

34. I accept that local knowledge is important, and that the NP acknowledges problems with the B5017 and that development in the locale should be carefully controlled. However, in the absence of any substantiated evidence to dispute that provided by the appellant within the TA, I am satisfied that the proposal would not have an adverse impact on highway safety.
35. The appellant's ecological report finds that the appeal site is mostly of low ecological value, but that the hedgerows and boundary vegetation and some trees have value in supporting some species. The landscape masterplan (500237/001B) shows that existing hedgerows would be mostly retained in the proposed layout.
36. Furthermore, a condition could be imposed both to seek an appropriate landscaping plan and ecological measures to improve the overall biodiversity of the site. I am satisfied therefore that the proposal would not be materially harmful to ecology and biodiversity.
37. The proposed layout provides the potential for linkages to both Aviation Lane and the development to the east under construction. Policy B1 of the NP requires that all new development, defined as major for planning application purposes, will be expected to include the provision of new, safe walking, and where appropriate cycling and mobility vehicle routes, linking into existing wider routes, creating an attractive pedestrian friendly neighbourhood in Branston which encourages travel by means other than the car for short journeys. While there is no guarantee that the pedestrian linkages between the different residential areas would be established, this would not in itself prevent occupiers walking to nearby facilities.
38. The design and layout of the proposed housing forms a development pattern not dissimilar to that in the adjacent housing estates. I am satisfied therefore that there is no conflict with Policy B2 of the NP regarding high quality design.
39. Policy B5 of the NP requires that overall a green infrastructure approach to design should be provided. Furthermore, Policy B7 states that new developments will be required to provide a mix of private space and open space uses which meets local need, including children's play areas, sports pitches, allotments and amenity green space in accordance with the most up to date guidance adopted by the Council. While there is a deficit in the overall level of open space that would be delivered on the appeal site when assessed against the requirements of the Council's Open Space and Playing Pitches Supplementary Planning Document 2019 (the SPD), a commuted sum, to be spent on facilities close by, would mitigate that. This is an approach supported in the SPD. The proposal would also provide children's play space and equipment. The central area of open space breaks up the two areas of development, with that to the north providing a buffer to the existing housing on Henhurst Hill.
40. It was agreed at the hearing there is no reason why trees could not be planted on the areas of green space and this could come forward as part of a landscaping scheme secured through the imposition of a condition.
41. The proposed parking provision is in accordance with the Council's Parking Standards Supplementary Planning Document 2017. However, amendments made to Policy B11 of the NP in February 2020, after the determination of the planning application, means that it would not meet the required one off-street

car parking space for each bed space provided. Nevertheless, the Policy goes on to state that the requirements may be varied where in the opinion of the Local Planning Authority, the additional parking likely to be generated by the development can be safely accommodated on-street, without causing obstruction to driveways or hindering the passage of emergency, refuse collection and delivery vehicles. The Council raised no objection to this part of the proposal. Furthermore, I heard from the appellant that the width of the road would be such that on street parking could be safely accommodated. I have seen no evidence to suggest any different. Therefore, I find no fundamental conflict with Policy B11 or any policies within the NP.

42. Concern was raised regarding the potential for the flooding of gardens of properties on Henhurst Hill given the slope of the land. However, the appellant confirmed that both the Lead Local Flood Authority and the Environment Agency have raised no objections to the development based on the submitted Flood Risk Assessment and Drainage Strategy. I see no reason to disagree.

S106 Agreement

43. All of the dwellings would be provided as affordable homes secured by the planning obligation. Since the justification for the development on land outside the settlement boundary, is reliant on the proven need for affordable housing, the arrangements secured are necessary.
44. The financial contribution of £9,600 towards refuse containers is in accordance with the £75 costs per unit which is the cost of providing the recycling wheelie bin and associated set up costs for each household.
45. The provisions for open space and children's play facility is in line with the requirements of the SPD. As there would be an increased population due to the proposal, I am satisfied that the proposed development would generate a requirement for the suggested level of open space, some of which would be met on site. The SPD allows for the payment of a contribution where the on-site provision would fall below the required amount of open space. Therefore, the financial contribution of £37,302 towards public open space is necessary. The agreement also includes provision for the maintenance of the on-site provision.
46. The statement from the education authority shows that existing education provision for primary, secondary and sixth form provision is at capacity, and the proposed development would increase demand for places. The S106 includes a sum of £376,534.32 towards primary, £85,570 towards secondary and £18,560 for sixth form provision at the closest facilities. I am therefore satisfied that the payment of the required contributions would adequately mitigate the impact of the proposal on the education infrastructure.
47. The evidence presented by the NHS East Staffordshire CCG demonstrates that the existing GP practices do not have the capacity to manage increased patient demand. Occupation of the 128 dwellings proposed would lead to an increase in demand for local health facilities. From the evidence before me, I am satisfied that the requested contribution of £55,020 towards a new facility in the locality of the appeal site is fairly and reasonably related in scale and kind to the development and necessary to make the development acceptable.

48. The S106 requires the submission of a Travel Plan, the appointment of a Travel Plan Co-ordinator together with its implementation and the production and submission of an annual performance report for approval to the County Council. This is necessary to ensure that the proposal contributes to sustainable development as required by Policy SP1 of the Local Plan. There is little detail before me regarding how the monitoring sum requested by the County Council has been calculated. I was advised by the Council that it is a standard sum requested for major developments. The PPG⁵ requires that the costs are proportionate and reasonable and reflect the actual cost of monitoring. Bearing in mind that there is an ongoing requirement for annual monitoring of the Travel Plan after its initial approval I am satisfied that the sum requested of £11,900 meets the requirements of the PPG.
49. The County Council has also requested the sum of £1,110 towards the cost of monitoring (including reporting under the CIL regs) the obligations contained in the Deed. From my understanding of the Deed this would relate to the three contributions to education for which there are two trigger points for payment. Based on this, the requested sum seems a reasonable amount and in accordance with the PPG.
50. Therefore, based on the evidence before me, these obligations, are necessary and meet the statutory tests contained in Regulation 122 of the CIL, and the requirements of paragraph 56 of the Framework.

Planning balance and conclusion

51. To develop the appeal site as proposed would be contrary to Policies SP2, SP4 and SP8 of the Local Plan. I am mindful that the Framework recognises that the planning system should be genuinely plan led. However, I have found in this instance that the aims of the spatial strategy regarding accessibility and protection of the countryside contained in the development plan would not be unacceptably harmed and therefore any harm caused by the conflict with the development plan as a whole would be very limited.
52. Planning law requires that applications be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have found that the delivery of the site for 100% affordable housing would be a very significant benefit. Indeed, the SOCG sets out agreement that the weight to be afforded to the provision of affordable housing is at least significant. On a straightforward development plan balance, I am firmly of the view that the provision of the affordable housing proposed is a significant material consideration which, in this instance, outweighs the development plan conflict.
53. The Council referred me to an appeal decision⁶ which it considers to be similar circumstances to the appeal before me now. The Inspector found that, in light of the Council being able to demonstrate a five year supply of housing, the material considerations were not sufficient to outweigh the conflict with the development plan, even though the scheme would amount to sustainable development for the purposes of the Framework. However, that scheme was for a market led housing scheme which did not accord with Policies SP2, SP4 and SP8 of the Local Plan. The proposal before me is different in providing

⁵ 036 Reference ID: 23b-036-20190901

⁶ APP/B3410/W/16/3150471

100% affordable housing as a material consideration which would outweigh the conflict with the development plan in this instance.

54. We spent some time at the hearing discussing which were the most important policies for determining the appeal and whether or not they were out of date for the purposes of paragraph 11d of the Framework. However, given my findings regarding the development plan balance I have not considered this matter further.
55. For the reasons given above I conclude that, on balance, the appeal should be allowed.

Conditions

56. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the PPG and have made such amendments as necessary to comply with those documents.
57. In the interests of certainty, it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans and details of a phasing plan are submitted for approval.
58. Conditions regarding materials, finished floor levels and landscaping (including landscape management) are necessary to protect the character and appearance of the area.
59. Details of protection of existing hedgerows and trees on site are required prior to work commencing on site to ensure that the existing landscaping is protected from construction damage.
60. A condition requiring details of an open space strategy and its implementation are necessary to ensure that such facilities are available on site for the future occupiers in accordance with the Councils SPD.
61. A condition requiring 10% of the dwellings to meet standard M4 (2) of the Building Regulations is necessary to ensure that a proportion of the proposed dwellings are accessible and adaptable. Details need to be submitted prior to work commencing on site to ensure that the required proportion are provided in a satisfactory manner.
62. Details of the disposal of foul and surface water are required prior to development taking place to ensure that the proper systems are in place and that the development does not cause flooding elsewhere.
63. Conditions regarding the implementation of boundary walls and fencing, a construction management plan and noise and dust mitigation are required to protect residents' living conditions.
64. A condition requiring details of ecological enhancement measures is necessary to ensure that biodiversity on the site is improved.
65. Conditions 14, 15 and 16 are required to protect highway safety. A condition regarding unexpected contamination and soil imported to the site are necessary to ensure that satisfactory living conditions are provided for future occupiers of the development.

66. An Air Quality Impact Assessment, including any mitigation measures is required to be submitted prior to work commencing on site to ensure that accurate details are submitted prior to construction works.
67. Details of cycle parking are necessary to encourage travel by an alternative means than the car.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Helen Kent

Associate Director LUC on behalf of East Staffordshire Borough Council (ESBC)

Naomi Perry

Planning Manager, ESBC

Kerry Challoner

Principal Planning Officer, ESBC

Michael Petter

Housing Officer, ESBC

FOR THE APPELLANT

Thea Osmund Smith of Counsel

Instructed by:

Andrew Gore

Partner, Marrons Planning

James Stacey

Senior Director, Tetlow King Planning

Annie Gingell

Senior Planner, Tetlow King Planning

Anna-Maria Edwards

Head of Business Development, Midland Heart

Dr Amer Halabi

IPRT Planning

INTERESTED PERSONS

Councillor Mike Ackroyd

Chair, Branston Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement by Councillor Ackroyd
- 2 Tenure Plan 41262/026G
- 3 Statement of CIL Compliance

DOCUMENTS SUBMITTED AFTER THE HEARING

- A Section 106 Agreement

Appendix JS18

Affordable housing as a separate benefit



Affordable Housing as a Separate Material Consideration

- Regarding the weight to be attached to the proposed affordable housing benefits at the appeal site, the need is acute, the benefits are significant, and the weight in the planning balance should be **very substantial weight**. Affordable housing is a material benefit and should therefore be awarded its own weight in the planning balance.
- Many appeal decisions issued by Inspectors and the Secretary of State (“SoS”) have recognised affordable housing as an individual benefit and have specifically awarded affordable housing provision its own weight in the planning balance. Some examples are summarised below.

Appeal Ref.	Site Name	Decision Type	Decision	Date	Paragraph Ref.	Weight to Affordable Housing	Paragraph Text
APP/M0655/W/17/3178530	Land at Peel Hall, Warrington	SoS	Allowed	09-Nov-21	24	Very substantial	"He further agrees (IR524) that <u>the provision of affordable housing attracts very substantial weight</u> , for the reasons given."
APP/A2280/W/20/3259868	Land off Pump Lane, Rainham, Kent	SoS	Dismissed	03-Nov-21	33	Substantial	"...The Secretary of State considers that the weight to be afforded to the delivery of housing in the light of the housing land supply shortfall is substantial (all IR12.201). Similarly, the Secretary of State agrees at IR12.202 that for the reasons given there is an acute need for affordable housing and in light of that, <u>the delivery of at least 25% of the residential units as affordable accommodation attracts substantial weight</u> ."
APP/W1850/W/20/3244410	Land North of Viaduct adj. Orchard Business Park, Ledbury	SoS	Allowed	15-Mar-21	27	Substantial	"For the reasons given in IR16.122-16.123, the <u>Secretary of State also gives substantial weight to the delivery of affordable housing</u> ."
APP/Y0435/W/17/3169314	Newport Road and Cranfield Road	SoS	Dismissed	25-Jun-20	32	Significant	"Weighing in favour of the proposal, the Secretary of State affords <u>the provision of affordable housing significant weight</u> and also affords the provision of market housing significant weight."
APP/E5330/W/19/3233519	Land at Love Lane, Woolwich	SoS	Dismissed	03-Jun-20	28	Substantial	"The Secretary of State considers that, in terms of benefits, <u>the provision of housing benefits and affordable housing benefits each carry substantial weight</u> ."

APP/Q3115/W/1 9/3230827	Oxford Brooks University, Wheatley Campus	SoS	Allowed	23-Apr-20	35	Very substantial	35 "...Given the seriousness of the affordable housing shortage in South Oxfordshire, described as "acute" by the Council, he agrees with the Inspector at IR13.111, that the delivery of up to 500 houses, 173 of which would be <u>affordable</u> , are considerations that carry very substantial weight." IR 13.111 " <u>The Framework attaches great importance to housing delivery that meets the needs of groups with specific housing requirements. In that context and given the seriousness of the affordable housing shortage in South Oxfordshire, described as "acute" by the Council, the delivery of up to 500 houses, 173 of which would be affordable, has to be afforded very substantial weight irrespective of the fact that the Council can demonstrate a 3/5YHLS.</u> "
APP/G1630/W/1 8/3210903	Land at Fiddington, Ashchurch near Tewkesbury	SoS	Allowed	22-Jan-20	20	Substantial	"...The Secretary of State agrees with the Inspector, and further considers that <u>the provision of affordable housing in an area with a serious shortfall would be of significant benefit and attracts substantial weight in favour of the proposal.</u> "
APP/A0665/W/1 4/2212671	Darnhall School Lane	SoS	Dismissed	04-Nov-19	28	Substantial	"The Secretary of State agrees that the social benefits of <u>the provision of affordable housing should be given substantial weight</u> , for the reasons set out at IR408-411."
APP/P4605/W/1 8/3192918	Former North Worcestershire Golf Club, Hanging Land, Birmingham	SoS	Allowed	24-Jul-19	33	Significant	30 "Weighing in favour the <u>Secretary of State considers that the 800 family homes, including up to 280 affordable homes is a benefit of significant weight.</u> "
APP/E2001/W/1 8/3207411	Hutton Cranswick	Inspector	Dismissed	05-Jun-19	39	Significant	"However, <u>aside from the provision of affordable housing (to which I attach significant weight)</u> , the provisions are essentially intended to mitigate the effect of the development-although they could be of some benefit to the wider public, and I have therefore given them very limited weight."
APP/P0119/W/1 7/3191477	Coalpit Heath, South Gloucestershire	Inspector	Allowed	06-Sep-18	61	Substantial	"There are three different components of the housing that would be delivered: market housing, affordable housing (AH) and custom-build housing(CBH). <u>They are all important and substantial weight should be attached to each component</u> for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply. <u>The fact that the much needed AH and CBH are elements that are no more than that required by policy is irrelevant –they would still comprise significant social benefits that merit substantial weight.</u> "
APP/L3815/W/1 6/3165228	Land at the Corner of Oving Road and A27, Chichester	Inspector	Allowed	18-Aug-17	63	Substantial	"Moreover, the provision of 30% policy compliant affordable houses carries weight where the Council acknowledges that affordable housing delivery has fallen short of meeting the total assessed affordable housing need, notwithstanding a recent increase in delivery. With some 1,910 households on the Housing Register in need of affordable housing, in spite of stricter eligibility criteria being introduced in 2013 there is a considerable degree of unmet need for affordable housing in the District. <u>Consequently I attach substantial weight to this element of the proposal.</u> "

APP/P1425/W/1 5/3119171	Mitchelswood Farm, Newick, Lewes	SoS	Allowed	23-Nov-16	18	Significant	"For the reasons given at IR196-201 the Secretary of State agrees that <u>the provision of 20 affordable homes is a tangible benefit of significant weight.</u> "
APP/G1630/W/1 4/3001706	Cornerways, High Street, Twynning	Inspector	Allowed	13-Jul-15	63	Very substantial	"...Table 7.16 of the Strategic Housing Market Assessment [SHMA] Update [CDA17] identifies that the net annual need for affordable housing in Tewkesbury is 587 dwellings. This is more than twice the equivalent figure for the neighbouring District of Wychavon, despite the fact that Tewkesbury's population is little more than two thirds of that in Wychavon. <u>The Inspector in the Wychavon appeal found that the provision of affordable housing in that case: "...is a clear material consideration of significant weight that mitigates in favour of the site being granted planning permission"; the Secretary of State agreed.</u> Given the much larger quantum of identified need in Tewkesbury and the magnitude of the accumulated shortfall in affordable housing delivery, <u>it would be appropriate to attribute very substantial weight to this important benefit of the proposal.</u> "
APP/E2001/A/13 /2200981 and APP/E2001/A/14 /221394	Brickyard Lane, Melton Park, East Riding	SoS	Dismissed	25-Jun-15	11	Substantial	"However, he also agrees with the Inspector's conclusion that <u>substantial weight should attach to the proposals in proportion to the contribution they would make to the supply of affordable housing.</u> "
APP/K2420/A/13 /2208318	Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire	SoS	Allowed	18-Nov-14	13 / IR 6.19	Substantial	13. "For the reasons given at IR11.20-IR11.23, the Secretary of State agrees with the Inspector's findings in relation to affordable housing, and with his conclusion at IR11.23 that the need for affordable housing is acute and warrants the provision offered by the appeal proposal." IR 6.19 "In those circumstances, there is no reason to depart from the statutory basis to providing for affordable housing set out in policy 15 of the Core Strategy. The policy takes account of the needs identified in the SHMA (2008) and was found to be sound by the Core Strategy Inspector. Hence, although <u>substantial weight should be given to the affordable housing</u> offered, that weight should not be overwhelming."
APP/H1840/A/1 3/2199085 and APP/H1840/A/1 3/2199426	Pulley Lane, Droitwich Spa	SoS	Allowed	02-Jul-14	23 / IR 8.126	Very significant	23. "For the reasons given at IR8.112-8.126, the Secretary of State agrees with the Inspector's conclusion at IR8.127 that the Council does not have a 5-year supply of housing land and the appeal scheme is necessary to meet the housing needs of the district, including the need for affordable housing." IR 8.126 "It seems to me that the Council has largely ignored the affordable housing need in its evidence. The poor delivery record of the Council has also been largely overlooked. The Council's planning balance is struck without any apparent consideration being given to one of the most important reasons why housing in Droitwich Spa is needed. <u>From all evidence that is before me the provision of affordable housing must attract very significant weight in any proper exercise of the planning balance.</u> [4.47]"