
77. A number of matters need to be addressed within the landscaping details so that conditions to identify these and to allow for replacement planting should there be any failures are necessary in the interests of visual amenity. Conditions relating to surface water drainage and flood risk are imposed to prevent any increased risk of flooding. Details of the proposed bridge over the watercourse, the proposed access and a wheel washing facility are necessary in the interests of highway safety. Details of external materials are necessary in the interests of the appearance of the development.
78. Landscaping is a reserved matter so that the suggested condition relating to replacement of trees and plants is not necessary at this stage. There was discussion at the Inquiry as to whether it would be appropriate to restrict the permitted development rights attached to specific dwellings where the gardens would include embankments, so as to ensure the longer term protection of trees. However, the Circular advises that such a condition should not be imposed unless there is clear evidence that there would be serious adverse effects on amenity or the environment and there are no other forms of control. Since the trees and tree groups of recognised importance are already subject to a TPO, I consider that there is not sufficient justification to impose such a restriction in this instance.
79. The Planning Obligation makes provision in relation to an Integrated Transport Contribution, a Common Amenity Area Management Scheme and affordable housing as well as arrangements for the maintenance of the balancing pond and the provision of the acoustic fence. It also provides for contributions in relation to education.
80. The Integrated Transport Contribution is necessary to support initiatives to provide alternatives to the car. It is calculated according to the net developable area of the site, the extent of which was agreed at the Inquiry, so that it is directly related to the proposal and is reasonable in scale and kind.
81. The Common Amenity Area Management Scheme sets out arrangements for the management and maintenance of public spaces, including the proposed

balancing pond, details of which are also to be provided. Because the acoustic fencing would be on highway land, the Obligation sets out details for its provision, an arrangement which was agreed between the parties during the course of the Inquiry. The level of education contributions reflects the scale of the development. The provision for affordable housing reflects the requirement of Local Plan policy H5. Having regard to public house 204 of the NPPF, these matters arise from the development and are necessary to make it acceptable in planning terms. The provisions secured also comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Conclusions

82. Although I have found that the proposal would be contrary to the Broxtowe Local Plan, the relevant policies are out of date. When the proposal is considered against the policies in the Framework taken as a whole, the adverse impacts would not significantly and demonstrably outweigh the benefits.
83. For the reasons given above therefore, I conclude that the appeal should succeed.

K.A. Ellison

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Graham Machin, of Counsel

He called

Emma Palmer-Barnes MA MRTPI	Senior Planning Officer, Broxtowe Borough Council
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Philip Wood	Tree Officer, Broxtowe Borough Council
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Suzanne Dempsey BArch (Hons), MA, MRTPI	Planning Consultant
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Callum Gibson CEng, MICE	Associate with Mott MacDonald
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Steffan Saunders MA, MRTPI	Planning Policy Manager, Broxtowe Borough Council
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FOR THE APPELLANT:

Ian Dove QC

He called

Philip Rech BA, MPhil, CMLI	Director, FPCR Environment and Design Ltd
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John Dolan CEng, MICE, CMILT, MSc, DIC, BSc	Interfleet
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Martin Stockley CEng, FICE,
FIStructE, CMILT, FRSA

Michael Robson BA, DipTP, MRTPI	Director, Cerda Planning Ltd
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Andrew Brown BArch, MSc, RTPI RIBA, IHBC	Director, Woodhall Planning and Conservation Ltd
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INTERESTED PERSONS:

Mrs F Hunt	Local resident, also speaking on behalf of others living locally
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Cllr P Simpson	Ward Member, Nutthall East
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Cllr Phillip Owen	Vice Chair, Nutthall Parish Council; Member for Nutthall Ward, Nottinghamshire County Council
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Graham Allen MP	Local resident and MP for Nottingham North
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DOCUMENTS

- 1 List of drawings and documents as at 21 March 2013
- 2 Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another, (1982) 43 P. & C.R. pp233-241
- 3 Note on reconsultation
- 4 Clarification on amended drawings V3
- 5 Email E Palmer Barnes – M Robson 12/11/2013, clarification
- 6 Email M Green - F Mitchell 29/10/2013 acoustic fence
- 7 Extract from Draft Site Allocations Local Plan, pp124-5, Land East of Low Wood Road, Nutthall
- 8 Planning permission 06/00581/PFUL3, 24-26 Queens Road, Nottingham
- 9 Email E Palmer Barnes – Planning Inspectorate 11/11/2013, Core Strategy examination update
- 10 Bombardier Tram, Croydon
- 11 CAF Tram, Edinburgh
- 12 Summary statement of Mrs F Hunt
- 13 Email F Mitchell – N Highton 16/5/13 instructions to Interfleet
- 14 Drawing 4074-A-06 Rev D Draft Tree Protection Plan
- 15 Nottinghamshire County Council v SSETR and another [2001] EWHC Admin 293
- 15 Witness details – Andrew Brown
- 16 Agreed list of suggested conditions
- 17 Draft Planning Obligation, 21/11/2013
- 18 Email D Isherwood – F Mitchell, 21/11/13 S106 areas and relevant contributions sought
- 19 Further clarification as to superseded drawings
- 20 Plots and permitted development rights restrictions
- 21 Completed Planning Obligation dated 29 November 2013

Appendix 1: conditions

- 1) Details of the landscaping (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matter shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the reserved matter.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 28015-PL31 Site location plan; 28015-APP-01 Rev M site layout; 28015-APP-02 Rev H, housing type layout; 28015-APP-03 Rev A Illustrative section; 28015-APP-04 Rev C Site layout area 1; 28015-APP-05 Rev C site layout area 2; 28015-APP-06 Rev D site layout area 3; SK001 Rev L proposed road and plot levels layout; SK002 Rev F proposed site sections; 4074-L-01 Rev D landscape masterplan; 4074-L-02 Rev E landscape cross sections; 4074-A-05 Rev D Draft tree protection plan Fig 3.1; 4074-A-06 Rev D Draft tree protection plan Fig 3.2; 4074-A-04 Rev A tree survey plan; House type plans 208015 PL06A Turnberry; PL07A Worcester; PL08A Croft; PL09A Smithy; PL10A Ashby (detached); PL11A Walton; PL13A Somerby; PL14A Lichfield (detached); PL15A Lichfield (end); PL16A Orton; PL17A Drayton; PL19A Belfry; PL20 garage type- front gable; PL21 garage type- side gable; PL40 Worcester – RH; PL41 Somerby RH; PL48 house type B; PL49 house type D; PL50 Tilton
- 5) Before application is made for approval of the reserved matter, a scheme shall be submitted to and approved in writing by the local planning authority indicating measures to be taken to protect the status of the local toad population during the course of the development and to ensure that a suitable habitat for them is retained within the site. The measures shall be broadly along the lines indicated in the addendum to the Ecological Appraisal. The scheme shall include a programme for its implementation and it shall be implemented in accordance with the approved programme.
- 6) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until details of the safeguarded corridor for the tramway, including the vertical alignment of the proposed kerb lines and the level of the footways within the corridor, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 8) No development shall take place until details of the proposed utility protection zones within the safeguarded corridor have been submitted to and approved in writing by the local planning authority. The zones shall be provided as approved and retained thereafter.
- 9) No development shall take place until details of predicted tramway vibration and vibration induced noise along the route of the potential tramway have been submitted to and approved in writing by the local planning authority. The details shall include identification of all dwellings predicted to be affected by tramway vibration and vibration induced noise and a schedule of mitigation measures to protect occupants of those dwellings. The mitigation measures shall include details of the proposed foundation design and construction of the dwellings. No affected dwelling shall be occupied until the mitigation measures for that dwelling have been carried out as approved.
- 10) No development shall commence until a noise mitigation scheme has been provided to protect the occupants of the dwellings from road traffic and tramway noise, including details of windows and ventilation to the affected dwellings, details of the acoustic specifications for the proposed noise barrier, its precise alignment, proposed planting on the road side of the barrier and arrangements for its maintenance. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 12) The plans and particulars submitted in accordance with condition 2 above shall include:
 - (i) indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection during the course of development. The approved tree protection measures shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, including any works of site clearance and shall be retained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels

- within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority;
- (ii) details of all embankments or other retaining structures including external appearance and sections;
 - (iii) numbers, types, sizes and positions of proposed trees and shrubs;
 - (iv) proposed site boundary treatments;
 - (v) details of the means of enclosure for each dwelling plot and no dwelling shall be occupied until it has been enclosed in accordance with the approved details;
 - (vi) proposed boundary treatments for the pond and unnamed watercourse in Area 3 and the balancing pond in Area 2;
 - (vii) proposed hard surfacing treatment including the public rights of way across the site and the proposed footpath links to the eastern site boundary to the north east of plots 104 and 105 and the link to Anders Drive, as identified on 28015-APP-01 Rev M;
 - (viii) planting, seeding and turfing of soft landscape areas including any embankments;
 - (ix) details of the proposed play area including boundary treatment and specification of play equipment;
 - (x) details of a maintenance corridor along the course of the unnamed watercourse
 - (xi) a timetable for implementation
- 13) No development shall take place until details of the implementation, maintenance and management of a surface water drainage scheme based on sustainable drainage principles have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- i) Measures to limit the surface water run off to a betterment of greenfield rates
 - ii) a timetable for its implementation, and
 - iii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 14) No development shall commence until details of the bridge over the unnamed watercourse have been submitted to and approved in writing by the local planning authority. No development shall commence east of plot 66 as identified on 28015-APP-01 Rev M until the bridge has been constructed and surfaced in accordance with the approved details.
- 15) No development, including site clearance, shall commence until details of wheel washing facilities and arrangements for their use have been submitted to and approved in writing by the local planning authority. The arrangement shall be adhered to throughout the construction period.

- 16) Development shall not begin until full engineering details of the following have been submitted to and approved in writing by the local planning authority;
 - (i) The access to the site from Low Wood Road, including visibility splays and the right turn lane as shown in the Transport Assessment
 - (ii) Works to downgrade the access to Hempshill Hall and FarmThe access shall be completed in accordance with the approved details prior to the occupation of any of the dwellings hereby approved.
 - 17) Development shall be carried out in accordance with the approved Flood Risk Assessment dated September 2012 and the proposed methods and mitigation measures contained therein. The measures shall be implemented in accordance with a timetable to be submitted to and agreed in writing with the local planning authority.
 - 18) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
-