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22 February 2019

Dear Sir/Madam

PLANNING COMMITTEE

A meeting of the Planning Committee has been arranged to take place **MONDAY, 4TH MARCH, 2019 at 6.00 PM IN THE COMMITTEE ROOM**, District Council House, Lichfield to consider the following business.

Access to the Committee Room is via the Members' Entrance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Turner'.

Neil Turner BSc (Hons) MSc
Director of Transformation & Resources

To: Members of Planning Committee

Councillors Marshall (Chairman), Powell (Vice-Chair), Mrs Bacon, Mrs Baker, Bamborough, Mrs Barnett, Cox, Drinkwater, Mrs Evans, Matthews, Pritchard, Mrs Stanhope MBE, Strachan and A Yeates



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AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. Minutes of Previous Meeting 3 - 4
4. Planning Applications 5 - 102



PLANNING COMMITTEE

11 FEBRUARY 2019

PRESENT:

Councillors Marshall (Chairman), Powell (Vice-Chair), Mrs Baker, Bamborough, Cox, Mrs Evans, Matthews, Pritchard, Mrs Stanhope MBE and A Yeates

5 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Mrs Bacon, Councillor Mrs Barnett and Drinkwater.

6 DECLARATIONS OF INTEREST

There were no Declarations of Interests.

7 MINUTES OF PREVIOUS MEETING

The Minutes of the Meeting held on 14 January 2019 previously circulated were taken as read, approved as a correct record and signed by the Chairman.

8 PLANNING APPLICATIONS

Applications for permission for development were considered with the recommendations of the Director of Place and Community and any letters of representation and petitions of observations/representations received since the publication of the agenda in association with Planning Applications 18/01781/FUL and 18/01782/FUL

18/01781/FUL – Demolition of existing bungalow and erection of 1 no. replacement dormer bungalow (Plot 3)
1 Hood Lane, Armitage
For PIA Housing Limited

RESOLVED: That subject to the owners/applicants first entering into a Unilateral Undertaking for a financial contribution to mitigate the impact on the Cannock Chase Special Area of Conservation, then planning permission be approved subject to conditions contained in the report of the Director of Place and Community and an additional condition to remove permitted development rights to read as follows:

12. Notwithstanding the provisions of Schedule 2, Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order) no extensions, porches, or outbuildings, shall be constructed without the prior grant of planning permission by the Local Planning Authority.

Reason:

12. To prevent the over-development of the site and safeguard the amenity of existing, neighbouring and/or future occupants of the development hereby approved, in accordance with Core Policy 3 and Policy BE1 of the Local Plan Strategy, the Sustainable Design SPD and the National Planning Policy Framework.

(PRIOR TO CONSIDERATION OF THE APPLICATION REPRESENTATIONS WERE MADE BY MR ROB DUNCAN (ON BEHALF OF THE APPLICANT)).

18/01782/FUL – Erection of 1no detached three bedroom dwellinghouse
1 Hood Lane, Armitage
For PIA Housing Limited

RESOLVED: That subject to the owners/applicants first entering into a Unilateral Undertaking for a financial contribution to mitigate the impact on the Cannock Chase Special Area of Conservation, then planning permission be approved subject to conditions contained in the report of the Director of Place and Community.

(PRIOR TO CONSIDERATION OF THE APPLICATION REPRESENTATIONS WERE MADE BY MR ROB DUNCAN (ON BEHALF OF THE APPLICANT)).

9 CONFIRMATION OF TREE PRESERVATION ORDER 423-2018 AT 81 HINTS ROAD, HOPWAS, TAMWORTH, STAFFORDSHIRE. B78 3AB

RESOLVED: That the Planning Committee confirm the Tree Preservation Order without modification.

(PRIOR TO CONSIDERATION OF THE APPLICATION REPRESENTATIONS WERE MADE BY MR WAUGH (OBJECTOR)).

10 PLANNING APPLICATION LOCAL VALIDATION GUIDANCE UPDATE

Mr Jon Allinson presented the Planning Application Local Validation Requirements document which had recently been reviewed, as required every two years. This document sets out the requirements for a valid planning application and discussion took place around the contents. Mr Allinson explained that there had been very minor amendments made to the document which were updated telephone numbers, web addresses and policy references. As the changes were minor a full consultation process was not required.

Comments were made by some members about the importance of assessing applications in accordance with local and national policy, including the importance of design considerations. Also, comments were made about the future requirements of certain documents that should be included when this document is to be fully reviewed.

RESOLVED: That the Planning Committee approve the revised Local Validation Guidance and approve its adoption for publication on the Council website with immediate effect.

(The Meeting closed at 7.15 pm)

CHAIRMAN

4 March 2019

Agenda Item 4

Contact Officer: Claire Billings

Telephone: 01543 308171

Report of the Director of Place and Community

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT, 1985

All documents and correspondence referred to within the report as History, Consultations and Letters of Representation, those items listed as 'OTHER BACKGROUND DOCUMENTS' together with the application itself comprise background papers for the purposes of the Local Government (Access to Information) Act, 1985.

Other consultations and representations related to items on the Agenda which are received after its compilation (and received up to 5 p.m. on the Friday preceding the meeting) will be included in a Supplementary Report to be available at the Committee meeting. Any items received on the day of the meeting will be brought to the Committee's attention. These will also be background papers for the purposes of the Act.

FORMAT OF REPORT

Please note that in the reports which follow

- 1 'Planning Policy' referred to are the most directly relevant Development Plan Policies in each case. The Development Plan comprises the Lichfield District Local Plan Strategy (2015), saved policies of the Lichfield District Local Plan (1998) as contained in Appendix J of the Lichfield District Local Plan Strategy (2015) and an adopted Neighbourhood Plan for the relevant area.
- 2 The responses of Parish/Town/City Councils consultees, neighbours etc. are summarised to highlight the key issues raised. Full responses are available on the relevant file and can be inspected on request.
- 3 Planning histories of the sites in question quote only items of relevance to the application in hand.

ITEM 'A' Applications for determination by Committee - **FULL REPORT** (Gold Sheets)

ITEM 'B' Lichfield District Council applications, applications on Council owned land (if any) and any items submitted by Members or Officers of the Council. (Gold Sheets)

ITEM 'C' Applications for determination by the County Council on which observations are required (if any); consultations received from neighbouring Local Authorities on which observations are required (if any); and/or consultations submitted in relation to Crown applications in accordance with the Planning Practice Guidance on which observations are required (if any). (Gold Sheets)

AGENDA ITEM NO. 4

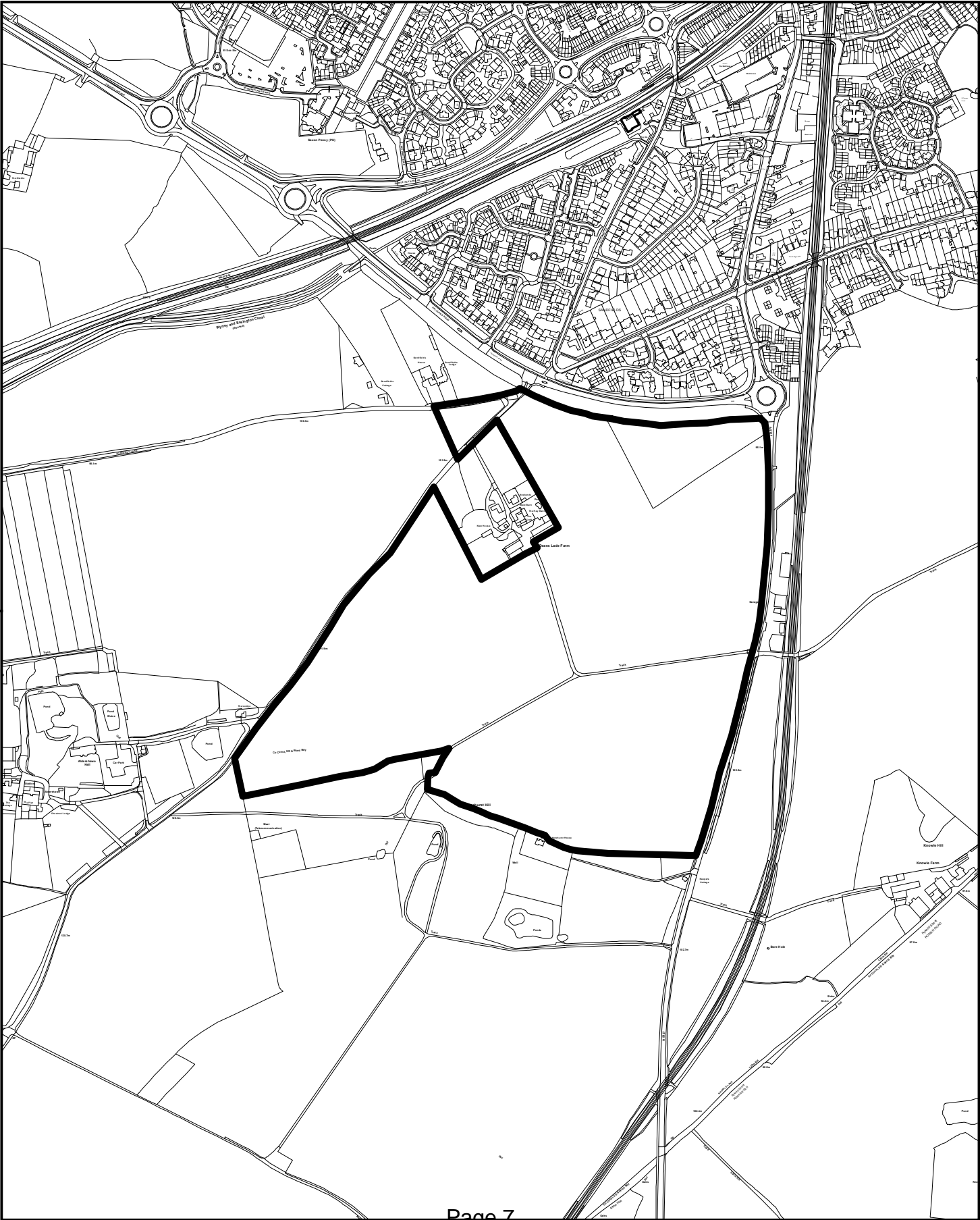
ITEM A

APPLICATIONS FOR DETERMINATION BY COMMITTEE: FULL REPORT

4 March 2019

CONTENTS

Case No.	Site Address	Parish/Town Council
17/01191/OUFMEI	Deanslade Park Land South Of Falkland Road Lichfield	Lichfield



BLOCK PLAN

17/01191/OUFMEI
Deanslade Park
Land south of Falkland Road

Scale:

Dated:

January 2019

Drawn By:

Drawing No:



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17/01191/OUFMEI

HYBRID PLANNING APPLICATION COMPRISING FULL PLANNING APPLICATION FOR THE CONSTRUCTION OF A SUSTAINABLE MIXED USE URBAN EXTENSION COMPRISING OF 475 DWELLINGS, NEW VEHICULAR ACCESS POINTS ONTO CLAYPIT LANE AND BIRMINGHAM ROAD, THE REMODELLING AND FORMATION OF A ROUNDABOUT AT THE JUNCTION OF FOSSEWAY LANE AND CLAYPIT LANE, COMPREHENSIVE GREEN INFRASTRUCTURE INCLUDING UP TO 16.55 HA OF COUNTRY PARK, FOOTPATHS, CYCLEWAYS, MULTIFUNCTIONAL OPEN SPACE INCLUDING CHILDREN'S PLAY AREAS, COMMUNITY ORCHARD, OPEN SPACE FOR INFORMAL SPORT AND SUSTAINABLE URBAN DRAINAGE SYSTEMS, FOUL AND SURFACE WATER DRAINAGE INFRASTRUCTURE INCLUDING BALANCING PONDS, AND OTHER ANCILLARY INFRASTRUCTURE AND GROUND REMODELLING. WITH OUTLINE APPLICATIONS FOR THE SERVICED PROVISION OF 1.09 HA OF LAND FOR A PRIMARY SCHOOL AND 1.9 HA FOR STRATEGIC SPORTS PROVISION WITH ALL MATTERS RESERVED EXCEPT ACCESS

DEANSLADE PARK, LAND SOUTH OF FALKLAND ROAD, LICHFIELD, STAFFORDSHIRE

DEANSLADE PARK CONSORTIUM

Registered on 23/08/17

Parish: Lichfield

Note 1: This application is being reported back to the Planning Committee following the resolution to approve the scheme at the Committee on 2nd July 2018. The resolution was on the basis that the S106 agreement for the development was to be completed by the 2nd November 2018 and that the applicant provide a suitable design solution to resolve objections raised by the Highways Authority, specific to visibility splays, for the vehicular access from Claypit Lane. The S106 agreement is not yet signed so an extension for the completion of the agreement is sought, whilst details of alterations proposed to the internal vehicular and pedestrian routes to address the concerns of the Highway Authority have now been submitted.

This report also addresses concerns raised by the Lichfield & Hatherton Canal Restoration Trust (LHCRT) and Inland Waterways Association (IWA) regarding the processing of the planning application and seeks to clarify matters specific to the inter-relationship between the development and the likely route of the to be restored Lichfield Canal. It should also be noted that the application was to be determined at the Committee meetings on the 17th December 2018 and 14th January 2019, but in each case members resolved to defer the determination to allow time to consider the legal opinions received from the LHCRT.

Note 2: To ensure this report reads more easily for members, the original committee report, previously reproduced on the deferred reports, has now been omitted and a single committee report amalgamating all material planning considerations for this application is detailed below.

Previous Reasons for referral to Planning Committee:

Note 3: This application is being reported to the Planning Committee as it is a Strategic Development proposal which was subject to an Issues Paper. Also the proposal is subject to a S106 agreement, which includes more than 2 obligations.

Furthermore there are also significant planning objections raised by Lichfield City Council on the grounds that:

- there should be a greater number of bungalows within the site,
- the 50mph speed limit on Birmingham Road should be lowered beyond the Travis Perkins site,

- assurances should be given that the Country Park will be open prior to first occupation of any of the dwellings; and
- consideration to be given to grouping the school and sports facility in one location.

RECOMMENDATION:

(1) Subject to the owners/applicants first entering into a Section 106 Legal Agreement under the Town and Country Planning Act (as amended) to secure contributions/planning obligations towards:-

- 1.On-site affordable housing provision.**
- 2.On-site Public Open Space Provision (including Delivery of Country Park)**
- 3.On-site Sports Provision (including changing facilities).**
- 4.Bus Service and Travel Pack Contribution**
- 5.Primary School Education Contribution**
- 6.Travel Plan**
- 7.Off-site highway works**
- 8.Maintenance Management Company**

(2) If the S106 legal agreement is not signed/completed by the 15th April 2019 or the expiration of any further agreed extension of time, then powers be delegated to officers to refuse planning permission based on the unacceptability of the development without the required contributions and undertakings as outlined in the report.

Approve, subject to the following conditions:

CONDITIONS:

- 1 The residential (full) part of the development hereby approved shall be begun before the expiration of three years from the date of this permission.
2. The Primary School and Strategic Sports provision authorised by this permission shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later. Application(s) for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.
3. The Primary School and Strategic Sports provision shall not be commenced until details of the layout of these sites including the disposition of buildings; existing and proposed ground levels and finished floor levels; the design of all buildings and structures; the external appearance of all buildings and structures including materials to be used on all external surfaces; the means of pedestrian and vehicular access and parking layout; and the landscape and planting of the site shall be submitted to and approved by the Local Planning Authority by way of reserved matters application(s).
4. The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.

CONDITIONS to be complied with PRIOR to the commencement of development hereby approved:

5. Before any part of the development hereby approved is commenced, a scheme for the phasing of the development of the site shall be submitted to and approved in writing by the

Local Planning Authority. The phasing plan shall include details of the phasing of the construction of the dwellings, delivery of Green Infrastructure, Primary School and Sports Provision (including changing facilities). The development shall thereafter be undertaken in accordance with the approved phasing plan, unless otherwise agreed in writing by the Local Planning Authority.

6. Before the development of the Primary School or Sports Facility building hereby approved is commenced, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:

- (i) External brickwork;
- (ii) Roof and wall materials;
- (iii) Soffit fascia boards and rainwater goods colour; and,
- (iv) Surfacing materials for any areas of hardstanding.

The development shall thereafter be undertaken in accordance with the approved details and thereafter be retained for the life of the development.

7. Before the development hereby approved is commenced within each phase of the development (as approved by condition 5), a Traffic Management/Construction Vehicle Management Plan and a Construction Phase Management Plan, for that phase of development, comprising the routing of construction vehicles to and from the site, and including the following details, shall be submitted to and approved in writing by the Local Planning Authority:

- i) Access points to be used for the temporary construction of each phase of the development;
- ii) Details of the phasing for closure of temporary access points and strategy for making good the temporary access points.
- iii) Arrangements for the parking of site operatives and visitors;
- iv) Loading and unloading of plant and materials;
- v) Storage of plant and materials used in constructing the development;
- vi) Construction hours;
- vii) Delivery HGV routing and hours;
- viii) Recorded daily inspections of the highway adjacent to the site access;
- ix) Wheel washing and measures to remove mud or debris carried onto the highway; and,
- x) Arrangements to protect any dwellings from noise and dust from the construction of the development.

The approved Traffic Management / Construction Vehicle Management Plan and Construction Phase Management Plan shall be adhered to throughout the entire construction period.

8. Before the development hereby approved is commenced, a revised plan indicating limits of adoption to include the extent of all vehicular visibility splays shall be submitted to and approved in writing by the Local Planning Authority. All vehicular visibility splays shall be provided prior to their first use, kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level and thereafter maintained for the life of the development.
9. Before the development hereby approved is commenced, a Stage 1 Road Safety Audit for the two new vehicular access points and the internal road layout, including any raised table junctions, shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be completed in accordance with any details required as part of the approved Road Safety Audit.

10. Notwithstanding the submitted details, before the residential development hereby approved is commenced within each phase of the development (as approved by condition 5) before the residential development hereby approved is commenced, a detailed landscape and planting scheme (to include a watering schedule) specific to that phase, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme specific to that phase shall thereafter be implemented within twelve months of that phase of development being first brought into use.
11. Before the development hereby approved is commenced, a scheme for protecting the proposed dwellings from noise arising from road, rail and commercial activities within the area, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of noise protection shall thereafter be implemented before the development is first brought into use and shall be the subject of a validation report, which shall first be submitted to and approved in writing by the Local Planning Authority. The validation report shall ensure that all noise issues on the site have been adequately addressed prior to the development being first brought into use. The approved measures shall thereafter be maintained for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.
12. Before any part of the development hereby approved is commenced, within each phase of the development (as approved by condition 5), the application site shall be subjected to a detailed scheme for the investigation and recording of any contamination of the site and a report shall be submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be carried out in full prior to first occupation of the development.
13. Before the development hereby approved is commenced, within each phase of the development (as approved by condition 5), a Site Waste Management Plan, to detail the duration of temporary site waste operations and provide a framework to enable the monitoring of fill operations and waste materials, generated and processed on site, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.
14. Notwithstanding the submitted details before the development hereby approved is commenced, within each phase of the development (as approved by condition 5), drainage plans for the disposal and treatment of foul sewage and surface water drainage for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use or first occupied and thereafter be maintained for the life of the development.
15. Before the development hereby approved, including any site clearance works is commenced, or any equipment, machinery or materials is brought onto site, full details of protective fencing and/or other protective measures to safeguard existing trees and/or hedgerows on the site shall be submitted to and approved in writing by the Local Planning Authority. The agreed tree/hedge protection measures shall thereafter be provided in accordance with the British Standard 5837:2012 and retained for the duration of construction (including any demolition and / or site clearance works), unless otherwise agreed in writing by the Local

Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed from the site.

All other CONDITIONS to be complied with:

16. The boundary treatments shown on approved plan ref. P16-0237_17 Rev H shall be implemented for each dwelling or building, prior to their first occupation or use and thereafter shall be retained for the life of the development.
17. The external materials for the dwellings hereby approved and indicated on the Materials Layout Drawing Number P16-0237_22 Revision I shall be implemented in full accordance with the approved plans. Any proposed change in the external materials to be used shall not be undertaken without the prior written approval of the Local Planning Authority.
18. Pursuant to condition 12, before the first occupation/use of any part of the development, and within 1 month of the approved contamination and remediation scheme being completed, a contaminated land validation report to ensure that all contaminated land issues on the site have been adequately addressed, shall be submitted to and approved in writing by the Local Planning Authority.
19. Before the first occupation of any of the dwellings or buildings hereby approved, within each phase of the development (as approved by condition 5), a scheme of external lighting for that phase, which shall include provision for the Public Open Space, shall be submitted to and approved in writing by the Local Planning Authority. The approved lighting scheme shall thereafter be implemented in full prior to the occupation of the final dwelling or building within that phase and thereafter be retained for the life of the development.
20. The development hereby approved shall only be carried out in accordance with the approved revised Flood Risk Assessment (FRA) dated December 2017 reference number 20965/07-17/3976 Rev C compiled by MEC or as modified and approved by the Local Planning Authority and the following mitigation measures detailed within the FRA;
 - a) Discharging all site surface water to infiltration or to the canal at greenfield runoff rates and not increase the risk of flooding off-site.
 - b) Provision of appropriate volumes of attenuation flood storage on the site to a 100 year +Climate Change standard.
 - c) Finished floor levels are set no lower than 150mm above local ground level.
 - d) Confirm which responsible body will maintain the surface water systems over the lifetime of the development according to an acceptable maintenance schedule and that is achievable.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme.

21. Before the first use of the Primary School or Sports Facility, full details of secure weatherproof cycle parking facilities and shower/locker facilities for residents and staff, shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle parking and shower/locker facilities shall thereafter be provided for the buildings to which they relate, prior to the development being first brought into use and shall thereafter be retained for the life of the development.

22. Before the first occupation of any dwellings hereby approved, the parking and turning areas associated with each respective property shall be provided and thereafter retained for their designated purposes for the life of the development.
23. Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.
24. The development hereby approved shall be carried out in strict accordance with the methods of working, which are detailed in the approved Construction Environment Management Plan / Habitat Management Plan produced by Taylor Wimpey, reference 20135-CEMP dated 19.03.18 and the Landscape and Ecology Management Plan, produced by LDA Design, reference 5721, dated 28th March 2018.
25. The development hereby approved shall be carried out in strict accordance with all recommendations and methods of working detailed within the Ecological Baseline Report, Section 5: Ecology and Biodiversity of the Environmental Statement produced by EDP, dated September 2017 Report Reference EDP2201_06b.
26. Prior to undertaking any vibro-impact works on site, a risk assessment and method statement shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved measures.
27. Before the first occupation of the dwelling to which it relates, a shed shall be erected in the locations indicated on approved plan P16-0237_ 12 Rev X, and thereafter shall be retained for the life of the development.
28. The site compounds hereby approved as shown on approved plan P160237_29 Revision 1 shall be removed from the site and the land altered to the use and appearance as agreed under the requirements of condition 10, within 6 months of completion of the residential properties.
29. Notwithstanding the submitted details, before the first occupation of any of the dwellings within the phase of development that borders the north of the site, adjacent to Falkland Road, as approved by condition 5, full details of a scheme of Green Infrastructure connections, including details of materials and detailed topographic levels, for the area adjacent to the northern boundary of the site, to provide at least 1 pedestrian link up to the boundary of the site, which is to be developed through the delivery of the Lichfield Canal, shall be submitted to and approved in writing by the Local Planning Authority. The footpath(s) so approved shall be completed within the site and installed in accordance with a scheme of delivery to be submitted to and agreed in writing by the Local Planning Authority.
30. Notwithstanding the provisions of Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015; or any Order revoking or re-enacting that Order, no gates, walls, fences or other means of enclosure (except for those approved by this permission) shall be erected within the curtilage of the dwellings, unless planning permission has first been granted by the Local Planning Authority.
31. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, unless specifically agreed pursuant to other conditions

of this permission, no external lighting shall be provided within the application site, without the prior permission of the Local Planning Authority.

32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), (or any Order revoking and re-enacting the Order with or without modification), the garage accommodation hereby approved, shall only be used for the garaging of private cars and for ancillary storage purposes, and shall not be used as additional living accommodation without the prior written permission, on application to the Local Planning Authority.

REASONS FOR CONDITIONS

1. In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended.
2. In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended.
3. For the avoidance of doubt in that the application has been made for outline permission only; to ensure a satisfactory form of development; safeguard the character of the area and safeguard the amenity of future residents in accordance with the requirements of Core Policy 3 and Policies BE1 of the Local Plan Strategy and guidance contained in the National Planning Policy Framework.
4. For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of Policy BE1 of the Local Plan Strategy and guidance contained in the National Planning Practice Guidance.
5. To ensure the appropriate timing of delivery of the Primary School and Sports Provision, in accordance with the requirements of Policy Lichfield 6 of the Local Plan Strategy and guidance contained in the National Planning Policy Framework.
6. To ensure the satisfactory appearance of the development in accordance with the requirements of Policy BE1 of the Local Plan Strategy and the National Planning Policy Framework.
7. In the interests of highway safety and to protect the amenity of existing and future residents, in accordance with the requirements of Policies BE1 and ST2 of the Local Plan Strategy and the National Planning Policy Framework.
8. In the interests of highway safety, in accordance with the requirements of Policy BE1 of the Local Plan Strategy and guidance contained in the National Planning Policy Framework.
9. In the interests of highway safety, in accordance with the requirements of Policy BE1 of the Local Plan Strategy and guidance contained in the National Planning Policy Framework.
10. To ensure that a landscaping scheme to enhance the development is agreed and to mitigate the impact of the development on the setting of Grade II Listed Buildings, in accordance with the provisions of Core Policy 14 and Policies BE1 and NR4 of the Local Plan Strategy, the Historic Environment and Trees, Landscaping and Development Supplementary Planning Documents and the National Planning Policy Framework.

11. To protect the amenity of existing and future residents and secure the on-going operation of the nearby rail line, in accordance with the requirements of Policy BE1 of the Local Plan Strategy and the National Planning Policy Framework.
12. In order to safeguard human health and the water environment and identify potential contamination on-site and the potential for off-site migration in accordance with the requirements of the National Planning Policy Framework.
13. In order to minimise waste generation and encourage on-site waste management, in accordance with Core Policy 3 of the Local Plan Strategy, the Staffordshire and Stoke on Trent Joint Waste Local Plan and the National Planning Policy Framework.
14. To ensure that the development is provided with a satisfactory means of drainage, to minimise the risk of pollution and to ensure that a suitable surface water drainage solution for the future adjacent restored Lichfield Canal is produced, in accordance with Core Policies 3 and 4 and Policies BE1 and Policy Lichfield 6 of the Local Plan Strategy and the National Planning Policy Framework.
15. To ensure that no existing trees or hedgerows on the site, which contribute towards the character of the area are damaged during the construction process, in accordance with the provisions of Policies BE1 and NR4 of the Local Plan Strategy, the Trees, Landscaping and Development Supplementary Planning Document and the National Planning Policy Framework.
16. To ensure the satisfactory appearance of the development in accordance with the requirements of Policy BE1 of the Local Plan Strategy and the National Planning Policy Framework.
17. To ensure the satisfactory appearance of the development and to safeguard the future character and appearance of the site, in accordance with the requirements of Policy BE1 of the Lichfield District Local Plan Strategy and the National Planning Policy Framework.
18. In order to safeguard human health and the water environment and identify potential contamination on-site and the potential for off-site migration in accordance with the requirements of the National Planning Policy Framework.
19. To ensure the satisfactory appearance of the development, to minimise impact upon the rural landscape and to safeguard the amenity of existing and future residents in accordance with the requirements of Policy BE1 of the Local Plan Strategy and the National Planning Policy Framework.
20. To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem, in accordance with Core Policy 3 and Policy NR9 of the Local Plan Strategy and the National Planning Policy Framework.
21. To promote the use of sustainable modes of transportation in accordance with Policy BE1 of the Local Plan Strategy, the Sustainable Design Supplementary Planning Document and guidance contained in the National Planning Policy Framework.
22. In the interests of highway safety and to protect the amenity of existing and future residents, in accordance with the requirements of Policies BE1 and ST2 of the Local Plan Strategy, the Sustainable Development Supplementary Planning Document and the National Planning Policy Framework.

23. To ensure the satisfactory appearance of the development in accordance with the requirements of Policies BE1 and NR4 of the Local Plan Strategy, the Trees, Landscaping and Development Supplementary Planning Document and the National Planning Policy Framework.
24. In order to secure an uplift in the site's habitat value in accordance with Policy NR3 of the Local Plan Strategy, the Biodiversity and Development Supplementary Planning Document and the National Planning Policy Framework.
25. In order to protect protected species and their habitat in accordance with Policy NR3 of the Local Plan Strategy, the Biodiversity and Development Supplementary Planning Document and the National Planning Policy Framework.
26. In the interests of the safe operation of the railway network, in accordance with guidance contained within the National Planning Policy Framework.
27. In order to encourage the use of sustainable modes of transport, in accordance with the requirements of Local Plan Strategy Policy ST1, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
28. To ensure that the approved Open Space, Landscaping and Country Park schemes, which are to enhance the development, are fully implemented and in order to protect the openness of the Green Belt, in accordance with the provisions of Policies BE1, HSC1, NR2 and NR4 of the Local Plan Strategy, the Trees, Landscaping and Development Supplementary Planning Document and the National Planning Policy Framework.
29. To ensure the satisfactory integration of the development with the future route of the to be restored Lichfield Canal, in accordance with the requirements of Core Policies 6, 9, 10, 13 and Policies HSC1, NR6, Lichfield 1, 2 and 6 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
30. To ensure the satisfactory appearance of the development and to safeguard the future character and appearance of the site, in accordance with the requirements of Policy BE1 of the Lichfield District Local Plan Strategy and the National Planning Policy Framework.
31. To ensure the satisfactory appearance of the development and to minimise impact upon the protected species and their habitat, in accordance with the requirements of Policies BE1 and NR2 of the Local Plan Strategy, the Biodiversity and Development Supplementary Planning Document and the National Planning Policy Framework.
32. To ensure that there is adequate parking provision to serve the development in the interests of the safety and convenience of users of the highway, in accordance with the requirements of Policies BE1 and ST2 of the Local Plan Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.

NOTES TO APPLICANT

1. The Development Plan comprises the Lichfield District Local Plan Strategy (2015), saved policies of the Lichfield District Local Plan (1998) as contained in Appendix J of the Lichfield District Local Plan Strategy (2015), the Lichfield City Neighbourhood Plan (2018) and Emerging Local Plan Allocations 2008-2029 Proposed Submission Document.

2. The applicant's attention is drawn to The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017, which requires that any written request for compliance of a planning condition(s) shall be accompanied by a fee of £34 for a householder application or £116 for any other application including reserved matters. Although the Council will endeavor to deal with such applications in a timely manner, it should be noted that legislation allows a period of up to 8 weeks for the Local Planning Authority to discharge conditions and therefore this timescale should be borne in mind when programming development.
3. The applicant's attention is drawn to the comments of the Staffordshire County Council Rights of Way Officer as detailed within their e-mail dated 28th February 2017.
4. The applicant's attention is drawn to the comments of the Council's Operational Services Customer Relations and Performance Manager in their e-mail dated 26th February 2018.
5. The applicant's attention is drawn to the comments of the Staffordshire Fire and Rescue Service as detailed within their e-mail dated 8th September 2017.
6. The applicant is advised to note and act upon as necessary the comments of Network Rail dated 8th March 2018. Where there is any conflict between these comments and the terms of the planning permission, the latter takes precedence.
7. The applicant is advised to note and act upon as necessary the comments of the Staffordshire Police Architectural Liaison Officer dated 1st March 2018 and 16th November 2018. Where there is any conflict between these comments and the terms of the planning permission, the latter takes precedence.
8. The applicant is advised that during the course of development and operation of the approved use no obstruction, prevention of use or diversion of the public footpaths No. 21 Lichfield or No. 7 Wall Parish must occur.
9. The applicant is advised to consider the installation of electric charging points within the driveways of dwellings within the site.
10. The accesses and off-site highway works will require a Major Works Agreement with Staffordshire County Council and the applicants are therefore requested to contact Staffordshire County Council in respect of securing the Agreement. The link below provides a further link to a Major Works Information Pack and an application form for the Major Works Agreement. Please complete and send to the address indicated on the application form which is Staffordshire County Council at Network Management Unit, Staffordshire Place 1, Wedgwood Building, Tipping Street, Stafford, Staffordshire ST16 2DH (or email to nmu@staffordshire.gov.uk)
<http://www.staffordshire.gov.uk/transport/staffshighways/licences/>.
11. This consent will require approval under Section 7 of the Staffordshire Act 1983 and also require a Section 38 approval of the Highways Act 1980. The applicant is advised therefore to contact Staffordshire County Council to ensure that approval and agreements are secured before the commencement of development.
12. Any soakaway should be located a minimum of 4.5m to the rear of the highway boundary.
13. Please be advised that Lichfield District Council adopted its Community Infrastructure Levy (CIL) Charging Schedule on the 19th April 2016. A CIL charge will apply to all relevant applications determined on or after the 13th June 2016. This will involve a monetary sum

payable prior to commencement of development. In order to clarify the position of your proposal, please complete the Planning Application Additional Information Requirement Form, which is available for download from the Planning Portal or from the Council's website at www.lichfielddc.gov.uk/cilprocess.

14. During the course of the application, the Council has sought amendments to the proposals to ensure a sustainable form of development, which complies with the provisions of paragraph 38 of the NPPF.

SUMMARY OF REASONS FOR GRANTING Outline and Full Planning Permission including DEVELOPMENT PLAN POLICIES that were relevant in the determination of this application:

The decision to approve outline and full planning permission has been taken because the Council is satisfied that on balance, the development will integrate successfully into the character of the area, successfully mitigate or improve its highway, arboricultural or ecological impact and would not adversely affect the special character and setting of nearby Listed Buildings, or the amenity of nearby residents. The concerns raised by consultees and others have furthermore been given due consideration and on balance, it is considered that subject to conditions and a S106 legal agreement, the proposals are acceptable and conform to the provisions of the Development Plan

The decision to approve outline and full planning permission has also been taken having regard to all the relevant material planning considerations and to the following relevant policies and proposals of the Development Plan: Core Policy 1 (The Spatial Strategy), Core Policy 2 (Presumption in Favour of Sustainable Development), Core Policy 3 (Delivering Sustainable Development), Core Policy 4 (Delivering our Infrastructure), Core Policy 5 (Sustainable Transport), Core Policy 6 (Housing Delivery), Core Policy 7 (Employment and Economic Development), Core Policy 8 (Our Centres), Core Policy 10 (Healthy and Safe Lifestyles), Core Policy 11 (Participation in Sport and Physical Activity), Core Policy 12 (Provision for Arts and Culture), Core Policy 13 (Our Natural Resources), Core Policy 14 (Our Built and Historic Environment), Policy SC1 (Sustainability Standards for Development), Policy SC2 (Renewable Energy), Policy IP1 (Supporting & Providing our Infrastructure), Policy ST1 (Sustainable Travel), Policy ST2 (Parking Provision), Policy H1 (A Balanced Housing Market), Policy H2 (Provision of Affordable Homes), Policy HSC1 (Open Space Standards), Policy NR3 (Biodiversity, Protected Species and their Habitats), Policy NR4 (Trees, Woodlands and Hedgerows), Policy NR5 (Natural and Historic Landscapes), Policy NR6 (Linked Habitat Corridors & Multi-functional Greenspaces), Policy NR7 (Cannock Chase Special Area of Conservation), Policy BE1 (High Quality Development), Policy Lichfield 1 (Lichfield Environment), Policy Lichfield 3 (Lichfield Economy), Policy Lichfield 4 (Lichfield Housing), Policy Lichfield 6 (South of Lichfield), Saved Local Plan Policy C2 (Character of Conservation Areas), the Sustainable Design, Trees, Landscaping and Development, Developer Contributions, Biodiversity and Development, Historic Environment and Rural Development Supplementary Planning Documents and Policies 3 and 9 of the Lichfield City Neighbourhood Plan.

PLANNING POLICY

National Guidance

National Planning Policy Framework
National Planning Practice Guidance
National Policy for Waste
Manual for Streets

Lichfield District Local Plan Strategy (2015)

Core Policy 1 – The Spatial Strategy
Core Policy 2 – Presumption in Favour of Sustainable Development
Core Policy 3 – Delivering Sustainable Development
Core Policy 4 – Delivering our Infrastructure
Core Policy 5 – Sustainable Transport
Core Policy 6 – Housing Delivery
Core Policy 7 – Employment and Economic Development
Core Policy 8 – Our Centres
Core Policy 9 – Tourism
Core Policy 10 – Healthy and Safe Lifestyles
Core Policy 11 – Participation in Sport and Physical Activity
Core Policy 12 – Provision for Arts and Culture
Core Policy 13 – Our Natural Resources
Core Policy 14 – Our Built and Historic Environment
Policy SC1 – Sustainability Standards for Development
Policy SC2 – Renewable Energy
Policy IP1 – Supporting & Providing our Infrastructure
Policy ST1 – Sustainable Travel
Policy ST2 – Parking Provision
Policy H1 – A Balanced Housing Market
Policy H2 – Provision of Affordable Homes
Policy HSC1 – Open Space Standards
Policy NR3 – Biodiversity, Protected Species and their Habitats
Policy NR4 – Trees, Woodlands and Hedgerows
Policy NR5 – Natural and Historic Landscapes
Policy NR6 – Linked Habitat Corridors & Multi-functional Greenspaces
Policy NR7 – Cannock Chase Special Area of Conservation
Policy BE1 – High Quality Development
Policy Lichfield 1 – Lichfield Environment
Policy Lichfield 2 – Lichfield Services and Facilities
Policy Lichfield 3 – Lichfield Economy
Policy Lichfield 4 – Lichfield Housing
Policy Lichfield 6 – South of Lichfield

Saved Local Plan Policies (1998)

Policy C2 – Character of Conservation Areas

Local Plan Allocations (Focused Changes) (Emerging)

Policy IP2: Lichfield Canal
Policy ST3: Road Line Safeguarding
Policy BE2: Heritage Assets

Supplementary Planning Documents

Sustainable Design
Trees, Landscaping and Development
Developer Contributions
Biodiversity and Development
Historic Environment
Rural Development

Lichfield City Neighbourhood Plan

Policy 3: Primary Movement Routes.

Policy 9: Views of Lichfield Cathedral

Other

Staffordshire and Stoke on Trent Joint Waste Local Plan

Lichfield Centres Report 2017 (WYG / White Land Strategies)

Historic England's General Practice Advice

CIL Regulation 123 List

Infrastructure Delivery Plan

Lichfield Surface Water Management Plan

RELEVANT PLANNING HISTORY

17/00977/OUFMEI – Outline application with all matters reserved except access for a flexible commercial development of up to 2000 sq. m area (classes A1, A2, A3, B1, D1 and D2), associated parking areas, new access on to the Birmingham Road, provision of strategic landscaping, cycle and pedestrian access routes, infrastructure and other operations including the safeguarding of land for the Lichfield southern bypass and safeguarded route for the Lichfield canal – Approved – 30.10.18.

AB950012_1 – Agricultural determination – Hay and agricultural; machinery store – No objection – 01.11.95.

L3051 – Golf Course and Sporting Complex – Refused – 14.03.77.

CONSULTATIONS

Lichfield City Council – Additional documentation has been received by the District Council concerning this application, but the City Council have not been informed. Request clarification why consultation has not occurred and request that consideration be given to deferring the item from the planning agenda (11.01.19).

Previous Comments: Recommend refusal as the issues previously raised have yet to be addressed, namely the provision of a greater number of bungalows within the site, reviewing the 50mph speed limit on Birmingham Road, to consider a lower limit extending beyond the Travis Perkins site; assurances that the Country Park will be open prior to first occupation of any of the dwellings and consideration to be given to grouping the school and sports facility in one location. Keen to see hedgerows retained and request an amendment to the planning conditions to address the ongoing issues regarding the construction of the bridge (23.11.18).

Recommend refusal as the issues previously raised have yet to be addressed, namely the provision of a greater number of bungalows within the site, reviewing the 50mph speed limit on Birmingham Road, to consider a lower limit extending beyond the Travis Perkins site; assurances that the Country Park will be open prior to first occupation of any of the dwellings and consideration to be given to grouping the school and sports facility in one location (12.03.18).

No objection subject to consideration of including a greater number of bungalows; reviewing the 50mph speed limit on Birmingham Road, to consider a lower limit extending beyond the Travis Perkins site; assurances that the Country Park will be open prior to first occupation of any of the dwellings and consideration to be given to grouping the school and sports facility in one location (12.01.18).

No objection subject to consideration of including a greater number of bungalows; reviewing the 50mph speed limit on Birmingham Road, to consider a lower limit extending beyond the Travis Perkins site; assurances that the County Park will be open prior to first occupation of any of the dwellings and consideration to be given to grouping the school and sports facility in one location (19.09.17).

Wall Parish Council – The revised details raise further concerns. The traffic projections identified within the submitted documentation, to Wall Island are considered to significantly underestimate the schemes impact. The Council does not accept that the addition of part-time peak am-pm traffic signals on the A5127 onto Wall Island will mitigate congestion caused by these movements, rather it will cause additional delay.

No measures are proposed to mitigate the additional flows northbound onto the A5127 from Wall Island, which is not acceptable, given this junction is already operating at capacity. Considerable remodelling of the Wall Island junction is required to accommodate increased traffic flows.

The traffic surveys fail to consider the likely use of Claypit Lane and Ashcroft Lane as a rat run to access the site from Claypit Lane and gain access away from the site to past the Wall Island junction. Require conditions to be attached to any approval specific to the submission of comprehensive traffic modelling for the extra traffic flows on Claypit Lane / Ashcroft Lane, a roundabout junction access being formed on the A5127 instead of a T junction, the deletion of the roundabout junction onto Claypit Lane and instead providing a roundabout junction from Falkland Road and the provision of substantial traffic calming, speed restrictions, or the closure of Claypit Lane (05.01.18).

Previous Comments: The traffic surveys fail to consider the likely use of Claypit Lane and Ashcroft Lane as a rat run to access the site from Claypit Lane. To address this issue substantial traffic calming, speed restrictions or possibly the closure of Claypit Lane should be a condition of any approval for the development. When Claypit Lane was closed during the construction works for Falkland Road no adverse impact upon highway users was experienced.

The T junction onto Birmingham Road is inadequate for the number of houses proposed and will lead to congestion to the A5127, thereby increasing the use of Claypit Lane. A roundabout junction is instead required in this location and should be a condition of any approval (04.10.17).

Shenstone Parish Council – Object as the development will increase the volume of traffic moving along Claypit Lane and Ashcroft Lane. The applicant's Transport Assessment makes no assessment of the current or projected volumes of traffic moving along these roads. This is a significant omission given that the roundabout access into the site from Claypit Lane, in combination with congestion issues along the A5127, will exacerbate the use of these rural lanes as a 'rat run'. To address this issue a four arm roundabout should be located directly off Falkland Road rather than Claypit Lane and the speed limit along Claypit Lane should, from the junction with Falkland Road to Aldershaw, be reduced to 40mph. Thereafter through Aldershaw the limit could be 30mph, increasing once more to 40mph between Aldershaw and Wall, then reducing once more passing through this village. Suitable signage will be required to advise motorists of these limit changes (18.10.17).

Lichfield Civic Society – Aspects of the design fail to fully meet the aims of the site's allocation and design concepts. For instance, the District Park, which is to provide a large new area of open space for new and existing residents, has been designed to be only accessible by cars travelling through the site, whereupon inadequate dedicated car parking is provided. Seeking to restrict or limit access by car users is inconsistent with the intended purpose of the allocation. Furthermore, the strategic sports site is also only accessible through the site. Both of these areas should have their own dedicated vehicular access. No attempt is made to retain the hedgerow, which is an important

characteristic of the A5127. The unduly cramped and unattractive configuration of the affordable housing should be improved, whilst car parking provision within the site should be altered to be integrated throughout the site more successfully.

No reference is made within the draft S106 agreement to the timing of delivery of the open space, play areas, street lighting, highway and sewer adoption and delivery of bus stops and shelters. Given the developer's record of accomplishment on Darwin Park, these matters should be addressed by legally binding commitments to ensure their delivery at appropriate times within the building project.

The site owner should be a member of the Maintenance Management Company established to maintain the public open space, including the country park within the site, to ensure that public access remains available indefinitely.

Further consideration needs to be given regarding the impact of the development on wider networks, with works undertaken as necessary via funding secured for improvements to secure safe routes into the City Centre for pedestrians and cyclists. For instance, crossing points will be required on Birmingham Road and Falkland Road, whilst the agricultural crossing over the Cross-City Line should be enhanced to allow for pedestrian and cycle links to the neighbouring St Johns development. Furthermore, a contribution should be gathered to aid in the delivery of the Lichfield Southern bypass and the provision of a canal bridge over Claypit Lane.

The developer will need to fund bus services into the site as current provision within this area is insufficient or too remote to offer a viable alternative to private transport.

The extensive use of private drives and shared spaces, appears excessive and would seem to be being utilised in order to reduce costs, so that such do not need to be built to an adoptable standard.

It is not clear whether the development will provide for sufficient off street and on street car parking to meet the needs of businesses for deliveries, maintenance services for households or unobstructed access for buses or emergency vehicles. Therefore recommends that more generous provision for visitor parking be introduced. Finally recommend that electric charging points for vehicles be included within the development.

Further clarification regarding the boundary treatment for the urban edge transition is required, whilst the car parking provision across the site should be reconsidered so as to not result in streets with significant frontage parking, which in combination with stored bins will have a detrimental visual impact.

Adequate car parking provision should be provided to enable drop off and collection of students from the primary school, whilst the design of this area should be fully considered to ensure the usability of the space.

Consideration of securing appropriate community facilities across this site, St Johns and Cricket Lane should be given (06.10.17).

South Derbyshire District Council – No comments (03.01.18).

North Warwickshire Borough Council – No comments (14.02.18, 13.12.17, 07.09.17).

Tamworth Borough Council – No objections (21.09.17).

Cannock Chase District Council – No comment (21.12.17, 18.09.17).

East Staffordshire Borough Council – No objections (30.04.18, 11.04.18, 28.02.18, 03.01.18, 22.09.17).

North West Leicestershire District Council – No objections (19.03.18).

Planning Casework Unit – No comments (04.10.17).

Spatial Policy and Delivery Manager – Notes that the application illustrates an amendment to the dwelling mix from previous submitted plans, through the increase of four bed dwellings by one and a decrease in three bed dwellings by one.

With regard to the letter received on the 6th November 2018 from Eversheds Sutherland which provides a response on behalf of the applicant to correspondence submitted to the Council from Lichfield and Hatherton Canal Restoration Trust Limited dated the 2nd October 2018. It is the view of Spatial Policy and Delivery Team that the policy summary offered is accurate and that the position articulated in regard to funding and delivery is also correct. In particular agreement is reached in regard to the position articulated within paragraphs 7 and 9 of the letter which concludes that CIL is the appropriate route in regard to off-site developer obligations (14.11.18).

Previous Comments: In response to the letter submitted by Eversheds Sutherland it is noted that in accordance with the requirements of Local Plan Strategy Policy H2, the level of affordable housing provision required within this development is 37% (30.11.17).

Further to the submission of the Canal Clarification Note reiterates the requirement established by the Local Plan Strategy that the Lichfield & Hatherton Canal route be safeguarded within this development (30.11.17).

Given that the site lies within the 8-15km zone of influence of the Cannock Chase SAC, no financial contribution would be sought (03.10.17).

The application falls within an area allocated for housing growth within the District by the Local Plan Strategy. As such there is strong support for the proposal. However the current affordable housing provision (31%) does not comply with the requirements of Local Plan Strategy Policy H2 and as such the scheme should be amended accordingly (37%). Furthermore, given that Policy HSC1 requires that the site deliver allotments and no such provision is offered, rather a community orchard is proposed, further clarification is required regarding both the operation and management of this infrastructure before a decision regarding its acceptability can be made (28.09.17).

Arboricultural Officer – No objections to the revised plans, however, the landscape specification fails to include details of watering and maintenance works for the trees/shrubs. Additionally, the General Notes accompanying the landscaping scheme states that, 'No substitutions will be acceptable without the prior written approval of the landscape architect'. In order to maintain the integrity of the scheme, the note will need to be amended to read: 'No substitution will be acceptable without the prior written approval of the Local Authority and the Landscape Architect' (03.12.18 / 11.12.18).

Previous Comments: Provides comments on the suitability of the on-plot landscaping providing a number of recommendations in order to improve the scheme as submitted (11.05.18).

Substantial issues remain unaddressed with regard to the latest submitted plans. The on plot landscaping details are very poor and therefore a revised approach is required to this element of the scheme. This matter could however be addressed via the use of a notwithstanding the submitted details condition if required.

A number of further issues regarding the stock type of the trees, the over reliance on small scale tree planting and the lack of details within the maintenance schedule detailed. Further advice provided in order to enhance landscaping provision throughout the site (25.04.18).

The confirmation afforded by the submitted plasticity index that there is no shrinkable soil within the site will allow for larger trees to be planted within the forthcoming amended planting scheme.

The planting scheme proposed adjacent to the new roundabout at Claypit Lane requires amendment to include Common Lime trees, which are considered appropriate to the character of the area. The present scheme is considered unsuitable and would result in an objection in principle.

Further consideration is required for the watering schedule for trees to be planted throughout the site, along with soil details for the Country Park. The Community Orchard should be maintained by an experienced person in fruit tree pruning (22.03.18).

Requests further information pertaining to soil type data and the delivery of the strategic planting areas. The submitted maintenance schedule would be improved by specifying the number of visits per year, whilst a condition will likely be recommended to secure the site's appropriate management.

Appropriately large trees along with suitable pit design to be considered and planned as part of the current application to ensure no future conflict with the routing of services. The schedule of trees continues to require revision along with the introduction of further scattered tree planting within the Country Park. Consideration to be given to the use of stock fencing. Lastly the on-plot planting requires significant improvement and addition to ensure successful integration with the strategic landscaping and meeting the Local Plan Strategy requirement of 20% canopy cover (24.01.18).

The tree species list is insufficiently broad, whilst no detailed maintenance schedule has been provided. There is little tree provision within the housing plots, whilst further planting is possible within certain public open space areas, which prevents the development from attaining the 20% canopy cover required by the Trees, Landscaping and Development SPD. The hedge planting mix does not reflect the site's context.

The Community Orchard is supported, however ownership of the project is critical and a firm commitment to funding of the scheme along with a detailed management plan will be required. The green areas to be formed within the site should be protected during construction works to preserve soil quality. The number of trees within the Country Park should be significantly increased (25.09.17).

Ecology Officer – No further comments to those previously raised (21.12.18 / 28.11.18).

Previous Comments: Satisfied with the information contained within the submitted CEMP / HMP and recommends that the development be carried out in accordance with these documents, which should be secured via condition. Recommends a further condition to ensure the development is undertaken in accordance with the recommendations contained within the Ecological Baseline Report. Finally advises of the need to secure a sensitive lighting scheme to minimise impact upon bats (18.05.18).

No objection. Advises that the development would be unlikely to impact upon European Protect Species or their habitat, subject to appropriate measures of avoidance, mitigation and compensation being implemented, as detailed within the submitted Ecological Baseline Report and Ecology Management Plan.

Notes that the site will deliver an 18.35 Biodiversity Unit net gain, equalling an improvement of some 23.6%. The development therefore complies with the requirements of Policy NR3 and the Biodiversity and Development SPD.

Requires that the applicant submit a Construction Environment Management Plan (CEMP) and a Habitat Management Plan (HMP) to demonstrate that the habitat creation works will be successful in achieving the required habitat type and condition (01.03.18).

Considered the quantitative data submitted via the Biodiversity Impact Calculator (value of 79.84 units) is an accurate depiction of the site value. The Calculator is also accurate in detailing the likely achievable positive biodiversity value post development of 18.35 units. However notes inaccuracies in the grassland habitat proposed to be formed within the Country Park and therefore requires that the description and management of this area be changed in the Landscape and Ecology Management Plan prior to determination. Requests clarification regarding the ability to secure a lowland meadow within the Country Park (02.01.18).

Notes that further information will be submitted in due course in respect of ecology and protected species. As such formal comments will be provided on submission (21.09.17).

Natural England – No objection (21.11.18 / 07.11.18/ 07.12.18).

Previous Comments: Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the Cannock Chase SAC has been designated and therefore offer no objection (12.10.18).

No objection subject to a suitable developer contribution being secured to mitigate the impact of the development upon the Cannock Chase Special Area of Conservation.

Advice given specific to Landscape Impact, Agricultural Land and Soil, Protected Species and Habitats, Ancient Woodland, Environmental Enhancement, Access and Recreation, Rights of Way and Biodiversity Duty (26.02.18, 03.01.18, 02.10.17).

Conservation and Urban Design Manager – No objection. The amended materials plan and the revised boundary details are acceptable (18.12.18).

Previous Comments: The material details are acceptable (12.12.18).

No objections. The revised layout continues to show dwelling facing directly onto Claypit Lane thereby introducing an active frontage to the site and also now through the revisions being proposed allowing for the retention of the existing hedgerow (21.11.18).

The materials shown on the latest Material Plan are acceptable (19.06.18).

The use of Ibstock Himley Worcester Mixture and Ibstock Alderley Orange bricks are acceptable. The Ibstock Alderley Mixture bricks is a potential alternative to the Alderley Orange but the uniform colour of the Orange makes it a better choice. The Ibstock Dorket Head Balmoral brick is unacceptable (06.06.18).

The use of Mercia Orange multi bricks is acceptable. Ibstock Mercia Antique and Hardwick Red Mixture are not characteristic of the area and as such are unacceptable. The two proposed detail bricks are acceptable (21.05.18).

No further comments to make on the amended landscaping details (24.04.18).

Improved articulation of the rear elevation of the apartment building is required. The close boarded fence to the rear of plots 41, 43-47 should be altered to a brick wall. Weinerberger Sandwell Road and Weinerberger Caldera Red bricks are unacceptable for use within the development.

The details of mitigation for the landscaping area adjacent to the Claypit Lane roundabout is sufficient for Conservation purposes, although suitability of the planting scheme will be determined by the Council's Arboriculturalist (05.04.18).

Notes a number of concerns regarding the design of scheme, specifically the siting of 2 ½ storey dwellings adjacent to bungalows and the utilisation of timber fencing to publically visible edges where brick walls should be used. Improvements undertaken to design of apartment block and eave detailing throughout the house type pack.

Concurs with the conclusion of the EIA Addendum position paper that the development will cause less than substantial harm to the setting of the and significance of surrounding listed buildings. The mitigation proposed via the landscaping scheme identified for adjacent to the roundabout junction is acceptable in principle but further details are necessary to fully assess the effectiveness of the level of screening to be provided (06.03.18).

Notes a number of concerns regarding the design of the scheme, specifically the siting of 2 ½ storey dwellings adjacent to bungalows, the density of development along the Birmingham Road frontage, the lack of information pertaining to the open space area to the front of Sandfields Lodge and Sandfields House and the design of the dwellings, which lack local reference, with improved eave, window and roof detailing required. In addition, the apartment block requires greater elevation articulation and the proposed materials require amendment with the Sandwell Red Multi bricks inappropriate for this area. Brick walls should solely be used to public boundaries.

The Technical Appendix fails to appropriately consider the impact of this development upon the setting of the Grade II Listed Sandfields Lodge and Sandfields House (02.01.18).

The application has undertaken inadequate assessment of the development's impact upon setting of the Grade II Listed Sandfields Lodge. The Technical Assessment also incorrectly sites Sandfields Pumping Station as being Grade II Listed when it is Grade II*. The Heritage Assessment therefore should be amended and consideration and appropriate weight attributed to the harm caused to the setting of these Listed Buildings (14.12.17).

The amended house type plans lack discernible architectural style, including an under provision of chimneys. The use of multiple small paned windows is inappropriate, whilst the improved alignment of ground and first floor windows should be considered. Assessment of proposed materials provided advising of need for further consideration (13.11.17).

Notes that there are a number of inaccuracies within the submitted plans that need to be resolved prior to determination. The layout of the site should be amended to increase the number of taller buildings along Falkland Road, facing onto the future canal route. The scheme currently lacks strong entrance features, with the walls proposed to form such from Birmingham Road not suitable for this type of development and rather more suited to a commercial or office development. The buildings located at key corner plots need to offer active frontages to both adjoining roads.

There are 12 drop off spaces currently shown to the front of the school. Further consideration of this area to ensure that sufficient provision is provided ensuring drives will not be blocked off at drop off and pick times necessary.

Site permeability is good but there are concerns regarding surveillance of LAPs and NEAPs and the pedestrian / cycle route. Notes concerns regarding the road layout to the fore of the school.

Further comments made regarding the design matters specific to general layout, landscaping, parking provision, boundary treatments and house type architectural details, with a need to introduce further relief and articulation, with chimneys to improve the roofscape and greater articulation of front elevations, possibly by incorporating features such as porches, bay windows and steeping of the building line (21.09.17).

Environmental Health Manager – No comments (07.01.19).

Previous Comments: Chapter 9 of the Environmental Statement relating to noise is generally accepted. Noise which may affect current and proposed nearby dwellings have been considered both during the construction phase and post construction. Recommendations are made around acoustic fencing and glazing, but specific details are yet to be determined. Therefore recommends two conditions requiring the submission and approval, prior to the commencement of development, of a noise mitigation strategy for the proposed dwellings and a construction phase management plan.

The proposal has the potential to cause loss of amenity to dwellings due to the lighting scheme for the development, particularly around the sporting facilities, once determined. Recommends the use of a standard lighting condition.

A survey of potential contamination has been undertaken across this site. This has identified issues relating to a low residual effect from landfill gas. The report recommends additional assessment is carried out in the affected areas and in areas that were inaccessible at the time of the original investigation. Therefore, recommends the inclusion of the standard Contaminated Land condition.

The impact on air quality associated with the development has been considered. Dust associated with construction is suggested to be controlled by way of a condition (along with noise). Much of the impact following completion of the developments relates to the use of vehicles associated with the occupiers of the development and this will impact upon the Air Quality Management Areas (AQMAs) of Muckley Corner and A38 Fradley, though the impact will be in the range of 0 to 0.4% and therefore the overall significance of the proposal is judged to be insignificant. Staffordshire Authorities including Lichfield are currently working on an Air Quality guide for developers, though this has yet to be introduced. In the interim, whilst a number of proposals will have a positive impact on air quality, it is recommended that the applicant considers the future use of electric vehicles by residents on the development and installs appropriate infrastructure, which supports this in dwellings, especially in view of the fact that many will not use their garage to charge an electric vehicle (i.e. consider external driveway charging points) (04.12.18 / 10.05.18).

Operational Services Manager – Provides detail of the requirements for the storage and disposal of residential waste. Notes that there are a number of private drives within the development and unless indemnity is given the Council will not take vehicles onto unadopted roads (05.11.18 / 26.02.18, 13.12.17, 04.09.17).

Housing and Wellbeing Manager – The provision of 176 (37%) dwellings within the development is Policy compliant.

The development as a whole proposes 3% (15) 1 bed, 40% (192) 2 bed, 40% (192) 3 bed and 16% (76) 4 and 5 bed homes, which is broadly reflective of the mix required by Local Plan Strategy Policy H2. There is significant demand for housing for older people within the District and the provision of bungalows within the development is welcomed, although ideally further provision should be included.

The affordable housing split of 55% social rented units and 45% shared ownership is acceptable, whilst the design of these dwellings should be indistinguishable and mixed within the market sale

properties. On the submitted layout the dwellings are well dispersed. From a public health viewpoint the development and site is considered to be sustainable (21.03.18).

Requires that 37% of the dwellings be affordable. Notes that the site's overall housing mix is broadly compliant with the requirements of Local Plan Strategy Policy H2. The affordable housing mix however is not compliant, with an overprovision of 2 bedroom dwellings. Requires that the affordable housing tenure split must be 65% social rented and 35% intermediate including shared ownership. The affordable housing has been appropriately distributed across the site (03.10.17).

Previous Comments: Given the date when pre-application guidance was provided requires that 31% of the units be affordable (147 units). Notes that the site's overall housing mix is broadly compliant with the requirements of Local Plan Strategy Policy H2. The affordable housing mix however is not compliant, with an overprovision of 2 bedroom dwellings. Requires that the affordable housing tenure split must be 65% social rented and 35% intermediate including shared ownership. The affordable housing has been appropriately distributed across the site (20.09.17).

Staffordshire County Council (Minerals and Waste) – No comments (14.02.18).

Previous Comments: No objection, subject to conditions to define the duration of the infill operations and ongoing monitoring of waste materials generated and reused on site (20.09.17).

Network Rail – Notes that to the west of the development is a mothballed railway line, which will not be directly impacted upon by this development. However HGV movements associated with the construction of the site have the potential to impact upon railway structures and as such consultation between the developer and the Asset Protection Engineers should be undertaken. Recommend that consideration be given to appropriate noise and vibration mitigation measures, given the site's proximity to the active Cross City railway line. If vibro compaction / piling machinery or ground treatment works are undertaken, details should be submitted to the Network Rail Asset Protection Engineer for approval. The applicant must ensure that any drainage scheme should not increase Network Rail's liability, cause flooding or soil slippage, vegetation or boundary issues on railway land. Finally recommends that before granting planning permission, the Local Planning Authority and Highways Authority should ensure that the development is acceptable and can be wholly built in the event that the southern bypass is delayed or not delivered (06.03.18).

Highways England – No objection. Following the issuing of previous responses further advice has been received from the Department for Transport regarding the interpretation of traffic arising from committed developments. The advice details that mitigation should only be sought for traffic from committed developments at the time of opening, rather than when they are fully built out. Utilising this approach, based on the figures identified within the submitted reports, it is concluded that it would not be reasonable to require this application to deliver any mitigation scheme (17.05.18).

Previous Comments: Confirm following the receipt of further information that their previous recommendations remain applicable. It is for the developer to identify an appropriate lesser mitigation scheme, but currently the S106 request is unchanged as is the trigger point for the collection of S106 monies of prior to the occupation of the 50th dwelling. Should the applicant wish to alter this to the 250th dwelling further traffic modelling analysis will need to be submitted (18.04.18).

No objection subject to conditions. The applicant has proposed a number of mitigation measures to the Wall Island roundabout junction consisting of:

- Signalisation of Birmingham Road N (southbound) onto the gyratory;
- Flare increase at the A5 West (eastbound),
- Closure of the westbound circulatory section of the roundabout;

- Re-alignment of the northbound circulatory and inclusion of an additional lane; and
- Removal of the southern signals (those northbound over the bridge and on the westbound circulatory section of the roundabout); and
- Adjustments and optimisation of signal timings.

At the A5 Wall Island southern roundabout, the applicant's proposed mitigation consists of:

- Signalisation of the A5 westbound approach and associated section of the circulatory; and
- Adjustments and optimisation of signal timings.

The works will need to be implemented prior to the occupation of the 50th dwelling. Prior to the implementation of any works, a Road Safety Audit, Walking, Cycling and Horse-Riding Assessment and Review and approval for any departures from Standard processes must be completed and agreed in writing by the Local Planning Authority.

In addition require a Section 106 agreement to secure a financial contribution to be paid, prior to the commencement of development, for an equivalent value of the mitigation strategy, should the works not be implemented by the applicant in accordance within the identified timeframe (07.03.18).

The revised submitted information relates to house types, internal layout and certain EIA matters and therefore the holding recommendation remains (15.02.18).

Recommend that the application not be determined for a period of 3 months to allow for time for further information, regarding the development's impact upon the strategic highway network, to be submitted. Specifically concern raised regarding the impact of the development on the A5 Wall Island Junction. The submitted information details a slight traffic increase at AM Peak and an increase of approximately 28% at peak PM. Given the increase in queueing, mitigation is required to manage demand. The mitigation proposed by the applicant, a variable traffic signal system will need to be fully assessed, by the applicant, prior to agreement (19.12.17).

Recommend that the application not be determined for a period of 3 months to allow for time for further information, regarding the development's impact upon the strategic highway network, to be submitted (20.09.17).

Staffordshire County Council (Highways) – No objection, subject to conditions requiring that prior to the commencement of development details of a Construction Vehicle Management Plan, the limits of highway adoption, a Stage 1 Safety Audit and Highways Works Agreement for the two new access points and internal road layout and details of secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority.

Further conditions requiring the closure of temporary Construction Access Points concurrent with the opening of the two main access points, the retention of garaging for the parking of vehicles and the provision and subsequent retention of parking and turning areas are recommended (12.12.18).

Previous Comments: The Travel Plan is acceptable and suitable for appending to the S106 agreement (05.12.18).

The proposed site access and external works to Claypit Lane do not preclude the construction of a bridge for the proposed route of the Lichfield and Hatherton Canal. Visibility splays onto Falkland Road, calculated from vehicle speeds at the time of a future application, would be required for any structure adjacent to the highway. However, in principle these could be accommodated by the location and/or design of the bridge parapet at detailed design stage (28.11.18).

Requests amendments to the wording of the Travel Plan (28.11.18).

The pedestrian access to the front of plots 47-53, is proposed via the footpath alongside the sports area, which is considered to be a convoluted and long route. This would likely encourage direct access on foot from Claypit Lane, which is considered dangerous. This layout could also cause confusion and delays to emergency services. No swept path drawing demonstrating that an 11.9m refuse vehicle could service plots 47-53 has currently been provided (08.11.18).

Following receipt from the applicant of the Speed Survey results for Claypit Lane, it is clear that the necessary vehicular visibility splays (in the region of 2.4 X 90m) cannot be accommodated within the red line boundary or land within the highway. Therefore, three options are available to resolve this matter:

1. Amend the housing layout so that plots 47-51 have vehicular access from within the development;
2. The applicant obtains ownership of third party land to accommodate the required visibility splays; or
3. Introduce physical measures and a Traffic Regulation Order to reduce speeds. It should be noted that the outcome of a Traffic Regulation Order cannot be guaranteed and therefore this approach cannot be conditioned. (29/6/18).

No objection, subject to conditions requiring, prior to the commencement of development, the submission and approval by the Local Planning Authority of a Construction Vehicle Management Plan, a Stage 1 Road Safety Audit, a Highways Work Agreement for the 3 new access points and off-site highway works and agreement of appropriate cycle parking facilities. The Temporary Construction Access points shall be closed concurrent with the opening of the two new site access points, the garages shall remain for domestic use and finally prior to the first occupation of any dwelling, the associated parking and turning area shall be provided and thereafter retained for their designated purposes (15.06.18).

Previous Comments: Many of the original issues have now been addressed. There remains a need to agree a Travel Plan along with a monitoring sum of £6,430, which should be included in the S106 agreement. Further consideration required of internal road junctions and their visibility splays, whilst no swept paths have been submitted for the residential access from Claypit Lane to serve plots 47-51. A Road Safety Audit is required for the internal road layout. An amended TRO is required to extend the 40mph limit on Birmingham Road to the west, whilst the same will apply for Claypit Lane. Further comments made regarding the siting of some parking bays, footpath provision and block paving use. Further details of the highway design for the Primary School site required along with details of cycle storage for the wider development. Measures to improve pedestrian and cycle connectivity offered. The construction access is considered acceptable subject to a condition limiting the timescale of use (08.03.18).

A review of the submitted Transport Assessment raises a number of issues, specific to bus provision that require further clarification (09.11.18).

Raise a number of highway issues with the development. The red line location plan includes the employment site, which is the subject of a separate application and as such should be placed within a blue line. In addition the vehicular visibility splays, forward visibility and swept path analysis, are not acceptable at a number of junctions. Notes that the 40mph limit to Birmingham Road is proposed to be extended to the south. This will require a Traffic Regulation Order, the funding for which should be secured via the S106 agreement. A number of design issues with the road layout are advised, which would prevent the scheme from being adopted. Further consideration of the access, parking provision and drop off and pick up facilities for the school should be given, along

with details to limit speeds through the site to 20mph. Funding for the monitoring of the Travel Plan will be £6430 (20.10.17).

Staffordshire County Council (Archaeology) – No comments. The Archaeological Assessment found no archaeological features or deposits, whilst concluding that there was low potential for any further archaeological remains to survive (28.02.18).

Staffordshire County Council (Flood Team) – Following the receipt of additional comments from the Lichfield and Hatherton Canal Trust requests that the drainage consultant provide:

- Infiltration tests (BRE365 compliant) undertaken at the location, depth and with a head of water that replicates the proposed design;
- Microdrainage results for the network based on the rates above;
- Trial pit logs and groundwater level to >1m below the base of the infiltration device; and
- Plan showing buffer distance to buildings / roads / canal cutting (30.11.18).

Previous Comments: Cannot comment on the geotechnical design of the cutting to retaining structures. Notes that building regulations state that infiltration devices should not be built within 5m of a building or road (22.11.18).

The house type amendments do not affect previous comments (05.03.18).

No objection subject to a condition requiring that the development be carried out in accordance with the submitted revised Flood Risk Assessment / Drainage Strategy and the mitigation measures identified therein (02.01.18).

Object to the development as the application has been submitted without any analysis of the pluvial flood risks associated with developing the site (30.05.17).

Staffordshire County Council (Education) – The site falls within the catchments of Christ Church CE (VC) Primary School, Lichfield and The Friary School, both of which are projected to be full for the foreseeable future.

Given that the development is for 475 dwellings, it is likely to add 145 Primary School aged pupils, giving an education contribution requirement of £2,938,839. Education contributions for secondary school infrastructure will be sought through CIL contributions (01.03.18).

Previous Comment: No further comments to make (18.12.17).

The site falls within the catchments of Christ Church CE (VC) Primary School, Lichfield and The Friary School, both of which are projected to be full for the foreseeable future.

Given that the development is for 475 dwellings, it is likely to add 150 Primary School aged pupils, giving an education contribution requirement of £3,040,179. The scheme is likely to generate 85 additional secondary school and 17 sixth form students. Education contributions for secondary school infrastructure will be sought through CIL contributions (18.09.17).

Staffordshire County Council (Rights of Way) – No rights of way cross the site. Public Footpath No 7 Wall and No 21 Lichfield City run to the south of the site although these routes are not directly affected by the development (14.06.18).

Previous Comments: Refers to original response. Notes that any new linkages from the site to the existing public footpath would be unlikely to be included on a Definitive Map of Public Rights of Way (28.02.18).

The amended plans do not alter original response (14.12.17).

Ramblers – No comment (03.03.18).

Previous Comments: Refers to previous comments made on 18.09.17 (31.12.17).

No objection. Notes that public footpaths No.21 Lichfield and No.7 Wall Parish are routed to the southern boundary of the site. Safe public access to these rights of way should be maintained (18.09.17).

Environment Agency – No objection (21.02.18).

Previous Comments: No objection (18.12.17).

No objection (20.09.17).

Staffordshire Fire and Rescue Service – Provides guidance relating to ensuring that the site can be appropriately served by firefighting appliances and the use of domestic sprinklers (22.12.17).

Previous Comments: Provides guidance relating to ensuring that the site can be appropriately served by firefighting appliances and the use of domestic sprinklers (08.09.17).

Severn Trent Water – No objection, subject to a condition securing details of a suitable surface water and foul sewage to be submitted to and approved by the Local Planning Authority (08.09.17).

Staffordshire Police Architectural Liaison Officer – No objection but raises concerns regarding the number of pedestrian routes that do not run alongside vehicle routes. Networks of separate footpaths to unsupervised areas facilitate crime and anti-social behaviour. In addition some parking spaces are not directly overlooked by the dwellings they are to serve. Further advice provided regarding measures to design out crime (16.11.18 / 01.03.18 / 02.01.18 / 20.09.17).

Health & Wellbeing Development Manager – The changing room facility will cost between £400k-£450k (18.04.18).

Previous Comments: The 2 football pitches to be provided within the site can if one is utilised for youth football be served by 2 changing rooms. A social area / kitchen will also be needed within the building to offer community facilities and a potential source of valuable income for the future occupant (28.03.18).

Sport England – No further comments (07.11.18).

Previous Comments: No objection. The mechanisms identified within the draft S106 agreement, whereby on-site sports provision will be delivered in accordance with the requirements of Core Policy 11, Policy HSC2 of the Local Plan Strategy and the concept statement for the site, or if no on-site provision can be made, to provide an off-site contribution of £575,000 is considered acceptable (07.06.18).

The additional information submitted by the applicant relates to the cost and design of a two team pavilion and clubhouse facility. It is noted that the local planning authority, following consultation with the Football Association (FA), advised the applicant that a Football Foundation (FF) compliant two team pavilion and clubhouse facility would cost between £400,000 and £450,000. However, the applicant has stated that the figure has not been broken down or substantiated therefore the applicant has undertaken their own research, resulting in a lower costing of £300,000 being proposed.

It is understood that the applicants costing are based on a scheme which was undertaken in the past five years. The FF (responding on behalf of the FA) have advised that the applicant's scheme would not be compliant with their current guidelines. Further to this the FF have provided a layout together with elemental breakdowns and fully priced facility for a project completed in late 2017, which substantiates the cost of £400,000 provided to the applicant.

Should the applicant wish to deviate from the FF's costing then this should be based on a number of quotes (figures broken down) for a FF compliant scheme (layout can be provided to assist with this).

Given the above it is considered that the applicants two team pavilion and clubhouse facility design and its financial contribution figure of £300,000 is not satisfactory (04.05.18).

Object. Refer to previous comments submitted on 18.09.17, 30.11.17 and 19.12.17. Notes that there are ongoing S106 discussions seeking to address stated issues (16.02.18).

Object. Refer to previous comments submitted on 18.09.17 and 30.11.17 (19.12.17).

Object. Notes that the applicant has submitted a Strategic Sports Position Statement, which sets out their approach to the delivery of pitches, changing rooms and car parking spaces. The detailed approach is that an end user is required to sign a contract with the landowner for the sale of the sport pitches within an undetermined time period. Should no contract be signed for the site then no on site provision would be supplied and rather an off-site financial contribution would be made. This approach is considered contrary to Policy HSC2 and rather the pitches should be included within the Maintenance Management Company to ensure their future provision or given to a local club (the FA have confirmed that there is an existing team requiring a site within the area). Furthermore, there are no projects within the vicinity not already identified within the CIL 123 list that require funding (30.11.17).

Objects. Encourages the Council to distribute CIL monies to sporting needs arising directly from the development as well as those identified within the Infrastructure Delivery Plan.

Comments on the outdoor sports provision within the site. Notes that the 1.9ha site identified within the scheme accords in terms of scale with the Local Plan Strategy. The Consortium propose currently to landscape the site, provide connection to the internal site road network and ensure the site is managed during the construction period, pending interest from a committed end user.

It is not adequate for the developer to simply provide the land for sport provision, rather it should be established what is the local pitch need, along with appropriate clubhouse, access and construction arrangements and then such should either be provided by the developer or secured via a S106 contribution. As such insufficient information has currently been submitted with the application (18.09.17).

Canals & River Trust – No comment (01.03.18 & 18.12.17).

Notes that the proposed development may impact upon the restoration line of the Lichfield & Hatherton Canal and therefore recommends that the Trust be consulted (06.09.17).

Inland Waterways Association – Remain of the opinion that further deferment of the application is required in order to allow for meeting to occur between the applicant, the L&HCRT and the Council to ensure that the development fulfils the requirements of the Development Plan.

Note that the latest committee report (for the 14th January 2019) contains errors including:

- The note regarding the incorrectly summarised comments of the IWA and LHCRT should have proceeded the first paragraph of the IWA's comments;
- The comments in paragraph 3.22 are incorrect;
- The Trust's original consultation response of 09.10.17 is omitted; and
- Bullet 2 p67 begins "*it is reasonable to argue that canal infrastructure should not be delivered because it lies outside of the boundary of the SDA*", whereas it should read "*it is unreasonable to*".

The Council's own legal opinion is not referenced and therefore it is concluded that it was not favourable to the case presented.

The key points of the Trust's legal opinion regarding the IDP forming part of the Local Plan is ignored. Whilst the report continues to acknowledge that the IDP is responsible for provision of the canal works, it then confuses the issue by introducing the red herring of CIL funding, which is then acknowledged to be insufficient to deliver the canal through the site.

The requirement for the St Johns SDA to provide canal bridges and canal channel works has been accepted and incorporated into their plans and S106 agreement. The Policy background for this development is the same as this site and therefore they consider that there are inconsistencies with the Council's approach.

The opinion offered by the officer that the delivery of canal infrastructure works on-site through S106 agreement and off-site via CIL ignores the third situation clearly identified within the IDP that the off-site work of the canal bridge will be funded by 'Developer/S106, which is a clear requirement of the Local Plan. The application site is defined by the SDA designation not the application red line, whilst it should be noted that off site works secured via S106 agreement are not unusual given that off-site highway works for this development will be funded in such a manner.

The required canal works and their funding are therefore:

Canal bridge and associated canal channel works - outside SDA site - developer/S106.

Further canal channel works necessary to integrate with open space and green infrastructure network - within SDA (and partly within red line) - developer/S106.

All other canal works (excluding the above) – outside or inside SDA – eligible for CIL.

The suggestion that the IDP and CIL Regulation 123 List provide conflicting advice is incorrect in light of the above. Therefore reference to both 'double dipping' and the need to update the IDP or CIL Regulation 123 List are irrelevant as there is no conflict. In addition it is ironic that the Council is seeking to discredit its own documents in order to misrepresent their own Local Plan.

The officer report's conclusion that the Development Plan does not require funding or delivery of the restored canal is deliberately misleading, as this document does require funding and delivery of both the canal bridge and other necessary canal channel works. Therefore the report's conclusion that the application accords with the Development Plan is erroneous and legally flawed.

To avoid further damage to the Council's reputation for competence the following actions should be taken:

The previous approval for the site should be rescinded and the S106 amended to include full funding for the canal bridge and channel works, meaningful discussions should occur between the applicant and Trust to define the extent of earthworks, required along the site's northern edge to facilitate the canals integration into the site's Green Infrastructure, the applicant should design and submit as part of the application, details of the canal bridge and channel works, along with details of the phasing of their delivery. Unless these actions are undertaken the IWA will support a Judicial Review of the Council's actions and decisions on this case (10.01.19).

Previous Comments: The latest committee report (that was scheduled for 17.12.18) contains further inaccuracies in reporting our comments, which are as follows:

- The CIL summary within their summarised consultation response does not reflect comments that were made;
- No summary has been provided of the Association's original comments submitted on 09.10.17; and
- The incomplete, inaccurate and misleading comments previously reported as being attributable to the IWA and Lichfield & Hatherton Canal Trust have been reiterated on pages 34-35. That the report remains uncorrected renders the entire document inaccurate and confusing to the committee.

As a consequence of the above, the application should be withdrawn from the committee in order for the report to be corrected and returned for consideration at a future date. If this action is not taken then they will consider escalating their complaint to the Local Government Ombudsman.

The report perpetuates the Council's incorrect application of adopted planning policy. As detailed within the legal advice obtained by the Lichfield & Hatherton Canals Restoration Trust from Keystone Law, the relevant sections of the IDP do, in this case, have the status of policy, because of the specific way in which they are referenced in the Local Plan Strategy. The legal opinion demonstrates that the response provided by the Spatial Policy & Delivery Manager is incorrect and therefore, as a consequence, the officer's report and conclusion are unsound.

It is recommended that the report be withdrawn from consideration by the planning committee, to allow for further consideration of the Trust's legal advice. The deferral of the application to a later meeting would also allow for further discussions between the applicant, the Trust and the Council to ensure that the requirements of the Development Plan are met. These meetings should deliver a suitable funding framework for the delivery of the canal bridge, the provision of necessary canal channel works, which will require changes to the layout of the open space, roadways and possible house locations along the adjoining part of the site and a scheme to ensure the integration of the canal into the site's Green infrastructure (for which the current sole requirement is to provide one or more footpath connection(s), which is considered inadequate). Finally, these meetings will allow for further discussions regarding the drainage proposals, to ensure that they are compatible with the canal and to allow for the agreement of phasing works within the site (11.12.18).

Welcomes acknowledgement that previous comments raised by the Lichfield and Hatherton Canal Trust and the Inland Waterways Association were not accurately reported and welcomes agreement that the application will be referred back to the Planning Committee for further consideration. This must ensure that any comments raised are accurately reported, and enable a fuller consideration of planning policy matters, specific to the formation of the Lichfield Canal.

Note that the whole of the canal route (although not the location of the bridge) lies within the Deans Slade SDA allocation as shown on Map H1: South of Lichfield, of the Local Plan Strategy. They feel the situation of land ownership is not relevant to this application and therefore, the canal development should be considered to be on-site and as defined within the IDP, subject to a S106 agreement.

No suitable justification has been provided for why the canal route has not been included within the red line of the application, given it does include other areas of land, which the applicant does not own, specifically, Claypit Lane and Fosseyway Lane. If necessary infrastructure works are not being provided within the application site, then they should be provided and funded as off-site works, within the S106 agreement.

The IDP requires the delivery of the canal bridge works as part of this development or through S106 contributions. The IDP has most recently been updated in March 2018 postdating the adoption of

the CIL 123 and therefore is the most up to date policy document detailing how the Canal will be delivered. The total available through CIL funding (currently £300,000) is insufficient to deliver the bridge, whilst it is unlikely that the Council would agree to devote all of its funds to one of the many projects identified in the CIL Regulation 123 list.

Whilst acknowledging that it is the Council's view that the IDP is not policy, they consider that it clearly details how policy is to be implemented and therefore should be given significant weight. This is in accordance with Core Policy 4 of the Local Plan Strategy, which states *"specific infrastructure requirements are set out in the Infrastructure Delivery Plan (IDP) and the Concept Statements relating to the Strategic Development Allocations (SDAs) identified in the Local Plan"*. Also they consider that this is reinforced by the SDA Concept Statement at Infrastructure H7, which states *"details of then infrastructure requirements are set out in detail in the Infrastructure Delivery Plan and developers will be expected to enter into a legal agreement to ensure the provision of necessary infrastructure and facilities detailed in order to make the development acceptable"*. Disagree with the view that the canal bridge works would not meet three s106 tests and rather feel that the works are related to the development and are also fair and reasonable, given that its delivery is sought throughout the Local Plan Strategy. In conclusion, they feel the response from the Council's Spatial Policy and Delivery Team is erroneous.

Advises that this potential misinterpretation of the development plan arose, as explained to the Local Plan Allocations Examination Inspector (see Examination Document EX9, our ref. CPLIC157), due to Lichfield District Council agreeing in 2014 to modifications, which for Deans Slade Farm (LPMM30) was to add to the Infrastructure section the words; *"including the provision of a new road bridge over the lowered canal channel and any further necessary canal channel works"*. However, due to administrative error, these changes were not included in the final version of the plan when adopted in 2015.

Note, in retrospect that perhaps the IWA should have made a formal complaint or taken legal action at that stage, but assurances were accepted from the Spatial Policy and Delivery Manager that the equivalent wording would be included in the IDP which she said, was *"the detailed document setting out how the infrastructure needs arising from the Local Plan will be delivered"*. Whilst this was done, it was always a concern that unless the Council made clear to developers from the outset that they were expected to comply with the IDP, they may seek to minimise or avoid providing this infrastructure.

Consequently, IWA asked that Policy IP2: Lichfield Canal in the Local Plan Allocations be amended to include a clear specific policy reference to the provision of infrastructure necessary to maintain the integrity of the canal route. It is most regrettable that the present Spatial Policy and Delivery Team has refused this opportunity to effectively correct the earlier error without discussion or explanation. Indeed, they feel that they went so far as to seek to discredit the whole canal restoration project at the Examination by bringing up matters that had already been resolved or were irrelevant.

Regretfully, they considered that officers have acted unprofessionally in misrepresenting and undermining their own development plan, thereby encouraging developers to ignore infrastructure requirements that are essential to avoid prejudice to the restoration of the Lichfield Canal (23.11.18).

Notes that Core Policy 4 of the Council's Local Plan Strategy (LPS) advises that *"specific infrastructure requirements are set out in the Infrastructure Delivery Plan (IDP) and the Concepts Statement relating to the Strategic Development Allocations identified in the Local Plan"*. The IDP states for the Dean Slade SDA that *"a continuous open space network must be provided along the course of the Lichfield Canal route giving access to future waterside recreation uses. The linear form of this corridor will be opened up in places to provide public amenity space. Works to include the provision*

of a new road bridge over the lowered canal channel and any further necessary canal channel works, to facilitate its integration with a wider open space and green infrastructure network". The IDP continues to advise that funding for these works will be secured via the developer through S106 contributions, with phasing agreed alongside the development of the site and collaborative working encouraged with the Lichfield Canal Restoration Trust. In addition, notes that further policies within the LPS seek to ensure that the canal route is integrated into the scheme's public open space and measures for sustainable drainage and ecological enhancements are considered.

Notes that Policy IP2 of the emerging Local Plan Allocations Document advises that new development should recognise the advantages of supporting the delivery of the canal, through a sensitively designed scheme, which integrates such within its open space. The canal should also be used as part of a sustainable drainage scheme for the disposal of surface water, where appropriate.

Given the above assessment, the Evershed Sutherland's letter submitted in support of the current application, which focusses only on open space and green infrastructure requirement, fails to fully consider local plan policy, specifically the IDP, to which it attaches no weight. It is clear however that the Council's Development Plan requires that the developer of this site fund the provision of a new road bridge over the canal route at Claypit Lane and also the lowered canal channel at this point. The LPS also requires, in order for the canal to integrate into the scheme's public open space that the developer undertake basic earthworks for the canal cutting east of Claypit Lane. Such works should be undertaken at an early stage within the development process to ensure there is minimal later disruption to residents. To address this issue the applicant should extend their red line to include the canal route, appropriate plans for the erection of a bridge should be submitted along with details of the canal banks and full details of how the canal route will be integrated into the scheme's POS. Either all of these matters should be addressed prior to the issuing of a decision or suitable conditions should be utilised (20.11.18).

The Development Plan requires the developer to provide both a new road bridge over the canal route at Claypit Lane and also the lowered canal channel at that point. It also requires provision of any further necessary canal channel works, which includes the basic earthworks for the canal cutting east of Claypit Lane, in order to facilitate the integration of this area within the wider green infrastructure network. This needs to be undertaken in conjunction with the preliminary stages of the housing development so as to minimise disruption to the main site access, the later stages of the site construction work, or to the marketing of the properties, or to their future occupants.

The applicant cannot avoid these requirements to provide the essential canal related infrastructure by excluding the canal land from their application red line. The developer is required to take the lead and work with the Canal Trust to meet these obligations.

The claim that the plan of the new roundabout on Claypit Lane demonstrates that the proposal will not prejudice the delivery of the canal is entirely misleading, as the proposed junction remodelling fails to include the necessary canal bridge and services routing.

The claim that pedestrian/cycle connectivity, drainage and green infrastructure cannot be provided because the canal is outside their application and its timescale not guaranteed is spurious. It is the refusal of the applicant to include the necessary land and provide the canal channel earthworks that would prevent the integration of the canal route into the open space and green infrastructure network.

It behoves the applicant to work with the Canal Trust and the County Council to incorporate the land and the necessary canal works on it into their overall development scheme, as required by the Development Plan.

In summary, the site red line should be extended to include the canal land and, in conjunction with the Canal Trust and County Council, the developer should be made to construct the Claypit Lane canal bridge and the canal channel earthworks, ensure that the canal is integrated into the open space and green infrastructure network, and offer appropriate funding. The application should not be approved until this is done (27.02.18).

Object. To the northern boundary of the application site the restored Lichfield Canal will rise through 3 new locks then go into a cutting to and beyond a new bridge under Claypit Lane, at its junction with the bypass. These works are detailed within the 2009 Restoration Feasibility Study and Maps by Atkins. Subsequent to this study further work by the Trust indicates that a 'staircase' lock rather than 3 separate locks would be preferable. This solution would however require some land take from within the applicant's site and as such, the developer should liaise with the Trust to ensure these works are agreed.

It is imperative that the Claypit Lane canal bridge be constructed at the same time as the proposed roundabout works on Fossey Lane / Claypit Lane. This would avoid later traffic disruption for the developer or future residents. When the bridge is erected, excavation of the canal should also occur beneath and immediately adjacent to the structure to allow for services to be introduced or diverted. This will require negotiation between the applicant and Trust.

The Inspector when approving the Local Plan Strategy noted that *"sites at... Deanslade Farm also offer benefits such as... the provision of a section of canal"*, indicating that the development would contribute to its provision. It should therefore be a requirement of the development to provide this infrastructure to ensure that the canal restoration is not disadvantaged.

The developer's undertaking of the canal restoration works will offer wider benefits, including the formation of a towpath, offering improved pedestrian routes, sustainable drainage opportunities, along with an uplift in land value resulting from the dwellings proximity to the canal.

The Statement of Community Involvement, Design and Access Statement, Planning Statement and the Environment Statement all fail to consider Lichfield's Local Plan Policy requirements specific to the canal.

To ensure that the development complies with the Local Plan Policy, the application should be amended to include within the red line boundary, the land between the site and Falkland Road, the construction of basic earthworks to provide the canal channel and towpath between Birmingham Road and the western side of the Claypit Lane bridge (which the applicant should erect), integrate the canal route into the scheme's open space provision and demonstrate consideration of using the canal as part of sustainable drainage solutions for the site (09.10.17).

Lichfield & Hatherton Canals Restoration Trust Limited – The Trust following consideration of the revised committee report (for 14th January 2019) believes that officers continue to act illegally by ignoring their duty to apply planning policy in making recommendations to approve this application. Councilor's have an opportunity to remedy this by amending the officer's recommendation.

The adopted Local Plan allocates Strategic Development Allocation (SDA) sites where future development will be concentrated. The SDA sites will increase demand on local infrastructure such as schools, roads, public transport etc. The Council has identified the required infrastructure and how it will be delivered via its Infrastructure Delivery Plan (IDP). The IDP in respect of Deanslade SDA requires that *"A continuous open network must be provided along the course if the Lichfield Canal giving access to future waterside recreation uses... Works to include the provision of a new road bridge over the lowered canal channel and any other necessary canal channel works to facilitate its integration with a wider open space and green infrastructure network"*. The funding for the canal is stated to be 'Developer/S106' and the Delivery Lead responsible for its provision is stated to the

“developer working with the LHCRT”. Within the officer’s report it is stated that the road bridge could be partially funded via the Community Infrastructure Levy (CIL). This source of funding is however specifically excluded for Deanslade within the IDP and therefore to pursue such a route would be illegal.

Given the above, it is apparent that there is a clear IDP requirement for the delivery of the canal bridge to be included within the S106 agreement for this development. The failure of the Council to recognise this requirement will create a precedent, which can be exploited by applicants for future development, whilst there is no justification for doing so, given that in the case of the South of Lichfield SDA, the planning permission includes the provision of the IDP specified canal infrastructure.

The Trust recommends that members take note of their Barristers opinion, on receipt, and request that it is resolved to include the canal bridge and associated canal work as specified in the IDP within the S106 agreement and also modify specific conditions. The proposed condition modifications relate to conditions 20 and 29, wherein the following alterations are proposed:

20. The development hereby approved shall only be carried out in accordance with the approved revised Flood Risk Assessment (FRA) dated December 2017 reference 20965/07-17/39 compiled by MEC or as modified and approved by the Local Planning Authority, in consultation with Staffordshire County Council as the Lead Local Flood Authority and the following mitigation measures detailed within the FRA;

a) Discharging all site surface water to infiltration or to the canal at greenfield runoff rates to be approved by the Local Planning Authority, in consultation with Staffordshire County Council as the Lead Local Flood Authority and not increase the risk of flooding off-site.

29. Notwithstanding the submitted details, before the first occupation of any of the dwellings hereby approved, full details of a scheme of Green Infrastructure connections, including materials and detailed topographic levels, for the area adjacent to the northern boundary of the site.

The reason for the requested amendments, in the case of condition 20, is to build greater flexibility into its wording, to ensure that should it be deemed necessary by the Local Planning Authority, in liaison with the Lead Local Flood Authority, to require the pond to be altered from infiltration to attenuation, then such can be secured. The amendment to condition 29 is to ensure that the land levels within the area, adjacent to the canal, are adjusted as necessary to ensure satisfactory integration of the site’s Green Infrastructure with the canal towpath.

The officer’s report contains a fundamental error on page 67, which reverses the opinion offered. Bullet 2 begins *“it is reasonable to argue that canal infrastructure should not be delivered because it lies outside of the boundary of the SDA”*, whereas it should read *“it is unreasonable to”*.

The Trust have been forced, due to officer’s failure to apply their own planning policy to obtain a legal opinion from a Barrister. The reason why this application was withdrawn from consideration at the Planning Committee meeting on the 17 December 2018 was to allow officers to give consideration to that opinion. The latest report contains a summary of this opinion, including the above noted error and states that the points made are not accepted and rather concludes that there is an error in the Council’s own planning policy, due to the IDP and Community Infrastructure Levy (CIL) documents being misaligned. Funding for the canal bridge is proposed to be drawn from CIL rather than a S106.

The Council advised the Trust that it was to obtain its own legal advice on the points raised by the Trust’s Barrister. The latest report, tellingly, fails to disclose that advice has been sought or the content on which the officer’s rejection of the Trust’s opinion is based. A further response from the

Trust's Barrister will be forthcoming, but, in summary, it states that the planning policy documents are not misaligned and rather identifies errors contained in the officer's report.

If the application is approved in its current form the Trust will pursue a Judicial Review.

The Trust notes that this is the third report produced for this application. The first permitted by the Committee on the 2nd July 2018, contained now acknowledged errors, the second proposed for consideration on the 17th December 2018 was withdrawn before consideration. It can however be seen from the content of these reports that the officer's position has altered as a result of challenge by the Trust.

Further erroneous comments on the development plan were provided by the Spatial Planning and Delivery Manager in a meeting with the Trust, when it was claimed that the local plan, including the IDP are aspirational documents and implied that planning application compliance is not mandatory. In addition it was advised that the local plan could not be implemented in full due to a lack of funds. These points are robustly rebutted by the Trust's Barrister.

The latest comments received from the Spatial Policy and Delivery Team summarised within the officer's report are dated the 14 November 2018. The Trust's Barrister's opinion was sent to the Council on the 10th December 2018. Given that no updated comments have been received it is not clear whether this department have read and considered this opinion.

The earliest the Council could have received a legal opinion would have been the 12th December 2018. The officer's report was placed in the public domain on the 3rd January 2019. Taking into account the Christmas break this leaves little time for officers to consider the various legal opinions. This haste has resulted in an erroneous decision, which reduces confidence in the officer's judgement.

The Trust do not oppose the development and if it were delivered in accordance with the IDP it would accelerate the delivery of the restored Lichfield Canal. However, if the application is approved without amendment, the canal restoration would fail to be safeguarded, the cost of the canal bridge would be much greater, there will be major disruption to traffic and residents, suitable green infrastructure between the canal and development would not be possible and there will be a delay in delivering the canal itself. The route to resolve these matters is for the conditions to be updated as recommended and the canal works as identified to be included within the S106 agreement (11.01.19).

Previous Comments: The legal opinion obtained by the Trust conflicts with the advice provided by the solicitors for Taylor Wimpey and also that provided by the Spatial Policy & Delivery Manager, in that the Development Plan, through the Infrastructure Delivery Plan (IDP), requires the delivery of canal road bridge on Claypit Lane via a legal agreement. Thus, the failure of the planning committee report presented to members in July, to consider and secure the provision of the bridge makes the application susceptible to legal challenge.

The December planning committee report continues to contain inaccuracies when reporting the comments of the Trust, in stating that there were no objections to the development, subject to condition. These comments, as acknowledged by the Council, relate to a separate application, namely 17/01191/OUTMEI and to reiterate these incorrect comments causes confusion. The report also does not contain reference to any of the letters of objection by the Trust, which commenced on the 13th October 2017, followed by a number of subsequent letters and reports. This equally applies to the comments of the Inland Waterways Association, where their comments including their letter dated 20th November 2018, are not reported. Whilst these errors are acknowledged later in the report, with the Trust's objections correctly identified, this is a long report and the no objection being earlier within the document has prominence.

Note 1 of the December report whilst acknowledging the incorrect reporting of the comments of the Trust and IWA fails to provide specific detail of this matter and therefore Councillors would be voting to ignore adopted planning policy.

The reason for condition 15 states that it is necessary to ensure that an appropriate drainage solution be secured for the adjacent restored Lichfield Canal. However, the development as submitted, discharges wholly to a soakaway or infiltration pond and therefore does not provide a surface water drainage solution for the Canal. In fact, the opposite is the case, and rather the proposed drainage creates major flood risk for the canal.

The above shortfalls are unsatisfactory and given that the Council now has a legal opinion sourced by the Trust from a Planning Expert Barrister, which details why the Council is not correctly implementing its own planning policies, a revised recommendation should be produced. This recommendation should include funding within the s106 agreement, to be paid for by the applicant, for the provision of a new road bridge and any further necessary canal channel works.

If there is insufficient time for the Council to fully consider the legal opinion, it is recommended that consideration be given to deferring the application, thereby also allowing for the Council or applicant to gain their own legal opinion. In addition, such a deferral would allow for the updating of the committee report to correct errors, facilitate further negotiation and avoid any further formal complaint by the Trust (10.12.18).

Object to the application. Surface Water run-off from roads within the development is proposed to be drained via an underground piped network to one of two infiltration ponds. In the case of the pond adjacent to the proposed route of the, to be restored Lichfield Canal, 1,600m³ of water is to be held for up to a day or more, whilst it infiltrates into the ground through the bed and sides of the pond. In the event of severe rainfall water will overtop the pond.

The Trust does not object to the use of soakaways within the development or the infiltration pond remote from the canal route but does object to the infiltration pond adjacent to the canal. This is because of the pond's design does not take into account the future presence of the canal. Specifically, it is argued that the ground beneath the pond comprises solid sandstone at a depth of 1.1 metres. Water will not pass through the sandstone and rather will dissipate across the rock horizontally, which given land levels within the area, will predominantly be towards the north. The tow path proposed to the north of the pond will be at a lower level than the sandstone strata, resulting in water running off into this area, causing future flooding issues, thereby impacting upon users of this route. This problem could be resolved through the infiltration pond being altered to an attenuation pond. It is noted that whilst the canal immediately adjacent to the site is not currently available and therefore unable to accept surface water, the pond could, until such time that the canal is operational, be connected to the existing culvert located beneath Birmingham Road and Falkland Road.

The pond would at its closest be located within 2 metres of the boundary to the canal route. The pond is to be constructed in 2019 and therefore will be in place prior to the Trust commencing work in this area. Whilst the FRA Addendum advises that the pond will be designed to ensure stability within its current environment, it does not take into account the proximity of the canal route, which will lead to the need for significant temporary retaining structures to be installed to protect the integrity of the pond. The need for such retaining structures would not be in accordance with the Council's greenway criteria referred to in planning policy, nor is the canal safeguarded as required by planning policy. The design of the pond should therefore be amended to address this issue.

Presently, should a severe rainwater event occur, water will overflow into the highway verge. Upon completion of the canal however, this water would overflow down the canal bank, onto the towpath

and into the canal. This could lead to concentrated flooding and erosion or damage to the canal sides, creating a potential risk of failure or breach to the infiltration pond. To address this issue an overflow should be introduced into the pond to allow for water to be released in a controlled manner into the canal.

The applicant's FRA includes reference to only 1 trial pit. Given the variable soil strata within the area there should have been at least two pits dug. In addition, it is noted that the pit was excavated to a depth of 2.2m. In order to assess ground conditions to a depth below the pond bottom of 1m, the pit should have been dug to 3.5m, thereby allowing for full analysis of the groundwater table level. The FRA Addendum also contains inconsistencies relative to data contained within the FRA, regarding at what level the pond water and top of the bund will be set.

The pond has also been designed to include a raised bund adjacent to the canal. The use of such a feature is not considered to be best practice, as should the bund fail, it would release a large volume of impounded water causing risk of downstream flooding. This matter could be addressed through a redesign of the pond (27.11.18).

Requests that the determination of the planning application be deferred in order to allow for reasonable time for the Trust to obtain and submit legal opinion upon the arguments of the applicant specific to the appropriate funding mechanism to seek the delivery of the canal bridge on Claypit Lane (13.11.18).

The applicant continues to fail to liaise with the Trust to seek to secure an appropriate solution for the canal to cross to the north of the application site. The documents submitted by the applicant fail to recognise that the delivery of the canal is a planning policy requirement rather than aspirational.

Whilst the application claims to embrace the canal within its masterplanning, by deliberately setting the route outside of the red line boundary, it has prevented full consideration of this feature and its suitable integration within the application. Furthermore the plans submitted with the application fail to identify the route of the canal, thereby ensuring that a lack of connectivity is evidenced between a potential future towpath and the site. It is arguable that the applicant should fund the delivery of such pedestrian links through a s106 contribution, but as a minimum links up to the boundary of the canal route should be detailed at this juncture to ensure the delivery of such.

The delivery of the completed development within the Deanslade Farm site will impact upon the later canal construction, as new roads would have to be removed and major disruption through road closures to the highway along Claypit Lane, due to the need to construct a bridge above the canal along with the need for services to be relocated, where they are to be instead within the existing highway verge. Therefore, in accordance with the Council's planning policy basic canal infrastructure should be constructed by the developer as part of any approved development.

The applicant's Flood Risk Assessment omits reference to the canal, failing to have regard to the adopted Lichfield City Surface Management Plan, which requires "investigation of the potential to reinstate and utilise the Lichfield canal to accommodate surface water runoff". Within the FRA, Severn Trent's response to pre-application submissions, identifies that there is limited scope within the existing sewer system to accommodate additional surface water runoff. Therefore they also recommend the applicant consider utilising the canal to take surface water runoff. The applicant has failed to undertake any such investigations.

The attenuation pond located adjacent to the site's northern boundary, will be at a higher level than the canal itself, which could lead to saturated ground conditions, which may create problems for construction works.

The development will lead to a significant increase in traffic using Claypit Lane to access Falkland Road. Whilst there will be no requirement to change the layout at the point of canal crossing, the requirement to temporarily close the road to form the canal bridge will be costly and disruptive.

Foul drainage for the site is proposed to be directed to a pumping station, which is proposed to be located adjacent to the canal route. The rising main from the pumping station to the Severn Trent public sewer on the north side of Falkland Road, requires crossing the line of the canal and could therefore add further areas of conflict.

In order to address these issues it is requested that the Council organise a meeting between the applicant and Trust. Should such a meeting not occur then the application should be refused or a condition utilised to require full details to address the above concerns (05.03.18).

The application has ignored the views of Lichfield District Council, regarding the need identified within the Scoping Opinion, for there to be appropriate provision made for the restored canal alongside the development and its integration into the scheme's green infrastructure.

Note the latest IDP advises for Deanslade a requirement for *"works to include the provision of a new road bridge over the powered canal channel and any further necessary canal channel works, to facilitate its integration within a wider open space and green infrastructure network"*. This is to be achieved through *"Developer / S106 funding"* with the *"developer working with the Lichfield Canal Restoration Trust"*. The applicant has made no meaningful attempt to work with the Trust.

The application does not include the integration of the towpath as an access route to the development and nor does it provide for landscaping along the northern edge of the development site, which would enable the waterfront to enhance the visual amenity of the development.

The proposal does not incorporate any provision for the canal channel, nor does it provide a navigable underpass and footway under Claypit Lane. The design for this section of the canal is well advanced and therefore the Trust would be able to work with the applicant to ensure the scheme is suitably amended, to include details of how the developer will deliver the canal (13.10.17).

The two Legal Opinions provided by Oliver Goodwin of Keystone Law on behalf of the Lichfield & Hatherton Canal Restoration Trust are attached to this report for member's consideration, noted as Appendix 1 and Appendix 2.

A rebuttal of these Opinions is offered by the applicant's Legal opinion provided by Paul Maille from Eversheds Sutherland, which is attached to this report for member's consideration, noted as Appendix 3.

LETTERS OF REPRESENTATION

Nine letters of objection have been received. The comments made can be summarised as follows:

Principle

- The roundabout will require further land being taken out of the Green Belt to deliver the scheme.
- The site is located within the Green Belt and should therefore be protected, notwithstanding the need for additional housing.

Visual Impact

- The site offers an important rolling landscape on a key entrance into the City. Considers that other more appropriate flatter sites around the Lichfield area would be more suited to residential development.
- Falkland Road is supposed to be a by-pass. To introduce further development along the southern side of the road would make it more akin to a residential street detracting from the character of the area.
- The Claypit Lane roundabout will have an adverse impact upon the rural setting of two Grade II Listed Building, Sandfields Lodge and Sandfields House. The current isolated location of these buildings is an important character of the building and its former use as an Asylum.

Highway Impact

- The development would increase traffic along already busy routes.
- No vehicular access into the site should occur from Claypit Lane, given this is a rural road incapable of accommodating additional traffic.
- Any construction traffic using Claypit Lane is likely to damage private driveways and telephone lines.
- The roundabout proposed at the junction of Claypit Lane and Fossey Lane will be located too close to the T junction off Falklands Road, causing heavy congestion issues at peak times.
- Residents of the site will utilise the surrounding rural lanes to access the wider highway network. These lanes are unsuitable for additional traffic and this will therefore result in an increase in accidents.
- There are already vehicular congestion issues accessing the A38 from Lichfield, which will be exacerbated by this development.
- The addition of approximately 1,000 new vehicles from residents within the site will, in combination with the additional traffic generated from the proposal at Shortbutts Lane, have a significant impact upon the local highway network.
- Birmingham Road is unable to accommodate any further traffic due to existing congestion issues. There is already danger in seeking to access or exit any properties located along this route.
- No safe pedestrian crossing point has been identified across Falkland Road for those seeking to gain access from the surrounding area to the, public open space, school or Country Park.

Impact on Residential Amenity

- A bedroom window will be overlooked by users of the country park. Requests the planting of additional trees to screen this view.
- Residents within the scheme will overlook surrounding properties.
- The increase in traffic resulting from the development will lead to a significant increase in traffic and noise pollution.
- The development will greatly increase light pollution in the area.
- The amount of discarded litter will greatly increase as a result of the proposal along Claypit Lane.
- During construction works significant noise, air quality degradation and dust disturbance will occur. A restriction should be place on noise levels and working hours.

Other

- Lichfield Scouts require additional accommodation within the area and as such would like to be involved in designing the community facility and could help to manage such a building should they become a future occupant.

- Lichfield is already served by a good amount of sports facilities that are underutilised and therefore the creation of further facilities is inappropriate.
- Will the development ensure that neighbouring properties are now able to access main gas and broadband cable.
- The proposal would reduce the value of existing dwellings within the area.
- There are 3 existing schools within a mile or so of the application site.
- A house in Claypit Lane has recently been refused planning permission for a conservatory. Why is such a large scale development within the same area considered to be acceptable?

Two letters have also been received from the Leomansley Area Residents Association (LARA), the latest requests that parking restrictions be introduced and enforced along the estate spine road, in order to ensure that residents park their cars on plot and within the provided garages (06.01.19).

The initial letter provides details of correspondence previously forwarded to Taylor Wimpey, prior to the submission of this application. The matters raised relate to concerns regarding design issues experienced within the Darwin Park estate, which are not wanted to be repeated within this development. Principally concerns are raised regarding garage dimensions not being sufficiently large in order to allow for vehicles to park, courtyard parking not being used, leading to on street parking on narrow roads resulting in the blocking of pavements thereby restricting pedestrian movement and the narrowing of useable roadway restricting vehicular movements, particularly for buses and emergency vehicles. Some roads are not served by tarmacked footpaths, whilst existing trees and hedgerows were removed to enable the development. There were serious delays in the delivery of public open space and play areas, resulting in these areas being yet to be adopted by the Local Council, with resultant maintenance issues.

Sufficient off street car parking needs to be offered to the Primary School to prevent congestion at drop off and pick up time, whilst mitigation measures are required to reduce vehicular speeds throughout the site. Improvements are required to the footpath along Birmingham Road, along with a reduction in speed limit and appropriate visibility splays to be provided for the highway junction on this road. Appropriate timescales for the delivery of the Southern Bypass need to be established.

During the construction period an appropriate Construction Management Plan to divert traffic away from Darwin Park will be necessary along with measures to control dust and dirt emissions. Wheel washing facilities will therefore be needed for construction vehicles.

Environmental considerations specific to electric vehicle charging points, hedgehog friendly fencing, solar panel provision, sustainable construction methods, permeable block paving use and gas boiler provision are required (16.03.18).

OTHER BACKGROUND DOCUMENTS

The developer has submitted the following documents in support of their application:

Agricultural Land Assessment
 Air Quality Assessment
 Arboricultural Assessment
 Canal Clarification Letter
 Country Park and Open Spaces Management Strategy
 Design and Access Statement
 Design Context Appraisal
 Drainage Strategy
 Ecology Assessment and Species Specific Report
 Ecological Clarification Note
 Environmental Statement, Figures and Appendices including:

- Air Quality
- Cultural Heritage
- Cumulative Impacts
- Ecology and Biodiversity
- Ground Conditions
- Hydrology
- Infrastructure, Utility and Services
- Lighting Assessment
- Noise Assessment
- Socio-Economic
- Non-technical Summary
- Transportation

Existing Junction Visibility and Indicative Bridge Structure

Flood Risk Assessment

Flood Risk Assessment Addendum

Ground Investigation Report

S106 Heads of Terms

Heritage and Archaeology Statement

Heritage Technical Note

Landscape and Visual Impact Assessment

Lighting Assessment

Noise Assessment

Transport Assessment

Travel Plan

Land and Ecology Management Plan

Response to Lichfield & Hatherton Canal – letter from Eversheds Sutherland (International) LLP

Statement of Community Involvement

Statement of Development Phasing and Commerciality

Utilities Assessment

Wall Island Modelling Assessments – TN Update

OBSERVATIONS

Site and Location

The site is located to the south of Falkland Road, on the southern edge of the city of Lichfield and totals approximately 40 hectares in size. The site is bounded by the A5127 to the east, Claypit Lane to the west, Falklands Road to the north and open countryside to the south, which rises towards Harehurst prospect. The site encloses, but does not include, the existing Deans Slade Farm complex of former agricultural buildings and farmhouse, which are now in residential use.

The application site currently contains arable farmland, which is enclosed by mature hedgerows.

Background

Members will recall that an Issues Paper for this application was brought to the Planning Committee meeting on the 16th October 2017 seeking issues for further investigation, prior to the full consideration by the Planning Committee.

Proposals

This application consists of two elements, with part of the proposal submitted in full and part submitted in outline only.

The full planning application comprises:

- The erection of 475 dwellings;
- The formation of two new vehicular access points to serve the development. One is proposed from Birmingham Road and one from Claypit Lane, towards the north western corner of the site, which includes, the creation of a new roundabout on the junction of Fossey Lane and Claypit Lane;
- The formation of Sustainable Urban Drainage Features including balancing ponds located to the centre and north east corner of the site;
- The formation of areas of Green Infrastructure, containing Public Open Space, Children's Play Equipment, footpaths and cycleways; and
- The creation of a 16.55 hectare country park to contain a community orchard and car park.

The outline element of the application comprises:

- The erection of a 1 Form Entry Primary School across a 1.09 hectare site; and
- The formation of a 1.9 hectare Strategic Sports site.

Determining Issues

- 1) Policy and Principle of Development including Green Belt Impact
- 2) Housing Mix and Affordable Housing
- 3) Highway Impact and Parking
- 4) Design and Impact on the Setting of Surrounding Listed Buildings
- 5) Flood Risk and Drainage
- 6) Lichfield Canal Restoration Route
- 7) Public Open Space, On-Site Green Infrastructure and Landscaping
- 8) Residential Amenity – Future and Existing Residents
- 9) Loss of Agricultural Land
- 10) Biodiversity
- 11) Waste Management
- 12) Archaeology
- 13) Planning Obligations Including Education Provision
- 14) Other Issues
- 15) Financial Considerations (including Community Infrastructure Levy)
- 16) Human Rights

1. Planning Policy and Principle of Development including Green Belt Impact

- 1.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan for Lichfield District comprises the Lichfield District Local Plan (1998) (saved policies), the Local Plan Strategy 2008-2029 and the made Lichfield City Neighbourhood Plan.
- 1.2 Paragraph 14 of the NPPF sets out a presumption in favour of sustainable development and within the Ministerial Foreword, it states "*development that is sustainable should go ahead, without delay*". Therefore consideration has to be given to whether this scheme constitutes a sustainable form of development and whether any adverse impacts would significantly and demonstrably outweigh the benefits it would deliver.
- 1.3 Paragraphs 49 and 50 of the NPPF advise that housing applications should be considered in the context of the presumption in favour of sustainable development and that housing

policies within the Local Plan should only be considered up to date if the Local Planning Authority is able to demonstrate a five year supply of housing.

1.4 Paragraph 7 of the NPPF provides a definition of sustainable development, identifying that there are three separate dimensions to development, namely its economic, social and environmental roles. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right place and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

This report will consider how the proposed development fares in terms of these three strands of sustainable development.

1.5 The supply of housing land is regarded as having a social and economic role. The NPPF requires that Councils identify and update annually a supply of specific deliverable sites sufficient to provide five years delivery of housing provision. In addition, a buffer of 5% (moved forward from later in the plan period) should also be supplied, to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.

1.6 The latest five year housing land supply position for Lichfield District is contained within the Five Year Housing Land Supply Paper from July 2018, which states that a supply of 5.6 years can be demonstrated within the District.

1.7 Given that the Council can demonstrate a 5 year housing supply, it falls for this scheme to be considered, in the first instance, against the Policies contained within the Council's Development Plan.

Local Plan Policies

1.8 The Local Plan Strategy sets a strategic requirement to deliver a minimum of 10,030 dwellings during the plan period. Core Policy 1 of the Local Plan Strategy seeks to locate new growth in sustainable settlements and identifies Lichfield as being a key settlement to accommodate growth. Core Policy 6 and Policy Lichfield 4: Housing, identifies that Lichfield will play a significant role in meeting housing need by providing growth of around 3,900 new dwellings within the community, with appropriate associated facilities, including transport and social / green / physical infrastructure, over the plan period. Specific details of the sites allocated to deliver part of this housing provision, approximately 1,350 dwellings across the

South of Lichfield are identified under Policy Lichfield 6: South of Lichfield. This specific site, which forms part of this wider allocation, is discussed further within Appendix H (Dean Slade South of Lichfield) of the Strategy, which identifies that approximately 450 dwellings could be developed within the site.

- 1.9 To the east of this site is the Land South of Shortbutts Lane residential development site (reference 12/00182/OUTMEI), which following the signing of a S106 agreement, was approved on the 10th August 2018.
- 1.10 The development proposed within this site would therefore, should any approved outline consent for Shortbutts Lane be developed to its maximum, result in a total of 925 dwellings being erected within the south of Lichfield area. The remaining site within this designated SDA area, Cricket Lane, is the subject of a further pending planning application (reference 18/01217/OUTFLM), which proposes the erection of up to 520 dwellings. Should this occur then the total housing provision across the three sites contained within the wider SDA would total 1,445 dwellings.
- 1.11 The proposal could potentially therefore result in a minor over delivery of housing for the South of Lichfield area. However the figure of 1,350 identified within the Development Plan is a minimum figure establishing an appropriate parameter of housing delivery. A potential over delivery of approximately 25 dwellings within the application site, is not therefore considered to be contrary to the provisions of the Plan.

Green Belt Impact

- 1.12 It is noted, notwithstanding the above discussion, that elements of the scheme, namely part of the area where the roundabout on Claypit Lane is proposed to be formed, the land immediately to the south west of this feature, the District Park and one of the temporary compound areas, proposed off Birmingham Road, are located within the West Midlands Green Belt. Within the Green Belt there is a stricter degree of control over development, in order to ensure that it preserves the special characteristics and openness of the area.
- 1.13 The decision making process when considering proposals for development in the Green Belt is in three stages and is as follows:
 - a) It must be determined whether the development is appropriate or inappropriate development in the Green Belt.
 - b) If the development is appropriate, the application should be determined on its own merits.
 - c) If the development is inappropriate, the presumption against inappropriate development in the Green Belt applies and the development should not be approved unless there are very special circumstances which outweigh the presumption against it.
- 1.14 Policy NR2 of the Local Plan Strategy seeks to retain the character and openness of the Green Belt. The construction of new buildings is regarded as inappropriate, unless it is for one of the exceptions listed in the NPPF. Policy NR2 therefore accords fully with Paragraph 89 of the NPPF. The NPPF advises that the most important attribute of the Green Belt is its openness.
- 1.15 Paragraph 89 of the NPPF lists appropriate development within the Green Belt, which does not include the provision of highway infrastructure and rather relates to the formation or expansion of existing agricultural operations or sporting or leisure pursuits. Paragraph 90 of the NPPF does however advise that *"certain other forms of development are also not*

inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.

These are:

- *mineral extraction;*
- *engineering operations;*
- *local transport infrastructure which can demonstrate a requirement for a Green Belt location;...”*

- 1.16 Evidently the roundabout comprises local transport infrastructure. The need for this feature within this location has been established by the Highways Authority, who advise that a traffic island was selected to reduce conflict at the four arm junction, reduce queuing from any one arm and to allow movement of large service vehicles e.g. buses and refuse trucks, in and out of the proposed development. The country park is considered to be a recreation facility, which will not impact upon the area's openness. It is noted that a car park is proposed to be formed within the Country Park. The scale of this facility has been kept to a minimum and formed utilising grasscrete to ensure that when not in use, there is little impact on the openness of the Green Belt. Thus, these aspects of the proposal can be considered to comply with the exception allowances for development within the Green Belt.
- 1.17 It should be noted that the parcel of land adjacent to the roundabout, will, as discussed below, accommodate an area of landscaping. Given the planting of such would not be considered to be development, the impact of these works do not need to be considered under their effect on the Green Belt's openness.
- 1.18 The formation of the construction compound does not comply with any of the exception criteria and as such, in accordance with Paragraph 88 of the NPPF, in order to be considered acceptable, must be able to demonstrate 'Very Special Circumstances'. The Very Special Circumstances in this case are that the applicant has demonstrated that the Compound cannot be located elsewhere within the application site, without serious disruption to the build out process of the scheme. Any impact will evidently be temporary in nature and the land altered to form part of the Country Park when the development is complete. Thus, any impact upon openness will be short term in nature. Furthermore, the compound will help facilitate the delivery of much needed housing on an allocated site, which in accordance with the requirements of the NPPF should be afforded significant material planning weight. Given these arguments, it is considered that in this case, Very Special Circumstances can be established and this aspect of the proposal is considered to be acceptable. A condition is recommended to ensure that the land is altered to parkland, within a reasonable timeframe, on the completion of the development.
- 1.19 Given the above assessment, it is evident that this proposal accords with the requirements of the Development Plan and NPPF and therefore the principle of residential development within this site is considered acceptable. However, it is necessary to consider, in detail, a range of other issues detailed within the concept rationale of Appendix H of the Local Plan Strategy, along with compliance with the Key Design Principles established therein.
2. Housing Mix and Affordable Housing
- 2.1 Policy H1 of the Local Plan Strategy seeks the delivery of a balanced housing market through an integrated mix of dwelling types, sizes and tenures based on the latest assessment of local housing need. This reflects the approach in the NPPF, which sets out that local planning authorities should deliver a wide choice of high quality homes with a mix of housing based on current and future demographic trends, market trends and the needs of different

groups in the community. Evidence in the Southern Staffordshire Housing Needs Study and Strategic Housing Market Assessment (SHMA) Update (2012) identified an imbalance of housing types across the District with high concentrations of larger detached homes. Consequently, it has identified the need for smaller affordable homes, particularly those of an appropriate type and size for first-time buyers or renters.

- 2.2 The dwelling mix identified under the requirements of Local Plan Strategy Policy H1, as necessary to address the imbalance in the District's housing stock is 5% one bedroom, 42% two bedroom, 41% three bedroom and 12% four bedroom and above.

- 2.3 The housing mix proposed for site is detailed within the below table:

Number of Bedrooms	Number of Dwellings	Percentage
1	15	3%
2	192	41%
3	191	41%
4/5	77	16%
Total	475	100%

- 2.4 Whilst the mix is therefore not wholly compliant with the requirements of Policy H1, it is sufficiently close to meet the broad requirements of the Policy and will deliver a larger number of smaller scaled dwellings. Furthermore, it should be noted that the Council's Spatial Policy and Delivery Team have raised no concerns regarding this matter and therefore, it is considered that the development complies with the requirements of the Development Plan and NPPF in this regard.

Affordable Housing

- 2.5 The site is over the threshold for the provision of affordable housing as required by Local Plan Strategy Policy H2. The on-site affordable housing provision required by Policy H2, following the issuing of the latest Annual Monitoring Report issued in 2017 is for 37% of the units proposed.
- 2.6 Policy H2 also recommends that of the affordable housing provided within a site, 65% should be social rented and managed by a registered provider, although it is acknowledged that the precise proportions will be agreed with the District Council having regard to housing needs within the locality.
- 2.7 In this case, the applicant has indicated that 176 of the dwellings within the site, will be affordable, which equates to 37%. The affordable housing split is proposed to be 55% social rented units and 45% shared ownership. The Council's Housing Manager has considered the suitability of this arrangement and advised that in this location this tenure arrangement is acceptable.
- 2.8 The NPPF requires that new developments should create mixed and sustainable communities and so all affordable housing should be indistinguishable from and integrated amongst homes for sale on the open market. Policy H2 of the Local Plan Strategy reflects this and seeks to create a mixed and sustainable community.

- 2.9 The affordable units are to comprise a mix of 15 no. 1 bed, 111 no. 2 bed, 48 no. 3 bed and 2 no. 4 bed units, which has been determined to be acceptable by the Housing Manager. No open market 1 bed units are to be provided elsewhere within the site and as such there is the potential for these properties to be distinguishable from the market housing. The design employed however is such to appear as a two storey dwelling, which replicates architectural detail evident elsewhere throughout the site. The affordable units have been dispersed throughout the development, with some units evident within each character area. The maximum provision in any one area is 15 units and therefore the scheme will successfully integrate these dwellings into the surrounding built form.
- 2.10 Given the above detailed housing mix and affordable housing provision, the development complies with the requirements of the Development Plan and NPPF in this regard.
3. Highways Impact and Parking
- 3.1 Paragraph 34 of the NPPF and Strategic Policy 5 of the Local Plan Strategy both seek to ensure that development which generates significant movement, is located where the need to travel can be minimised and the use of sustainable travel maximised. Paragraph 40 of the NPPF states *"Local Authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles"*.
- 3.2 The proposed development will undoubtedly create an increase in the level of traffic on surrounding roads by virtue of the increased intensity of use of the site. The volume and movement of traffic along Birmingham Road, Claypit Lane and Falkland Road will be particularly affected, with an increase in vehicles accessing and exiting the site from the new vehicular access points proposed to be formed within this area.
- 3.3 Vehicular access into the site will be via 2 new points of entry, one from Birmingham Road, near opposite to the Travis Perkins building and the second from a new roundabout junction formed off Claypit Lane, to the north western edge of the site.
- 3.4 The suitability of these points of access, from a highway safety viewpoint, have been considered by the Highways Authority, who consider that the Birmingham Road and roundabout accesses are appropriate to ensure safe access and egress to the site. Further precise details of the junctions are however necessary and as such, conditions requiring exact details and the provision of requisite visibility splays are recommended.
- 3.5 A further access from Claypit Lane, proposed to serve 4 new dwellings was previously proposed as part of the application. However, the applicant subsequently undertook a speed survey along Claypit Lane, which demonstrated that suitable visibility splays, would cross land outside of the applicant's ownership. Evidently, this was unacceptable, as the applicant would not be able to ensure that fencing or planting is removed or maintained within the splay. As a consequence, these dwellings are now proposed to be served via a revised internal road layout.
- 3.6 The design and layout of the amended internal road network of the site has now been agreed with the Highways Authority, following the submission of suitable tracking information to demonstrate that vehicles, including refuse lorries, will be able to manoeuvre safely around the site. In addition, appropriate surface finish materials are evidenced, suitable road widths and footpaths, along with measures to be installed to ensure that vehicle movements through the site will be limited to 20mph. The delivery of these features will be secured via the use of appropriate conditions, as recommended.

- 3.7 The request by Lichfield City Council that the Country Park and Sports Facility have their own separate vehicular access is noted, however such is not a requirement of the Highways Authority and as such, the applicant cannot be required to supply this provision. In addition it should be noted that the creation of these new accesses would evidently require the removal of further areas of hedgerow.

Traffic Management

- 3.8 A Transport Assessment has been submitted with the application, which demonstrates a robust approach has been applied in calculating committed and future development flows and their impact upon the surrounding highway network. It is demonstrated that the junctions in the study area will largely operate within capacity following the completion of this development. However, there will be increased queueing occurring on Birmingham Road at peak AM and PM times. In particular it is advised that upon completion of this development with no mitigation in place the PM peak total delay is shown to increase by 28%.
- 3.9 Highways England initially recommended that a condition regarding the securing of a financial contribution towards mitigation works at the A5 Wall Island be attached to any planning permission that may be granted. Since the time of issuing their initial responses, they have received advice from the Department for Transport regarding the interpretation of traffic arising from residential developments allocated within adopted Local Plans and their effects on the Strategic Highway Network (SHN). The effect of this advice is that only traffic from committed developments that will be on the network at the time of first occupation is to be included in assessments, rather than treating them as fully built out as had previously been the case. Following the issuing of this advice, Highways England reviewed the assessments carried out in support of this application, and consider that the extent of queuing on the SHN is likely to be less than that shown in the modelling work submitted by the applicant. It was also noted that the development's trip impact will be dispersed across the SHN and local road approaches to the A5 Wall Island Junction. Therefore, it has been concluded that it would not be reasonable to require this application to deliver the mitigation scheme previously identified and in fact, no mitigation is considered necessary to address the impact of this development upon the SHN. Given this conclusion, whilst the concerns of Wall and Shenstone Parish Councils on this matter are noted, the impact of this development upon the SHN is considered to be acceptable and compliant with the requirements of the Development Plan and NPPF in this regard.
- 3.10 The comments of Lichfield City Council regarding the resiting of the 40mph limit further to the south along Birmingham Road are noted. The applicant has indicated a willingness to seek, in liaison with the Highways Authority, to undertake these revisions, which will require approval of an amended Traffic Regulation Order (TRO). It should be noted that TROs are determined by the Highways Authority rather than the Local Planning Authority. Funding for this change to the TRO shall be secured via a Highway Works Agreement to be agreed between the applicant and Highways Authority. It is noted that the Highways Authority have requested that funding for this undertaking be secured by condition but given these works are covered by separate legislation specific to highway operations this is not considered to be appropriate.
- 3.11 Whilst the request of Shenstone Parish Council for alterations to the speed limits along Claypit Lane and around Aldershaw are noted, such mitigation measures have not been identified as reasonable or necessary by the Highways Authority and as such, will not form part of the recommended off-site highway works.

Car Parking

- 3.12 Appendix D of the Sustainable Design Supplementary Planning Document provides guidance on the Council's off street car parking requirements for new development. It states that for residential development there should be a maximum for 1 and 2 bedroom dwellings of 1 space (plus 1 further space for every 3 dwellings for visitors), for 3 and 4 bed dwellings, 2 spaces and 5 bed dwellings, 3 spaces.
- 3.13 The scheme either delivers the maximum provision required by the SPD or in some cases exceeds this provision. Thus a number of the 3 and 4 bedrooms dwellings within the site are served by three off street car parking spaces, whilst plots 56 and 57, which contain 4 and 5 bedrooms are to be served by 6 spaces per unit. The parking levels identified within this site, do therefore in some cases exceed maximum levels, but given wider Government advice to allow for developers to determine suitable parking levels, they are considered to be acceptable, whilst they shall be retained for their specified use via a condition, as recommended by the Highways Authority.
- 3.14 The parking bays within the site all comply in terms of scale, being 2.4m wide, with a depth of 4.8 metres, with the specifications identified within the abovementioned SPD and Manual for Streets Guidance. In addition, the garages spaces are of sufficient size, 3m by 6m, to also be considered as sufficiently large so as to accommodate a vehicle.
- 3.15 The off street car parking provision for the school and sports facility will be agreed via the respective reserved matters applications, although it is noted that unallocated parking is shown in the area to the front of the school. It is noted however that concerns have been raised by Lichfield City Council regarding the number of spaces to be created to serve the Country Park. There are no parking level targets identified within the abovementioned SPD for this type of facility and therefore the level of provision will have to be addressed based solely on likely usage. Whilst it is acknowledged that the area could become a well-used facility for both future and existing residents, it would not be appropriate, given the car park's location within the Green Belt, for this area to be larger than proposed, whilst given its sustainable location, users should be encouraged to walk or cycle to the site.
- 3.16 Local Plan Strategy Policies ST1 and ST2 state that the Council, when considering the appropriate level of off street car parking to serve a development, will have regard to the "provision for alternative fuels including electric charging points". To address this point, a note to applicant to advise that they consider the implementation of Vehicle Recharging Points is recommended for the decision notice.
- 3.17 Given the sustainable location of the site, adjacent to established residential areas, the level of provision shown on the indicative site plan demonstrates that sufficient car parking can be provided to meet the likely future demands of the site. In addition, it should be noted that the Highways Authority have requested a Framework Residential Travel Plan, in order to encourage future occupiers to use sustainable modes of transport, along with an appropriate monitoring sum, which shall be secured via a Section 106 agreement.

Cycle Parking

- 3.18 The Sustainable Design SPD identifies the minimum number of cycle parking spaces to be provided across the development to serve the various land uses. For residential development this is identified as being 1 space for 1 and 2 bedroom dwellings and 2 spaces for 3 or more bedrooms. The parking strategy submitted with the application demonstrates that much of the residential provision will be supplied within proposed garages, whilst non-garaged dwellings are to be provided with a shed. No details are yet available regarding

cycle facilities for the Primary School or Sports facility. Therefore a condition is recommended to secure the submission and approval of such parking details to ensure the promotion of sustainable transport methods and the scheme's compliance with the requirements of the Development Plan and NPFF in this regard.

Pedestrian Connectivity

- 3.19 The application proposes to create a section of shared footway / cycleway on Birmingham Road, along the site's eastern boundary running south. Additionally, a new pedestrian refuge will be provided on Birmingham Road, to the south of the access to serve the development, for the benefit of pedestrians crossing to the existing southbound bus stop on the eastern side of the carriageway. The refuge will be secured via a Section 7 agreement between the applicant and the County Council specific to the commercial application, approved at the Committee Meeting on 4th June 2018 (our reference 17/00977/OUTMEI), whilst the footpath enhancement would be secured under the requirements of the off-site highway works agreement.
- 3.20 Initial concerns regarding the layout of the site specific to the location of the footpath to offer pedestrian access to the front of plots 47 to 54 have been addressed, through the introduction of a central overlooked footpath, which is to run between plots 49 and 50. To prevent the possibility however of future residents utilising or creating gaps in the retained hedgerow to the front of these properties to gain access onto the non-footpathed Claypit Lane, a low level fence has been introduced.
- 3.21 Elsewhere within the site the footpath network through the Green Infrastructure will provide sustainable links into the existing communities to the north, linking to the Primary Movement Route, as identified within Policy 3 of the Lichfield Neighbourhood Plan, whilst also allowing these communities safe access into the scheme's Country Park. Thus suitable, safe, pedestrian permeability is secured, whilst any enhancements of the wider route can, as identified by the abovementioned Policy, be potential secured via CIL.

Lichfield Southern Bypass

- 3.22 Policy Lichfield 6 paragraph 10 identifies that development within the Lichfield South area will deliver improved *"access to the sites through the completion of the Lichfield Southern Bypass"*. Paragraph 13.27 of the explanatory text, which accompanies this Policy, advises that development within this area *"can contribute to the need for improved east-west connections through the southern part of Lichfield City. The completion of the Lichfield Southern Bypass will be required to achieve this and support the overall scale of development planned within South Lichfield"*.
- 3.23 The area designated to be safeguarded for the delivery of the canal falls outside of but immediately to the north of the site's boundaries. As such the development will have no impact upon the delivery of the canal or its protected route, although as noted above, consideration has been had within the character of the built form to ensure that the appearance of dwellings proposed along the site's northern boundary would appear suitable for a canal side location.
- 3.24 Given the above considerations it is concluded that from a highway safety, car parking and sustainable transport viewpoint, this application in this regard, is consistent with the requirements of the Development Plan and the thrust of the guidance in the NPFF.

4. Design and Impact on the Setting of Surrounding Listed Buildings

- 4.1 There are two Listed Buildings within the immediate area, near to the application site, namely the Grade II Listed Sandfields Lodge and Sandfields House, which are sited adjacent to the north west of the site, off Fosseway Lane.
- 4.2 These dwellings, which historically formed Lichfield Asylum will be located approximately 130 metres from the nearest proposed dwelling within the application site. However the new roundabout junction will be 80m from Sandfields Lodge.
- 4.3 Whilst considering proposals which affect the setting of a listed building regard is to be made of S16 (2) and S66 (1) of the Planning (Listed Building and Conservation Area Act) 1990, which requires the Local Planning Authority to “have special regard to the desirability of preserving the building or its setting or any features of a special architectural or historic interest which it possesses”.
- 4.4 Paragraph 131 of the NPPF states that in determining planning applications, local planning authorities should take account of:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness.
- 4.5 Paragraph 132 of the NPPF then goes on to say that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered.
- 4.6 The Council’s Conservation Officer concurs with the conclusion of the EIA Addendum position paper that the development will cause less than substantial harm to the setting and significance of these listed buildings, due to the development impacting upon the building’s setting.
- 4.7 Historic England’s General Practice Advice recommends that where harm to a heritage asset arises, consideration should be given to screening options, in order to seek to reduce harm. The mitigation proposed by this scheme via the introduction of a landscaping scheme within the area adjacent to the roundabout junction, is acceptable in principle, to mitigate this harm towards the lower level of the ‘less than substantial’ spectrum. The suitability of the planting proposed within this location will be discussed further within the green infrastructure and landscaping section of this report.
- 4.8 Paragraph 134 of the NPPF states that *“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”*.

- 4.9 In terms of paragraph 134, the NPPG advises that public benefits can be *“anything that delivers economic, social or environmental progress as described in the NPPF (Paragraph 7)... benefits do not always have to be visible or accessible to the public in order to be genuine public benefits”*. Evidently this development will secure a large number of dwellings on an allocated site within the Local Plan Strategy and as such offers significant wider economic and social benefits, which will have to be weighed against the Listed Building harm impact arising from this development within the planning balance discussed within the conclusion of this report.

Design

- 4.10 Local Plan Strategy Core Policy 14 states that *“the District Council will seek to maintain local distinctiveness through the built environment in terms of buildings... and enhance the relationships and linkages between the built and natural environment”*. This Policy continues to state that the Council will protect and enhance the built environment and protect the skyline of Lichfield, which is characterised by the five spires and tree canopies. This requirement should thereafter inform the height, scale and layout of new development.
- 4.11 The NPPF (Section 7) advises that *“good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”*. The document continues to state that *“permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”*.
- 4.12 The NPPF also attaches great importance to the design of the built environment, which should contribute positively to making places better for people. As well as understanding and evaluating an area’s defining characteristics, it states that developments should:
- function well and add to the overall quality of the area;
 - establish a strong sense of place;
 - create and sustain an appropriate mix;
 - respond to local character and history, and reflect local surroundings and materials;
 - create safe and accessible environments; and
 - be visually attractive as a result of good architecture and appropriate landscaping.
- 4.13 Local Plan Strategy Policy BE1 advises that *“new development... should carefully respect the character of the surrounding area and development in terms of layout, size, scale, architectural design and public views”*. The Policy continues to expand on this point advising that good design should be informed by *“appreciation of context, as well as plan, scale, proportion and detail”*.
- 4.14 Policy 9 of the Lichfield Neighbourhood Plan, requires that *“views of Lichfield Cathedral from Lichfield City Centre should be incorporated into any development which could otherwise impact on these views”*.
- 4.15 The layout plan submitted with this application for the 1 FE Primary School and Sports facility areas is wholly indicative. The former will be produced in liaison with the Staffordshire County Council Education Authority, in due course, with details submitted via a reserved matters application. Exact details of the sports facility will also be progressed via a separate reserved matters application. As such no further consideration to the visual impact of these elements of the proposal will be undertaken currently.

4.16 The dwellings proposed across the site are according to information contained within the Design & Access Statement submitted with this application, to be arranged within 7 character areas. The areas have been given the following designations:

- Main Boulevard – Structural, linear built form, containing buildings up to 2 ½ storey in height. Tree lined boulevards. Predominantly terraced built form. Generally formal in appearance.
- Green Route – Consistent building lines to create enclosure to public open space. Consistent roofscape with some dormers to punctuate. Maximum 2 storeys with low level hedge or timber rail to define public / private interface.
- Secondary Route - Structural, linear built form, containing buildings up to 2 ½ storey in height. Tree lined boulevards. Predominantly semi-detached built form. Generally formal in appearance.
- Birmingham Road – Consistent frontages, formal development enclosure with building up to 2 ½ storeys in height. Consistent roofscape utilising gables to book end terraces. Low hedgerow planting to frontages.
- Rural Edge – Lower density with larger setbacks and gaps between dwellings. Buildings up to 2 storeys in height, larger garden areas. Informal appearance, with varying roofscapes and built form. Generally longer rear gardens to respect adjacent Deanslade Farm occupants.
- Woodland Ridge – Lower density with larger setbacks and gaps between dwellings. Buildings up to 2 storeys in height, larger garden areas. Generally informal in appearance, offering a softer development.
- Canal Side Edge – Mix of formally set out detached and semi-detached dwellings and a short run of terraces, with a height of up to 2 ½ storeys. Buildings set back behind soft landscaping as interface to potential future canal reinstatement. Projections and recessions in frontages to add visual interest.

Layout

4.17 The scheme has been arranged with denser residential development located to the northern and eastern boundaries, with a looser pattern of residential development evident when moving south and west across the site. The Primary School site is located centrally within the development, whilst the sports provision is located to the south western edge. The country park will extend throughout the southern area of the site. The principle areas of Public Open Space are shown to run diagonally through the centre of the site, which will contain a total of 7 Local Areas of Play and 1 Neighbourhood Area of Play.

4.18 The layout of the proposed development demonstrates an understanding of landscape context, evidenced through the retention of the upper slopes of the site, adjacent to Harehurst Hill, free from development, thereby preserving the landscape setting and limiting the visual impact of the development within the surrounding area, as demonstrated within the submitted Landscape and Visual Impact Assessment (LVIA). An appropriate contextual analysis is further evidenced through the creation of a central park route, which runs diagonally across the site, from its south eastern to north western corner, allowing views to and from Knowle Hill and into the wider countryside. In addition, the scheme includes a recognisable core surrounding the Primary School site, which aids in place making, whilst the internal streets have been aligned to facilitate views through the site towards the Country Park. In addition, the layout has been designed with areas of open space running down from the Country Park into the residential development, forming 'Green Fingers' which ensures integration of this area into the proposed built form.

4.19 As noted above, the density of development across the site, which overall equates to 37dph, has been varied to suit the surrounding built form context and future characteristics

proposed for the site. Thus, densities are low to medium in the area around the existing Deanslade Farm complex to reflect the character of this location. Similarly the density adjacent to the proposed Country Park is of a low level, realising a visual transition from urban character to rural edge in this area.

- 4.20 The eastern site boundary of the site, which is defined by Birmingham Road has been designed to form a linear pattern of development to the highway. Dwellings within this area are sited to form a high density, which responds to the existing commercial edge created by the existing Travis Perkins and City Plumbing sites, along with the buildings to be erected following the grant of planning permission for the Land East of Birmingham Road site, reference 17/00977/OUTMEI.
- 4.21 The northern boundary, adjacent to Falkland Road and the land safeguarded for the future restored Lichfield and Hatherton Canal route, is also shown in a linear pattern, but has been offset somewhat to allow for landscaping and public access.
- 4.22 Dwellings sited along the site's western boundary with Claypit Lane have been sited so as to be set back away from the road, to aid to preserve the rural character of this area. Whilst no secondary vehicular access will now be located off Claypit Lane, principal facades will continue to be presented to this road, to facilitate overlooking and present a well-designed street scheme to the wider public realm, which is considered to be an appropriate urban solution for this area of the site.

Scale

- 4.23 The development contains a mixture of 1, 2 and 2 ½ storey dwellings, along with the 3 storey apartment building, located to the north eastern edge of the site, which vary in height from between 5.4 metres and 11.3 metres.
- 4.24 The Landscape & Visual Impact Assessment submitted with this application has assessed the impact of a development within this site of up to 10.5 metres in height, via a visual and character assessment. The report advises that this development will have medium scale effects to character within approximately 500m of the site, given the topography of the area and the existing settlement of Lichfield. Beyond 500m the effects to character are likely to be small to negligible given the lack of intervisibility, existing context of built form and the minor alteration to the pattern and character of the wider landscape as a result of the developments.
- 4.25 Whilst the apartment building will be marginally larger than that considered within the LVIA, the conclusions of the report are such so as to ensure that any visual impact remains of only local significance and negligible in terms of wider landscape affect.
- 4.26 Given the above, the height of development proposed within the site is considered acceptable, whilst the variation in roof height evidenced throughout the site is reflective of the surrounding existing built form, also introducing visual interest to the roofscape. In addition, it is noted that the variation in roof height, along with the use of roof furniture, such as chimneys and dormer windows, will create visual interest and texture to the internal street scene views.

Appearance

- 4.27 The design of the dwellings exhibit features typical of the wider area, namely the Sandfields housing estate, which is located to the north west of the site and modern housing estates in general. As such, architectural detailing is evidenced through the use of small overhanging

porches, which are the primary tool used to break up the elevation of the majority of dwellings, although brick headers and footers, string courses, bay and bow windows aid and a variation in material utilised to provide elevational interest. A number of iterations of the house type pack proposed for this development have been submitted through the course of the determination of this application, following comments received from the Council's Urban Design Manager. It should be noted that these amendments have resulted in this consultee now offering no objection to the proposal on design grounds. Thus, the seven character zones proposed throughout the site and the varying detail of dwelling contained therein are considered to be visually acceptable.

- 4.28 Details of the materials palette to be used within the development have been submitted with this application. The latest bricks proposed to be used within the site are Ibstock Himley Worcester Mixture and the Ibstock Alderley Orange are acceptable for use within this development. In addition Weber Silver Pearl render is proposed for use, along with Weinerberger Cranbrook Red and the Ibstock Staffordshire Blue Slate Smooth bricks for detailing work (string courses etc.). The proposed roof tiles are Anthracite or Terracotta coloured Russell Plain or Forticrete Gemini tiles. The suitability of these materials have been considered by the Council's Urban Design Manager who has determined that they are appropriate to their context and therefore acceptable for use within this development.
- 4.29 The applicant has also submitted details of the proposed fencing and walling scheme with the application. The siting of the fences have been appropriately positioned to ensure that they are visually subservient features within the street scene, whilst all of the prominent boundary's, for instance those facing onto main routes through the site, are proposed to be constructed from brick to ensure that they remain of a high visual quality, throughout the life of the development. Elsewhere within private areas timber fencing is proposed, which is appropriate to the future character of these areas. Lastly, to the southern perimeter of the site, 1.5m high metal estate railings are proposed, which will ensure an appropriately soft edge to the surrounding country park and rural edge. A condition is therefore recommended to secure the implementation of the fencing details as submitted along with their erection within an appropriate timeframe.
- 4.30 Consequently, it is considered that the proposed housing and associated development would be satisfactorily assimilated into its surroundings and would not have a harmful impact in the wider landscape. Accordingly, it is considered that the application in this regard is consistent with the requirements of the Development Plan and the thrust of guidance in the NPPF.

5 Flood Risk and Drainage

- 5.1 The application site is located within Flood Zone 1, which is defined as having little or no risk of flooding from rivers or streams. Such zones generally comprise land assessed as having a less than 1 in 100 annual probability of river or sea flooding in any year.
- 5.2 Staffordshire County Council Flood Team have, following the submission of revised information during the application process, offered no objection to the development, subject to a condition requiring that surface water drainage be undertaken in accordance with the measures identified within the submitted Flood Risk Assessment, which includes the formation of two drainage ponds within the site.
- 5.3 Severn Trent Water have recommended a condition to secure details of foul drainage. Such a condition is considered to be reasonable and necessary and accordingly is recommended. Thus, subject to the abovementioned conditions, the development is considered to comply with the requirements of the Development Plan and NPPF in this regard.

6. Lichfield Canal Restoration Route

- 6.1 Following the committee's consideration of this application in July 2018, the Lichfield and Hatherton Canal Restoration Trust (LHCRT) and Inland Waterways Association (IWA) have raised within their letters, a number of concerns regarding the handling of the planning application by the Local Planning Authority (LPA), namely that the officer's report presented to the planning committee contained incorrect information, wrongly advised that the proposals would have no impact on the canal restoration and wrongly claimed that the Trust had no objections to the application, when in fact significant objections were raised by them.
- 6.2 Specific concerns are raised regarding the fact that the canal sits outside of the application site's red line and the lack of detail provided within the submission regarding future canal infrastructure. This will have led, in their view, to the Highways Authority failing to consider the acceptability of visibility splays affected by the erection of the canal bridge at Claypit Lane, the Lead Local Flood Authority not considering the impact of surface water pond adjacent to the northern boundary on the canal and finally, a lack of integration between the scheme's green infrastructure and the canal towpath and hence this this would impact on the ability to deliver the canal.
- 6.3 A spreadsheet accompanied one of the Trust's letters, setting out their concerns regarding the future interface between the development and the canal, which includes a limitation on working space, to allow for construction of the canal and the impact of the pumping station, due its siting, upon the future stability of the canal. As a result of the concerns raised by the Trust, meetings were held between members of the Trust and the Local Planning Authority. In addition, the Trust, the applicant and the LPA have had a meeting to discuss and seek to address the concerns raised above.
- 6.4 Following the issuing of the officer's report for both the December 2018 and January 2019 planning committees (subsequently deferred), the Trust instructed a Barrister of Keystone Law to offer legal commentary on the LPA's approach to this application (see Appendix 1 and 2 for the full wording). The advice offered, advises that the conclusion of the LPA regarding the funding to deliver the canal restoration works is unsound and susceptible to legal challenge. The issues raised related to the canal are addressed below.

Green Infrastructure

- 6.5 The restored Lichfield Canal and its associated green infrastructure are identified as one of the District's significant assets through Core Policy 1. The benefits that would be delivered to tourism, recreation, sustainable transport, biodiversity and well-being are further supported by Core Policies 4, 9, 10, 13 and Policies HSC1, NR6, Lichfield 1, 2 and 6 of the Local Plan Strategy.
- 6.6 Policy Lichfield 6 allocates the three Strategic Development Allocations (SDA) South of Lichfield (Deans Slade Farm, Cricket Lane and South of Lichfield (St Johns)). The policy requires: *"Integration of the route for a restored Lichfield Canal into an integrated open space and green infrastructure network"*. Appendix H of the Deans Slade, South of Lichfield Concept Statement (H.8) and Concept Rationale (H.3) reflect this wording again, requiring the integration or inclusion, for a restored Lichfield Canal into an open space network and green infrastructure, which will take into account sustainable drainage and the potential for enhanced biodiversity.

6.7 The Local Plan Allocations (Focused Changes) Document has now been submitted to the Secretary of State for consideration, following public consultation and subsequently, an examination in public and completion of the consultation on Modifications. As such, this document now carries some material planning weight. Policy IP2 provides guidance specific to the delivery of the Lichfield Canal and states *“To assist in the delivery of the Lichfield Canal the route of the Lichfield Canal as shown on the Policies Maps and including the Heritage Towpath Trail will be safeguarded from any development which could prejudice its long term restoration. New development shall recognise the advantages of supporting the delivery of the canal through a sensitively designed scheme and by including the route as part of the open space network, considering opportunities for sustainable transport, enhanced biodiversity, enhancement to the historic environment and where demonstrated that infiltration drainage is not viable, use of the canal as part of sustainable drainage for disposal of surface water, where appropriate”*.

6.8 The application as submitted, fails to demonstrate integration of the scheme’s open space with the canal, through a lack of pedestrian linkages and details of land levels to be formed between the site and the proposed canal route. Given that no planning permission exists for the canal within the area to the north of the application site, it is understandable why this has not occurred. However, as detailed above, there is a development plan requirement, reproduced in paragraph H8 of Appendix H of the Local Plan Strategy, to secure the *“integration of the route for a restored Lichfield Canal into an integrated open space and green infrastructure network”*. To address this issue therefore and to ensure that the proposal accords with the requirements of the Development Plan in this respect, it is recommended that a condition be added to the decision notice, to require the submission of details of any land regrading and additional footpath link(s) leading up to the northern boundary, to allow for the Trust to tie such into their canal towpath in due course, should planning permission and subsequent construction works be undertaken for the canal. Condition 29, which has, since the issuing of the previous committee report, been updated, following comments received from the Trust and applicant, is recommended to address this matter and is considered reasonable, necessary and proportionate, with details of the links to be agreed by the Council, at an appropriate stage of the development and, to ensure the footpath route is delivered and secured within a suitable timeframe. This is in line with Core Policy 4 of the Local Plan Strategy in terms of the delivery of infrastructure for new development.

Formation of a roundabout and the impact upon the deliverability of the canal bridge over Claypit Lane

6.9 The applicant has submitted an indicative plan to demonstrate that the delivery of the proposed roundabout on Claypit Lane, will not affect visibility splays or the safe use of any canal bridge that will have to be erected adjacent to the junction of Falkland Road and Claypit Lane, when the canal is constructed. The comment of the Trust’s Barrister (paragraph 3 of response to 14th January 2019 report), acknowledges this point, which has also been confirmed by the Highways Authority.

6.10 The remaining concern of the Trust relates to from where the funding for a bridge at Claypit Lane will be secured and the disruption to existing and future residents, through the need to close Claypit Lane at some undesignated time in the future, if not delivered at the same time as the housing development. These points are discussed in greater detail below.

Claypit Lane Canal Bridge and Channel Works

6.11 It is necessary to consider here whether the specific Lichfield Canal restoration works, detailed below, are a requirement of the development plan or are otherwise a requirement,

the failure to meet warrants the refusal of planning permission on a proper application of the statutory tests, with which Members will be familiar.

- 6.12 Core Policy 4 (Delivering Our Infrastructure) of the Local Plan Strategy requires new development to be supported by the required infrastructure at the appropriate stage. It states that *“new development will be required to provide the necessary infrastructure at a timely stage to meet the community needs arising as a result. Development will also be expected to contribute, as appropriate, to strategic projects that support sustainable development and the wider community”*.
- 6.13 Policy IP1 of the Local Plan Strategy states that *“to ensure that all new development provides the necessary infrastructure facilities required to create and support sustainable communities, the following will be required: The District Council will require all eligible development to provide the appropriate infrastructure on and off site, in line with other policies of the Local Plan and Infrastructure Delivery Plan”*. The Policy continues to advise that *“For the Strategic Development Allocations (SDAs) reference will be made to the relevant infrastructure requirements as set out in the Concept Statements and Infrastructure Delivery Plan”*.
- 6.14 Core Policy 13 (Our Natural Resources) states that *“The District Council will support the safeguarding of our ecological networks, including the restoration and creation of new habitats... including through the opportunities provided within... the project associated with the restoration of the Lichfield Canal”*.
- 6.15 Policy Lichfield 6 (South of Lichfield) of the Local Plan Strategy advises that *“within the allocations identified south of Lichfield City... approximately 1,350 dwellings will be delivered by 2029”* across the 3 sites designated at South of Lichfield (St Johns), Deans Slade Farm and Cricket Lane, further details of which are provided within Appendices C, H and I. The Policy continues to state in paragraph that these 3 sites will include the *“integration of the route for a restored Lichfield Canal into an integrated open space and green infrastructure network”*. Appendix H specifically relates to the development of Deans Slade Farm, advising that the infrastructure requirements for the site include the *“integration of the route for a restored Lichfield Canal into an integrated open space and green infrastructure network”*. Paragraph H.7 states that *“Details of the infrastructure requirements are set out in detail in the Infrastructure Delivery Plan and developers will be expected to enter into a legal agreement to ensure the provision of necessary infrastructure and facilities detailed in order to make the development acceptable”*. Any legal agreement will have to comply with paragraph 56 of the NPPF, which states that *“planning obligations must only be sought where they meet all of the following tests:*
- a) necessary to make the development acceptable in planning terms;*
 - b) directly related to the development; and*
 - c) fairly and reasonably related in scale and kind to the development”*.
- 6.16 The Council’s Infrastructure Delivery Plan (IDP), which details the requirements that are needed to make places function efficiently and effectively, in a way that creates sustainable communities, was last updated in March 2018. It advises that as part of the Green Infrastructure for the Deans Slade development, infrastructure needs shall include landscaping, green spaces and *“works to include the provision of a new road bridge over the lowered canal channel and any further necessary channel work, to facilitate its integration within a wider open space and green infrastructure network”*. The document indicates that funding for the canal works could be secured via *“Developer/s106”* and phasing *“alongside development of the site, to be completed by full construction stage with an ongoing*

programme for maintenance". The developer working with the LHCRT is identified as the delivery lead.

- 6.17 The requirement to provide a singular (therefore 1) new road bridge over the lowered canal channel is replicated across the IDP requirements for each of the three South of Lichfield SDA sites.
- 6.18 In the first instance, it is necessary to consider to which bridge the IDP is referring. Within or immediately adjacent to the Deans Slade SDA there will be two bridges required to facilitate the delivery of the canal. One passes under the railway line linking Deans Slade to the South of Lichfield site (St Johns). The other would likely be a bridge on Claypit Lane. The railway bridge does not match the wording of the IDP, given the current application being considered by the LPA (reference 18/00816/FULM) is not a 'road bridge', but could be interpreted to relate to a future bridge requirements on Claypit Lane, where the canal channel would need to pass under this existing highway. The IDP requirements therefore are clear that a new road bridge is to be delivered, with the developer as lead, or through a S106 contribution, along with any further necessary canal channel works.
- 6.19 In having regard to the extent of necessary canal work attributable to this application, the approach agreed on the approved neighbouring sites, which fall within the South of Lichfield SDAs need to be considered, namely the South of Lichfield site (St Johns) (planning reference 12/00182/OUTMEI) and the employment part of the Deans Slade SDA (planning reference 17/00977/OUTMEI). In the case of the former (which was approved, subject to the signing of a S106 agreement, by the planning committee on the 28th November 2016 and issued on the 10th August 2018) the developer is to deliver a small section of the Lichfield and Hatherton Canal in the vicinity of Denbar, Marsh Lane due to the narrowness of the corridor and the need to provide the Canal route, pedestrian access and the bypass, and the inability to provide this once the bypass is in operation. The developer is also required to provide a vehicular access road bridge and a pedestrian access bridge over the route of the future canal to connect elements of the residential development (housing parcels straddle the canal route). The route of the canal furthermore lies wholly within the planning application site in this instance. Due to the siting of the canal within the application site, integration of the canal is therefore an integral and necessary piece of infrastructure for the delivery of the South of Lichfield (St Johns) SDA and a requirement of the Local Plan Strategy, as detailed above and therefore, its delivery as part of the wider development is compliant with the requirements of the Development Plan and NPPF.
- 6.20 In the case of the employment site at Deans Slade SDA, the Trust are to deliver the canal channel works, with exact details of such to follow as part of a reserved matters application. There has therefore been a variance of approach across the currently permitted South of Lichfield SDA sites. Notably where the infrastructure (bridge / canal channel works) are an integral part of the development and hence are required to provide appropriate means of access or deliver necessary infrastructure to make the development acceptable, then the developer is/will be providing such works. In the case of the employment site at Deans Slade SDA, a different approach is proposed, where the Trust will be lead on developing the canal. This approach is because the delivery of the canal is not necessary to ensure delivery of the wider development. In this case therefore, it is reasonable, utilising precedent and consideration of what is necessary to deliver the development to conclude that the developer was identified in the IDP to lead on delivering the channel solely under and in the immediate vicinity of the Claypit Lane road bridge.
- 6.21 In this instance, the proposed road bridge is not required (by the developer) as a necessary integral part of the delivery of the proposed development, as the canal is not in situ, nor is there any permission in place for its delivery. It does not furthermore, include the route of

the canal within the boundary of the application site, unlike the two applications already determined within the South of Lichfield SDAs. Also of note, is that the Deans Slade Concept Statement diagram shows the route of the Lichfield Canal only partly within the wider SDA boundary, notably at the portion towards Claypit Lane and to the eastern end where it traverses Birmingham Road across to the railway line.

- 6.22 However, consideration also needs to be given to the CIL Regulation 123 list, which advises, specific to Environment and Biodiversity that, *“Infrastructure works relating to the restoration of the Lichfield Canal will potentially benefit from CIL funds, apart from works required in relation to any on-site provision by developers connected to the three SDAs in the vicinity of the canal: South of Lichfield, Deans Slade Farm and Cricket Lane”*. Note identical wording is included within the Council’s Developer Contributions Supplementary Planning Document (SPD).
- 6.23 The CIL Regulation 123 list and Developer Contributions SPD therefore state that on-site canal works will be secured by S106 agreement. A reasonable interpretation therefore is that conversely off-site works will be supported using CIL funds and this is a reflection of the note section of the list. The Claypit Lane road bridge evidently is off-site, being outside of the application’s red line boundary, which indicates land ownership. It is noted that this application area differs from that identified within the concept diagram at Appendix H of the Local Plan Strategy, which includes the highway verge to the north of the site. However, neither within the concept plan nor the application site area does this bridge lie within the ‘site’s’ boundaries. Thus, it is considered that the off-site Claypit Lane road bridge, contrary to the reasonable interpretation of the IDP, would fall to be funded by CIL.
- 6.24 The notes section of the CIL Regulation 123 list states that *“Section 106 agreements will be required where appropriate to secure infrastructure works relating to the restoration of the Lichfield Canal for the three SDAs in the vicinity of the canal”*. There are two potential interpretations of this statement. Firstly, as the LHCRT have suggested in their consultation responses this could reference the need for a S106 agreement for infrastructure, such as the Claypit Lane bridge where it is in the vicinity of the three SDAs. Alternatively, the word vicinity may not be intended to provide clarity in regard to the location of “works” (on or off site), it could simply be there to confirm and provide clarity as to which of the three of the SDA’s (3 of 5 as identified within the Local Plan Strategy and including the Broad Development Location), within the Local Plan Strategy appropriate works to the canal could be attributed. As such the phrase that should be considered within the note section is *“where appropriate”* and therefore whether the infrastructure is necessary, in accordance with the requirements of the NPPF, as detailed above in paragraph 6.15.
- 6.25 On the above point, I note that comments of the LHCRT barrister in paragraph 20 of the letter dated 11th January 2019 that *“both the item in the list itself and the explanatory note use the phrase “in the vicinity of the canal”*”. The item in the list is reproduced fully in paragraph 6.21 above and it is noted that whilst it does include the statement ‘in the vicinity’, in this case it relates to on-site rather than off-site works. If such a statement were made specific to off-site works in the vicinity, then there would be no conflict between the IDP and CIL list and, the bridge and channel works could be subject to S106.
- 6.26 The CIL Regulation 123 list includes a commitment to *“be updated on a regular basis, taking into account the Council’s Infrastructure Delivery Plan (IDP) and any changes to the CIL regulations”*. Thus, this statement, utilising reasonable consideration, implies that the CIL Regulation 123 list will take into account the IDP. National guidance contained within the NPPG (paragraph 098 Reference ID 25-098-20140612) advises that *“Authorities may amend the regulation 123 list without revising their charging schedule, subject to appropriate consultation. However, where a change to the regulation 123 list would have a very*

significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule". Thus, it is not possible to amend the CIL Regulation 123 list to reflect the IDP without consultation and further consideration of viability impact. A position regarding the review of the CIL Regulation 123 list will be informed by the updated evidence base associated with the Local Plan Review and will be considered and recommendations made by officers and elected members via the process set out in the adopted CIL Administration and Governance Arrangements. Thus, the discrepancies between the documents can be resolved in due course.

- 6.27 The IDP states that *"The latest review of the IDP (2017) has been undertaken to reflect the District Council's adoption of their Community infrastructure Levy Charging Schedule and also ensure the document is able to robustly support the development of the emerging Local Plan Part 2 Allocations Document"*. Thus, at time of the IDPs publication, it was considered that the IDP and CIL schedule were in conformity.
- 6.28 Examination of Council's Draft CIL Charging Schedule took place in January 2016. On the 24th February 2016 the Examiners report was received and concluded that *"Subject to some recommended modifications, the Lichfield District Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area"*. In Paragraph 20 of the Examiner's report, the following is concluded *"The IDP is a thorough, up to date and clear analysis of the district's infrastructure needs"*. The Regulation 123 List was considered at this point by the Inspector with reformatting and additional information recommended for inclusion. The CIL Charging Schedule and Regulation 123 List were subsequently both adopted in April 2016. Consultation on a revised CIL Regulation 123 List was undertaken for 4 weeks between October and November 2016. An amended CIL Regulation 123 List was adopted without the need for public consultation in February 2017.
- 6.29 At examination, the Inspector solely considered the viability of the CIL Charging Schedule. The above detailed conflict between the IDP and CIL Regulation 123 List arose following this examination and post the Council's adoption of CIL.
- 6.30 It is acknowledged that the IDP is a 'living document' and as such, the council is committed to reviewing the document to enable it to reflect current infrastructure requirements and facilitate the delivery of such. The IDP will next be reviewed as part of the emerging Local Plan Review process to enable it to reflect development options and be informed by an up to date evidence base. It is envisaged that the reviewed IDP will be considered by elected Members in September 2019, in line with the timeframes articulated within the published Local Development Scheme.
- 6.31 It is however important to acknowledge that the Regulation 123 of the Community Infrastructure Levy Regulations 2010 imposes 'double-dipping' restrictions advising that:
- planning obligations may not be a "reason for granting" permission where they secure funding or provision of infrastructure on a published list.
 - planning conditions are prohibited where they would require an agreement to fund or provide such infrastructure.
- 6.32 Thus, if infrastructure is to be delivered via CIL, then it cannot also be secured via S106 agreement or condition.
- 6.33 Notwithstanding the above, the recent Court of Appeal decision for *Oates v. Wealden District Council & Anor*, provides further insight into the weighting to be attributable to the delivery of CIL infrastructure, advising that the *"true scope of Regulation 123"* – which does

not compel... the Local Authority to grant permission for a proposed development if, for whatever reason, that development is unacceptable in planning terms, or if it cannot be made acceptable either by a planning obligation, or by the imposition of conditions”.

- 6.34 The above decision therefore requires the decision maker to have regard to what is genuinely, ‘necessary’ to make a scheme acceptable. Thus, in this case, the question to be considered is; if the delivery of the canal bridge and associated channel works are not provided as part of this development, then would it make the scheme as a whole, unacceptable in planning terms? If it is determined that this does make the scheme unacceptable, the abovementioned Court of Appeal decision demonstrates that consideration should thereafter be given to whether the failure to provide the bridge and channel works would be so significant as warrant the refusal of this application or alternatively whether a Grampian style condition (i.e. prior to the first occupation of any of the dwellings hereby approved, the canal bridge and associated channel works shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority) is necessary to make it acceptable in planning terms.
- 6.35 The need for the canal to make the scheme genuinely acceptable is touched upon in paragraph 6.21 above. Further consideration of this matter however evidences that the dwellings and canal are, from a construction viewpoint, capable of being developed independently and the lack of a canal would not hinder the wider delivery of the proposed development or vice versa.
- 6.36 The second point raised by the Court of Appeal decision for *Oates v. Wealden District Council & Anor* is whether a Grampian style condition, (to ensure the delivery of the bridge via CIL, prior to the first occupation of any the dwellings), is required to make the development acceptable in planning terms. Such a condition is not considered appropriate in this case, given that the delivery of the canal is not required to make the scheme as a whole acceptable. For instance, in the *Oates* case, CIL was being collected in order to deliver off-site highway junction improvements, required in order to increase capacity in the network to enable development. The works were required, prior to the occupation of any of the dwellings, as the network was operating at capacity. Thus, in the *Oates* case, a condition may have been appropriate as the works are fundamental to enable development. It is considered that, the formation of the canal bridge at Claypit Lane is not fundamental to the delivery of the wider housing scheme for the Deans Slade, given such could be delivered outside of this application process and notwithstanding the submission of this application, would always have been required to be built by the Trust in order for the canal to pass under Claypit Lane.
- 6.37 CIL funding will potentially be available for the road bridge and channel works associated with the canal restoration. The level of CIL applicable to this development is £14 per sqm. This significant discount, applicable to all SDA sites, compared to elsewhere within Lichfield, where CIL is £55 per sqm, arises due to scheme viability. CIL funding will be allocated to strategic infrastructure requirements in line with the adopted Administration and Governance arrangements (adopted by Full Council in July 2016). Not all of the infrastructure requirements identified within the Regulation 123 List or the IDP will benefit from CIL due to the identified funding gap. This position is not unique to the canal and exists for all of the requirements identified on the Regulation 123 list. This view should however also be balanced against the IDP, as stated above, which acknowledges that not all funding for projects will be available from developer contributions, with paragraphs 3.10 and 3.12 advising that not all infrastructure will be able to be funded via CIL or S106 and paragraph 4.151 of the Strategic Infrastructure Section, which identifies that the canal itself will be delivered utilising “*developer contributions, the David Suchet Appeal, Member’s*

contributions, the Inland Waterway Association, the Manifold Trust and possible grant funding”.

- 6.38 The relevant policies of the development plan have been set out above and the failure to provide a bridge, for example, is not contrary to those policies, as there is no requirement in the policies of the plan to do so. The concept statements explain how the policy is to be applied, providing guidance on formulation of the masterplan and other elements including infrastructure. The IDP is not a Local Plan nor can the contents be properly interpreted as having the same status of a development plan document and rather, as detailed within the Local Plan Strategy, it is *“a plan to implement the necessary social, physical and green infrastructure, required to create sustainable communities in line with the Local Plan”*. Thus, the LHCRT’s legal opinion that the IDP should carry equal weight to the Local Plan Strategy is not supported. The IDP is however a published document of the Council and therefore is a material consideration in this planning application. Equally, the Regulation 123 list cannot be considered to have the status of a development plan document and rather, it is also a published document of the Council, being a material consideration in the determination of this application. This distinction is made due the primacy afforded to the development plan by the NPPF and the weight attributable to the documents.
- 6.39 The Legal Opinions provided by LHCRT and the applicant have been previously mentioned and are attached for Member’s consideration (Appendices 1, 2 and 3). Some of the opinions expressed have been considered within the above report. Further consideration of other points raised are detailed below.
- 6.40 The LHCRT’s latest legal opinion dated 11th January 2019 (Appendix 2) advises that one of the exceptional circumstances for releasing the Deans Slade development site (along with the other 2 SDA’s to the south of Lichfield) from the Green Belt, was the creation of the canal, providing compensatory green public open space and a green transport corridor. The Inspector’s Report to Lichfield District Council on the examination into the Local Plan Strategy, states at paragraph 207 that *“the additional sites selected by the Council (Deans Slade and Cricket Lane) are in Green Belt and land should be released from Green Belt only in exceptional circumstances. In my judgement the lack of more sustainable sites outside the Green Belt to meet the identified need for housing in a way that is consistent with the Plan’s urban and key centre strategy amounts, in this instance, to the exceptional circumstances that justify the release of Green Belt land at Deanslade Farm and Cricket Lane”*. No mention is made within the report to the canal being an exceptional circumstance to justify the removal of land from the Green Belt. Rather, as identified above, the delivery of homes is the exceptional circumstance, which the granting of permission for this application would help to realise.
- 6.41 It is acknowledged that the IWA submitted representations in relation to the Local Plan Allocations document, which stated:
- “... Dean Slade SDAs as Main Modifications (Jan. 2014), removing them from the Green Belt. All 3 of these SDAs will extend the City to the south of the agreed restoration route for the Lichfield Canal (the section adjoining South of Lichfield and Dean Slade being a diversion from the original route due to development following its closure in 1954). These sites require road access across the line of the canal from Falkland Road (Dean Slade), the Southern Bypass continuation (South of Lichfield), and Tamworth Road (Cricket Lane). In order to avoid additional physical obstacles and significant extra cost to the restoration project it is important that the developments each provide a new road bridge over the canal line and associated canal channel works. IWA’s representations on MM12, MM13 and MM15 and LHCRT’s representation on MM15 made this case, and it was accepted by LDC in the Council Responses [Document 1] which agreed to add the words: LPMM30 Deans Slade Farm:*

“including the provision of a new road bridge over the lowered canal channel and any further necessary canal channel works”

- 6.42 The above representation has been considered by the Examiner as part of the Local Plan Allocations process and it is within this process that this matter will be duly considered. It is noted however that in order to deliver this development, a new road bridge from Falkland Road is not necessary, rather the site as discussed above, will be served from Claypit Lane. The matter of weight attributable to the IDP relative to the Local Plan Strategy is detailed within paragraph 6.38.
- 6.43 The applicant’s most recent legal opinion provided by Eversheds Sutherland dated 29th January 2019 is attached to this report (Appendix 3). Briefly, the opinion states that given the canal bridge on Claypit Lane is located off-site, the Council’s CIL Regulation 123 List clearly states that a funding contribution should be sought via CIL. In addition, given the need for the bridge arose prior to the allocation of the Deans Slade SDA, it cannot be considered as a requirement directly related to the proposed development. Therefore, to seek funding for the bridge via a S106 contribution would not satisfy the tests, as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, given the bridge is not necessary or directly related to the development. It follows therefore that in order to secure funding for the bridge, the Council sought to include this off-site infrastructure within the CIL Regulation 123 List, to seek to assist the Trust by providing access to such funds, notwithstanding whether the Deans Slade SDA was brought forward via planning consent or not.
- 6.44 The applicant’s legal opinion starts and arrives at the same conclusion as the Council, but there are minor variances in approach. Thus, both parties agree that the wording of the CIL Regulation 123 List is explicit in requiring off-site work to be funded in part by CIL. Therefore, a S106 contribution is not possible due to the nature of the CIL Regulations, which prevent double dipping. The variance in opinion arises as the applicant states that any S106 requirement for the bridge would not meet the necessary tests of Regulation 122(2) for securing such contributions. The Council acknowledges this opinion, however, assumptions are presented regarding the delivery and navigation of the canal at Claypit Lane, which are yet to be evidenced and relate directly to the detailed design of the canal, which does not form part of this application.
- 6.45 It is fully appreciated that in making this planning balance and concluding that it is not reasonable to request the developer to provide and/or pay by way of S106 for the road bridge and canal channel works, having regard to all material planning considerations, this will clearly have implications for the delivery of the canal, in terms of timescales and cost. As noted by the LHCRT, the cost of delivery would likely be higher than if the bridge works were to be delivered at the same time as the SDA housing and associated off-site highway works. Also, there would be acknowledged additional disruption in delivery at different timescales. Furthermore, it is also recognised that CIL receipts across the district will not generate enough to pay for all of the identified infrastructure set out in the CIL Regulation 123 list. Accordingly, the cost of the delivery of the canal and associated road bridge in the vicinity of the site would be unlikely to be achieved, solely through CIL receipts, particularly as other infrastructure demands will/do also bid for part of such receipts. Therefore, in making this planning balance, whilst the development itself will not prevent the route of the proposed canal, the timescales for delivery are likely to be impacted upon along with how it will be funded. This does not however make the development proposal either unlawful or unacceptable in planning terms, as it is considered that all relevant material considerations; as raised by the Trust and others, have been duly taken into account in this report and in assessing the planning balance, which is ultimately for the consideration of Members.

- 6.46 Overall, it is acknowledged that Local Plan Strategy Policy IP1 requires the SDAs to deliver off-site infrastructure, in accordance with other Local Plan Policies and the IDP. The Strategy, including the Concept Statement (Appendix H) do not require the delivery of the Claypit Lane canal bridge or canal channel works, but the IDP clearly identifies such will be delivered by the developer directly or through S106 agreement. The Council's Developer Contributions SPD and CIL Regulation 123 list state this infrastructure will be delivered, given its location off-site, through CIL contributions. Given the wording of the IDP it would, on balance, appear that the intended route to deliver this infrastructure was through S106 agreement/ the developer. However, having regard to the policy position as it stands today and other material considerations, including the nature of CIL legislation, which prevent 'double dipping' as detailed above, it is considered that these works should be subject to CIL and cannot therefore be secured via alternative means (S106). Thus, the development is contrary to the IDP, but given other material planning considerations, notably the contents of the Regulation 123 CIL list, the site's boundaries and the reasonableness of the requirement of providing the bridge and other works that are not directly related to make an acceptable form of development, in planning terms; including when having regard to the case law (Oates's Case); on balance, it is considered that the Council could not reasonably request the developer to fund these works, in this instance. Thus, it is considered that CIL is the appropriate mechanism through which to seek the delivery of the bridge and canal channel works and that in having regard to all relevant material considerations the development is acceptable, in this regard, subject to conditions.

Sustainable Urban Drainage Systems

- 6.47 The applicant has submitted a Flood Risk Addendum, which advises that the pond located within the north eastern corner of the site, is sited as such, due to this being the low point within the landscape. The document details why relocating the pond to elsewhere within the site would be unviable and increase design risks. In addition, it is noted that the potential for the pond to overtop, due to a flooding event is very low (1:200 year event plus 40% climate change) and therefore, there is little risk of flooding of the towpath or canal. However, the document advises that in order to address this issue fully, it is recommended that an emergency spillway controlling exceedance flow towards the canal be incorporated. The Addendum continues to note that whilst it would be possible to alter the feature to an attenuation pond, with discharge to the canal, given that the construction date for the canal is unknown and the pond will have to be one of the first infrastructure features constructed when work commences on site, this amendment is not currently feasible and there is no policy requirement within the Development Plan to require such.
- 6.48 The Lichfield Surface Water Management Plan requires consideration to be given to the use of the canal for surface water attention. In addition, as noted in the Concept Statement of Appendix H, paragraph H3 this development should take account of the potential to use the canal for sustainable drainage.
- 6.49 The Local Planning Authority is currently awaiting a further response from the County Council Flood Team regarding the conflicting arguments forwarded by the applicant and the Canal Trust regarding the acceptability of design of the northern drainage pond. It is evident that the applicant considers infiltration drainage in this location to be acceptable and therefore, in accordance with Policy IP2 of the Local Plan Allocations Document, there is no need to drain surface water run-off from the site's road network into the canal. Evidently, the Trust are of the opinion that ground conditions in the area of the pond are such that infiltration drainage will likely lead to flooding of any future towpath, and the canal itself and rather, the design of the pond should be altered from infiltration to attenuation. Further input on this matter is to be provided by the applicant and will also be required from the County as Lead Local Flood Authority, to ensure that an appropriate solution is reached. It

should be noted however that if the applicant can demonstrate that an infiltration pond can be formed within this area, which would not 'prejudice the long term restoration' of the canal, then the need for the pond to be an attenuation feature cannot be established by policy. Whilst awaiting further comment, it is recommended that conditions 15 and 20 be amended accordingly, to require the submission and approval of further surface water drainage details, prior to the commencement of development. It is considered that drainage has been given due consideration by the applicant and subject to conditions the proposals are acceptable, in this regard thereby allowing for the development to comply with the requirements of the Development Plan and NPPF.

Sewage Treatment Plant

- 6.50 The sewage treatment station proposed near to the northern boundary of the site, will provide a wet well located approximately 9 metres from the site boundary. The 'tank' will be designed to be structurally and geotechnically stable and as such, there will be no risk to the structural integrity of either any future canal cutting or the pumping station.
- 6.51 Given the above assessment, subject to condition, it is considered that the foul and surface water drainage proposed for the site is acceptable and therefore the development will comply with the requirements of the Development Plan and NPPF in this regard.

7. Public Open Space, On-Site Green Infrastructure and Landscaping

- 7.1 The submitted block plan shows the main area of green infrastructure within the development itself running diagonally through the centre of the site from the south east to north western corner; along with small pocket parks dispersed through the development; which includes elements of both formal and informal public open space. There are a total of 7 LAPs and 1 NEAP proposed across the site, with details of the equipment to be installed within the parks supplied within the supporting documentation submitted for this application. No details of facilities within the Open Space such as benches or bins have yet been provided and will be secured under the provisions of the S106 agreement. The country park extends to 16.55ha and includes areas of tree planting, biodiversity enhancement areas, a Community Orchard and an off street car park for 18 vehicles. Lastly the remaining open space area to be considered is the sports facility shown to the western part of the site.
- 7.2 The open space areas proposed within the application site are in excess of 20 ha. The requirement as set out in Policy HSC1 of the Local Plan Strategy for amenity green space is 1.42ha/1000 population. The proposal for 475 dwellings would deliver an estimated population utilising data of average household estimates, which is 2.3 people per property of 1092 residents. This equates to a requirement of 1.55 ha and therefore the application site includes a significant green space over-provision.
- 7.3 The delivery of the Country Park facility within the site will be secured via the S106 agreement, as will its future maintenance by a maintenance management company. It is noted that Lichfield City Council has requested that the Park be completed prior to the first occupation of any of the dwellings. Such a requirement would be overly onerous for the applicant, given the financial implications of securing such, along with difficulties in accessing this area by vehicles. A suitable timeframe for delivery of the Park will therefore be secured as part of the phasing requirement proposed by condition 5.
- 7.4 Paragraph 118 of the NPPF advises that permission should be refused for development resulting in the loss of aged or veteran trees, unless the benefits of the development outweigh the harm. Core Policy 13 of the Local Plan Strategy also seeks to protect veteran trees, whilst Core Policy 14 seeks to ensure that there is no net loss to trees in conservation

areas. Policy NR4 and the Trees, Landscaping and Development Supplementary Planning Document seek to ensure that trees are retained, unless their removal is necessary and appropriate mitigation is proposed. The SPD also seeks to ensure that a minimum 20% canopy cover is achieved on development sites.

- 7.5 A community orchard, which is shown to be located within the Country Park, immediately to the south of the built form, is proposed in lieu of allotments. The latter is a requirement for the site identified by Policy HSC1 of the Local Plan Strategy, which requires the following in terms of allotment provision for the SDA's in South Lichfield, *"New allotment space will be provided...at a minimum of 1 plot (150sqm) per 32 households. Allotments will be well maintained and well managed and will be designed so as not to have a detrimental visual impact upon the wider landscape. Depending upon location, in some circumstances this may require restrictions upon the number and type of buildings which can be erected to serve the site such as individual sheds"*.
- 7.6 The orchard provision has been considered by the Council's Spatial Policy and Delivery Team and Arboriculturalist who advise that following consideration of the Additional Landscape Information Note submitted by the applicant, it could be considered that the proposed alternative broadly offers a similar type of provision, which subject to appropriate future maintenance (to be secured via the S106 agreement) will offer wider community benefits. In addition, given the prominence of the orchard from Birmingham Road, this being a key entrance point into Lichfield, should this area have been used for allotments, there would have been the potential for such to detract from the character of the site.
- 7.7 The Council's Arboriculturalist has discussed a number of iterations of the landscaping scheme with the applicant during the determination period. Whilst the landscaping scheme for both on and off plot is near approval, there remains elements of the latest submission that are inappropriate, specifically further details are required of watering schedules and amendments to the maintenance schedule, specific to replacement planting. These issues can be resolved through the use of a condition to ensure that a suitable landscaping scheme for the site. A further condition is recommended to secure the protection of trees and hedgerows during the course of developing the site. Subject to the submission of suitable details to discharge these condition the proposal's landscaping provision will be compliant with the requirements of the Development Plan and NPPF in this regard.
- 7.8 The requirement for playing field facilities to be delivered within this site, detailed within Appendix H of the Local Plan Strategy, is proposed by the applicant to be met on-site, should the Council secure a user for the land.
- 7.9 Presently, following discussions between the Council's Health & Well Being Manager and Sport England, it is envisioned that the facility will be utilised for football, with two adult pitches formed, along with a changing facility to contain two locker rooms and a social space. The cumulative cost of supplying these facilities will fall to the applicant, who, following the Council securing a club for the site, will either build the facility themselves or provide a sum to the Council to enable such to be built utilising a third party. Lastly, should no end user be identified to use the facility, then the S106 agreement should have a clause whereby a significant off-site contribution can be utilised by the Council to form facilities nearby. The acceptability of this agreement and the financial sums involved, have now been agreed, following extensive discussion between the applicant, Sport England and the Council's consultees on this matter, including the Health & Wellbeing Manager.
- 7.10 Given that the sports facility will be utilised by a club its separation from the school is considered to be appropriate and therefore the request from the Lichfield City Council for these areas to be located together is considered unnecessary.

- 7.11 Given the above considerations, with reference to green infrastructure, this development is considered to comply with the requirements of the Development Plan and NPPF, in this regard.

8 Residential Amenity – Future and Existing Residents

- 8.1 The NPPF core planning principles include the requirement that planning should seek a good standard of amenity for all existing and future occupants of land and buildings. The Council's Sustainable Design Supplementary Planning Document contains guidance detailing appropriate space around dwelling standards. These standards establish a minimum distance of 21 metres to separate principle habitable windows and that there should be at least 6 metres between a principal window and private neighbouring residential amenity space.
- 8.2 The SPD also requires that in order to prevent any overbearing impact upon residents, that there should be a minimum of 13 metres between the rear elevation and the blank wall of any proposed dwelling.
- 8.3 Finally the SPD identifies that for 1 or 2 bedroom dwellings a minimum garden size of 45m² should be provided, for 3 or 4 bed 65m² and for 5 bedroom dwellings 100m². All gardens should have a minimum length of 10m.
- 8.4 The layout, broadly complies with the requirements of the SPD, although there are some minor deficiencies noted across the development, with examples, such as Plot 453, which contains a 3 Bedroom dwelling, but has a private garden area of 55 sqm. It should be noted in this case however the dwelling is also served by a driveway containing a garage and two car parking spaces. Plot 428 has a garden length of 9.6m, the separation distance between principle windows to the rear elevations of plots 419/420 to 412/413 is 20.2m, whilst plots 362/363 to 364/365 are also 20.2m.
- 8.5 Whilst it is not ideal for a new development to fall short of the space about dwelling guidelines, the deficiencies evidenced throughout the site, are all minimal. Furthermore future residents will be aware of the circumstances prior to moving into the site. Lastly it should be noted that the vast majority of the site is fully compliant with the abovementioned standards.
- 8.6 The layout of the scheme, given the above described circumstances will ensure an appropriate standard of living accommodation for future residents and therefore the development will comply with the requirements of the Development Plan and NPPF in this regard.

Contaminated Land

- 8.7 Paragraph 109 of the NPPF advises that "the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability".
- 8.8 A Contaminated Land Survey has been submitted with the application which indicates low residual effect within the site from landfill gas. The report recommends that additional; assessment is undertaken in the affected areas and in the areas that were inaccessible at the time of the original investigation. Therefore it is recommended that a condition requiring

the submission of further ground contamination investigatory work be included within the decision, along with the installation of any mitigation measures as necessary.

Lighting

- 8.9 A Lighting Assessment document has been submitted with this application in order to quantify baseline lighting within the vicinity of the proposed development and identify existing sensitive receptors and allow constraints of any proposals to be assessed at an early stage.
- 8.10 The Assessment and Environmental Health Manager both conclude that the lighting within the development has the potential to cause loss of amenity to future residents, due to lighting within the scheme, particularly around the sporting facilities. To address this matter, a condition requiring the submission and approval by the Local Planning Authority of a lighting scheme, for each phase of development, is recommended.
- 8.11 Thus, subject to compliance with the abovementioned condition, the development will accord with the requirements of the Development Plan and NPPF in this regard.

Noise

- 8.12 The applicant has submitted a Noise Assessment within the Environmental Statement, which considers noise impact upon both the amenity of existing and future residents and existing business uses. The report concludes that the dwellings proposed within the site will require some noise mitigation, primarily due to noise generated by traffic, details of which are recommended by the Council's Environmental Health Manager to be secured via condition. In addition, in order to ensure that the impact of construction activity upon existing and future residents is minimised, a Construction Environment Management Plan is also recommended by the aforementioned consultee.

Air Quality

- 8.13 The applicant has submitted information to demonstrate the impact of this development on air quality. The report advises that dust associated with construction should be controlled by way of a Construction Management Scheme details of which are recommended to be secured by condition. Much of the impact following completion of the development relates to the use of vehicles associated with the occupiers of the development and this will impact upon the Air Quality Management Areas (AQMAs) of Muckley Corner and A38 Fradley, though the impact will be in the range of 0 to 0.4%. Therefore the overall impact of the proposal on air quality is judged to be insignificant.
- 8.14 It is noted that Staffordshire Authorities including Lichfield are currently working on an Air Quality guide for developers. Whilst this document has yet to be introduced, in the interim, it is recommended that applicants consider the future use of electric vehicles by residents on the development and install appropriate infrastructure, which supports this in dwellings, especially in view of the fact that many will not use their garage to charge an electric vehicle. For instance consideration can be given to external driveway charging points. A note to applicant to this effect is therefore recommended.
- 8.15 Given the above assessment, it is considered that subject to the recommended conditions, the amenity of existing and future residents will be adequately protected and therefore the proposal will be compliant with the requirements of the Development Plan and NPPF in this regard.

9. Loss of Agricultural Land

- 9.1 The application site is currently in arable agricultural use.
- 9.2 The Agricultural Land Classification (ALC) system classifies land into five grades, with Grade 3 subdivided into Subgrades 3a and 3b. The best and most versatile land is defined as Grades 1, 2 and 3a by policy guidance (Annex 2 of NPPF). Grade 3b is moderate, Grade 4 is poor and Grade 5 is very poor.
- 9.3 Paragraph 112 of the NPPF states that “Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality”.
- 9.4 The Agricultural Land Classification document submitted with this application, details the below results analysis for soil samples taken from the site:

Grade	Description	Area (ha)
2	Very good quality	1.2
3a	Good quality	27.3
3b	Moderate quality	9.2

- 9.5 As such, whilst the site does contain a small area of very good quality soil, the majority is defined as being of good quality. Therefore the loss of this land from food production would not be of significant concern, but will have to be considered within the planning balance exercise.

10 Biodiversity

- 10.1 To comply with the guidance contained within Paragraphs 9, 108 and 118 of the NPPF and the Council’s biodiversity duty as defined under section 40 of the NERC Act 2006, new development must demonstrate that it will not result in the loss of any biodiversity value of the site.
- 10.2 Due to the Local Planning Authorities obligation to “reflect and where appropriate promote relevant EU obligations and statutory requirements” (Paragraph 2 of NPPF) the applicant must display a net gain to biodiversity value, through development, as per the requirements of the EU Biodiversity Strategy 2020. Furthermore, producing a measurable net-gain to biodiversity value is also made a requirement of all developments within Lichfield District under Policy NR3 of the Lichfield District Local Plan Strategy.
- 10.3 The applicant has submitted a Construction Environment Management Plan, Habitat Management Plan and an Ecological Baseline Report and Ecology Management Plan with the application, which have assessed the site’s biodiversity value and its usage by protected species.
- 10.4 The Council’s Ecologist advises that the development be undertaken in accordance with the recommendations of the Ecological Baseline Report and Ecology Management Plan, to

ensure that there will be no impact upon protected species or their habitat to ensure compliance the abovementioned legislation and policies.

- 10.5 A positive ecological impact, specifically a habitat value uplift of 20% is required by Local Plan Strategy Policy NR3 and the Biodiversity and Development Supplementary Planning Document. A 23.6% habitat uplift will be achieved within this site, primarily through measures contained within the Country Park, along with the planting of the landscaping scheme. Such provision is recommended to be secured via the use of a condition to ensure that the development is undertaken in accordance within the requirements of the Construction Environment Management Plan and Habitat Management Plan. The net gain in biodiversity should be attributed appropriate material weight as per the guidance of Paragraph 188 of the NPPF. Subject to compliance with this condition the development accords with the requirements of the NPPF and Development Plan with regard to ecological considerations.

Cannock Chase SAC

- 10.6 The agreed strategy for the Cannock Chase SAC is set out in Policy NR7 of the Council's Local Plan Strategy, which requires that before development is permitted, it must be demonstrated that in itself or in combination with other development it will not have an adverse effect whether direct or indirect upon the integrity of the Cannock Chase SAC having regard to avoidance or mitigation measures. In particular, dwellings within a 15km radius of any boundary of Cannock Chase SAC will be deemed to have an adverse impact on the SAC unless or until satisfactory avoidance and/or mitigation measures have been secured.
- 10.7 Subsequent to the adoption of the Local Plan Strategy, the Council adopted further guidance on 10 March 2015, acknowledging a 15km Zone of Influence and seeking financial contributions for the required mitigation from development within the 0-8km zone. This site lies within the 8 - 15 km zone and as such is not directly liable to financial mitigation.
- 10.8 Under the provisions of the Conservation of Habitats and Species Regulations 2017, the Local Planning Authority as the competent authority, must have further consideration, beyond the planning policy matters identified within the original officer's report, to the impact of this development, in this case, due to the relative proximity, on the Cannock Chase SAC. Therefore, in accordance with Regulation 63 of the aforementioned Regulations, the Local Planning Authority has undertaken an Appropriate Assessment. Natural England are a statutory consultee on the Appropriate Assessment (AA) stage of the Habitats Regulations process and have therefore been duly consulted. Natural England have concurred with the LPA's AA, which concludes that the mitigation measures identified within the Council's Development Plan for allocated housing sites, will address any harm arising from this development to the SAC and therefore they have offered no objections to proposal. On this basis, it is concluded that the LPA have met its requirements as the competent authority, as required by the Regulations and therefore the proposal will comply with the requirements of the Development Plan and the NPPF in this regard.

11. Waste Management

- 11.1 Policy 1.2 of the Staffordshire and Stoke-on-Trent Joint Waste Local Plan, as supported by paragraph 8 of the National Planning Policy for Waste requires the better use of waste associated with non-waste related development, where all 'major development' proposals should:
- i. Use / Address waste as a resource;

- ii. Minimise waste as far as possible;
 - iii. Demonstrate the use of sustainable design and construction techniques, i.e.: resource efficiency in terms of sourcing of materials, construction methods, and demolition;
 - iv. Enable the building to be easily decommissioned or reused for a new purpose; and enable the future recycling of the building fabric to be used for its constituent material;
 - v. Maximise on-site management of construction, demolition and excavation waste arising during construction;
 - vi. Make provision for waste collection to facilitate, where practicable, separated waste collection systems; and,
 - vii. Be supported by a site waste management / waste audit if the development is likely to generate significant volumes of waste.
- 11.2 The application is accompanied by a Waste Audit and Waste Management Strategy ('the Strategy'). In respect of ground modelling and earthworks/excavation calculations, it is stated that a net fill of approximately 33,000m³ (approximately 45,000 tonnes) will be required to level the site. Approximately 8,000m³ (approximately 12,000 tonnes) of construction waste is also estimated from the development. The Strategy sets out that waste minimisation would be part of the overall sustainable design of the project and up to 80% of construction waste could be designed out. Also a construction material recycling facility could be developed at the start of the project and used as a hub for storing used construction material and a centre for recycling for further use on the project.
- 11.3 The Staffordshire and Stoke-on-Trent Joint Waste Local Plan contains the relevant waste planning policy considerations for the infill process identified for this development. Policy 1.4 (Use of Waste for landscaping, screening, engineering purposes or for the improvement of agricultural or forestry land) emphasises the importance of ensuring that the amount of material is reasonable and necessary and that the proposals are comprehensive, detailed, practicable and achievable within the proposed timescales. Policy 4.2 (Protection of environmental quality) identifies the matters that may be relevant to protect environmental quality, including the effects on people, local communities, and the highway network. Paragraph 6.4 provides a list of the type of matters that may be controlled by condition, which include a condition to define the duration of the development. Assuming an average HGV payload of 20-tonnes the fill required equates to a total of approximately 2,250 HGV loads or 4,500 two-way HGV movements. It is also important to limit the duration of temporary operations in order to minimise the effects on local amenity, the environment and the highway network.
- 11.4 Finally given the proposed Waste Management Strategy to design out up to 80% of construction waste, it would be appropriate to monitor progress of the fill operations, in addition to ongoing monitoring of waste materials generated and processed on site.
- 11.5 Having regard to the policies, guidance and observations referred to above, the application will be policy compliant, subject to the inclusion of a condition to define the duration of the infill operations and ongoing monitoring of waste materials generated and reused on site.
12. Archaeology
- 12.1 Paragraph 128 of the NPPF places a duty on Local Planning Authorities to "require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance".

- 12.2 The applicant has submitted an Archaeological Assessment with the application which has found no archaeological features or deposits within the site, whilst also concluding that there was low potential for any further archaeological remains to survive. This assessment has been supported by the County Council's Archaeologist and as such, no condition to require the submission of any further information is required. Therefore the application complies with the requirements of the Development Plan and NPPF in this regard.

13. Planning Obligations including Education Provision

- 13.1 Under the provisions of Policy IP1 of the Local Plan Strategy major new developments are required to make provisions for social/community facilities as the need for which arises from the development and that are commensurate to the scale and nature of the proposals. Such provision can be by way of direct on-site provision and/or by a contribution made for the provision of facilities elsewhere.

Education Provision

- 13.2 The site falls within the catchments of Christ Church CE (VC) Primary School, Lichfield and The Friary School, both of which are projected to be full for the foreseeable future. Given that the development is for 475 dwellings, it is likely to add 145 Primary School aged pupils, giving an education contribution requirement of £2,938,839, plus the land to be provided to form the on-site 1 FE Primary School. Education contributions for secondary school infrastructure will be sought through CIL contributions.
- 13.3 Other elements required to be included within the S106 are covered previously in this report. The document is now near completion and therefore it is proposed that an extension until the 31st March 2019 be provided to facilitate the completion of the document.

14. Other Issues

- 14.1 The matters raised by Lichfield City Council have largely been discussed within the above report. The remaining concern regarding the request for additional bungalows to be supplied within the site, beyond the 7 proposed is noted. However, there is no policy requirement in the Local Plan to require further provision.
- 14.2 The concerns raised by residents have also been largely addressed within the above report. Of those that remain it is evident that any damage to existing property caused by construction activity would be a private matter between the applicant and landowner, whilst the need for a further pedestrian access crossing over Falkland Road (an existing crossing exists adjacent to the north western corner of the site), will have been considered by the Highway Authority and secured if considered to have been reasonable and necessary. Concerns regarding overlooking of existing property from the Country Park are noted, but a separation distance of approximately 450m from the edge of this new facility to existing property ensures any impact would be wholly minimal in nature. The potential for residents to discard litter within the area, loss in value to property and the ability to gain access to mains gas and broadband are given very little planning weight in the determination of this application, given they are not material planning matters. Finally the request from the local Scouts Group to utilise the sports pavilion is noted and the request has been forwarded to the Council's Health & Wellbeing Manager to progress.
- 14.3 With reference to the comments raised by LARA, once more the majority of points have been considered within the above report, however it is noted that the requested provision

of hedgehog friendly fencing, solar panel provision and gas boiler provision for each dwellings has not been secured as there is no Planning Policy provision to secure the delivery of such. Whether parking restrictions are introduced within the site is a matter for the highways authority to consider prior to the adoption of the development. Thus, the necessity of this suggestion will be considered outside of this planning application.

15 Financial Considerations (including Community Infrastructure Levy)

15.1 This development is a CIL (Community Infrastructure Levy) liable scheme set within an SDA zone, where the applicable rate of £14 per square metre. This will be payable in accordance with the Council's adopted CIL Instalments Policy, unless otherwise agreed.

15.2 The development would give rise to a number of economic benefits. For example, it would generate employment opportunities including for local companies, in the construction industry during construction. The development would also generate New Homes Bonus and Council Tax.

16. Human Rights

16.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with neighbour's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report and on balance is justified and proportionate in relation to the provisions of the policies of the Development Plan and National Policy in the NPPF.

Conclusion

The NPPF states that there are three dimensions to sustainable development, namely economic, social and environmental and that these should be considered collectively and weighed in the balance when assessing the suitability of development proposals. With reference to this scheme, economically the proposal will provide employment opportunities, through creating a development opportunity, whose future residents would support existing and proposed facilities within the area. Socially, the proposal would have little impact upon existing residents, whilst suitable conditions can secure the amenity of future residents within the site. In addition the scale of development is compliant with the requirements of the Council's Local Plan Strategy.

Environmentally the site is a key Strategic Development Allocation and occupies a location where any landscape harm will be localised. It is considered that adequate, high quality public open space will be provided on site to meet the needs of future and existing residents, whilst sports provision will be met on site to ensure the health and well-being of residents. The number of dwellings and mix proposed, will provide a suitable density of development to integrate into the character of the area, whilst also helping to meet the accommodation needs of the District. The development will cause less than substantial harm to the setting of two Grade II Listed Buildings, although the degree of harm has been partially mitigated through the introduction of appropriate landscaping to reduce the intervisibility between the development and this site. In addition the scheme will remove a small area of very good soil from food production.

With regard to transport and highways, adequate information and detail has been included within the supporting information to demonstrate that sustainable travel choices are available in close proximity of the site. Acceptable details have been provided with regard to the two vehicular access points to ensure that the development can be safely and appropriately accessed, without undue

harm, to either the character and appearance of the area, existing or future residents or highway and pedestrian safety. Furthermore, it has been demonstrated that the development will have an acceptable impact upon the Strategic Highway Network.

Subject to suitable conditions there will be no adverse impact on protected or priority species, whilst a positive biodiversity impact will be created within the site. With regard to drainage, residential amenity and the development's impact on the surrounding landscape, it is considered that adequate mitigation would be provided and that, subject to appropriate conditions, no material harm will be caused.

The concerns and comments raised by the Lichfield & Hatherton Canal Restoration Trust, Inland Waterways Association and other parties have been fully considered and the implications of such are addressed above. In terms of the development's impact upon the delivery of the to be restored Lichfield Canal, it is considered that the proposal is in conformity with the requirements of the Development Plan, subject to conditions, in that it will ensure integration of such within the development's Green infrastructure. Other material considerations, including published documents of the Council, such as the IDP and CIL 123 List, have been given due consideration. Ultimately as the decision maker, it is for the Council to come to a balanced view on the guidance available, attribute appropriate material planning weight and make a subsequent judgement. In this case, whilst there may be material planning harm arising from an inability to fully support the delivery of the canal, key infrastructure identified within the Development Plan, as the CIL Regulations state that infrastructure identified to be delivered via such funding cannot also be funded via an alternative route, such as S106 contributions. It is considered that a balanced and appropriate recommendation has been arrived at.

Given the above assessment and the weight attributable to the delivery of residential development through the NPPF, it is recommended that this application is in conformity with the Development Plan as a whole and no other material considerations are sufficient to outweigh the acceptability of this development, so as to warrant the refusal of the application. Therefore, the recommendation, subject to the signing of a S106 agreement, is one of approval.

Appendix 1

APPLICATION AT DEANS SLADE SDA (17/01191/OUFMEI)

OPINION PROVIDED TO LHCRT.

1. I am instructed by Lichfield & Hatherton Canals Restoration Trust (LHCRT) to advise on the above application and its consideration by officers of Lichfield District Council in relation to the policy provision for the Restored Lichfield Canal, following an earlier officer's report to committee, and before consideration by committee due on 17th December.
2. The Canal issue has two elements; the provision of a new road bridge at Fosse Way (South of Falkland Road) to accommodate the future route of the Restored Lichfield Canal, and the integration of the Restored Lichfield Canal within the SDA.

The provision of a new road bridge

3. On the first issue of the incorporation of a bridge, the applicants have not provided for this, the officers have not required that it be provided, and the applicants have provided legal opinions from Eversheds Sutherland of 8th March and 17th November expressing the view that the applicant is not required to provide the bridge.
4. In my opinion the requirement for the bridge to be provided as part of the development of the Deans Slade SDA is clear and unambiguous from the wording of the Lichfield Local Plan, as Adopted in 2015.
5. A guiding principle to the interpretation of policies in any local plan is that where the wording of a policy refers to the necessity to comply with the requirements of either other sections of the Local Plan itself, such as an appendix, or to other planning documents, then the relevant wording of those other documents are incorporated by reference and become part of the policy wording. This is uncontroversial. To construe otherwise would render the policy wording meaningless. If the policy meant to say "shall have regard to" then that is what it would say (as is often the case).
6. Here, the policy requirement for provision of the new road bridge comes expressly from not one but two Local Plan policies. Policy Lichfield 6 allocates the three Southern SDAs. It provides (at 6) for "*Integration of the route for a restored Lichfield Canal into an integrated open space and green infrastructure network*". It "**requires** that development be in accordance with the Concept Statement at Appendix H".
7. The Dean Slade South of Lichfield SDA Concept Statement at Appendix H to the Local Plan also provides (at H3) "*The Lichfield Canal route will be included as part of the open space*

network, which will take account of sustainable drainage and the potential for enhanced biodiversity.” The Statement also provides (at H7) “Details of the infrastructure requirements are set out in detail in the Infrastructure Delivery Plan and developers will be expected to enter into a legal agreement to ensure the provision of necessary infrastructure and facilities detailed in order to make the development acceptable”

8. The Infrastructure Delivery Plan (March 2018) sets out the requirements for the Dean Slade SDA as: *“A continuous open space network must be provided along the course of the Lichfield Canal route giving access to future waterside recreation uses. The linear form of this corridor will be opened up in places to provide public amenity space. **Works to include the provision of a new road bridge over the lowered canal channel** and any further necessary canal channel works, to facilitate its integration with a wider open space and green infrastructure network. **Funding is: Developer/S106.** Phasing is: Alongside development of the site, to be completed by full construction stage with an ongoing programme for maintenance. The Delivery Lead is: Developer working with the Lichfield Canal Restoration Trust”*. (Emphasis added).
9. The second policy requirement is in Core Policy 4; Delivering our Infrastructure. It states; *“New development must be supported by the required infrastructure at the appropriate stage. New development will be required to provide the necessary infrastructure at a timely stage to meet the community needs arising as a result. Development will also be expected to contribute, as appropriate, to strategic projects that support sustainable development and the wider community. Both strategic and local infrastructure provision will be linked to the phasing of new development. Phasing and specific infrastructure requirements are set out in the Infrastructure Delivery Plan (IDP) and the Concept Statements relating to the Strategic Development Allocations (SDAs)....”*
10. The requirement in Adopted policy is clear and unambiguous, by express incorporation through Policy Lichfield 6 of the wording of the Concept Statement, which itself expressly incorporates the requirements of the Infrastructure Plan. Core Policy 4 also directly incorporates the Infrastructure Delivery Plan. In each case the requirement is clear.
11. It is worth noting that this view on the weight to be attached to the IDP, via express incorporation in appropriate Local Plan policy wording, has been expressly accepted by planning officers. Wording identical or similar to that now in the IDP for provision of the bridge (highlighted at paragraph 8, above) was formally submitted by officers for incorporation in the Local Plan policy relating to the canal. Somehow it was omitted, officers acknowledged the error and provided for the wording to be incorporated in the IDP, arguing that it would carry equal weight, via incorporation by reference in the policy itself. LHCRT reviewed this and agreed with this analysis, and were satisfied with the position at that time.
12. It should not be necessary to comment that it is no answer to say that the infrastructure required lies outside the boundary of the SDA (or, as has also been asserted, outside the application boundary). It is common for elements of strategic infrastructure which have



been assessed and included in express policy in connection with the delivery of Strategic Sites to be located beyond the site boundaries, as expressly acknowledged within the Local Plan.

13. Officers have suggested that CIL is the appropriate means for funding the provision of the new road bridge. The first point is that this would not be lawful under the CIL regulations. CIL cannot be charged when the Local Plan makes express provision for funding from the developer / s.106, as is the case here, see the IDP, (quoted and highlighted at paragraph 8, above). In any event, I am advised that those parts of the canal restoration not to be funded by development have not been costed and incorporated into the infrastructure resulting in the Charging Schedule, and is unsound on that basis. Major amendments would be needed both to the Local Plan and to the CIL documentation to first permit CIL for the road bridge to be collected, and secondly for the Core Policy infrastructure requirement to be deliverable.
14. It is clear from the earlier Report to Committee and the failure to require provision of the road bridge in a legal agreement that officers have manifestly failed to have regard to, or place appropriate weight on, provisions of the development plan which are fundamental to the delivery of infrastructure required to be provided as part of delivery of the SDA, with serious consequences for delivery of one of three key infrastructure improvements identified in the Local Plan. As such it makes any decision to grant permission without securing delivery of the new road bridge susceptible to legal challenge.

Integration of the Restored Lichfield Canal within the SDA

15. This matter can be taken shortly. Integration of the canal within the SDA is an express requirement of policy; Policy Lichfield 6, at the sixth item (see paragraph 6, above). It is also an express requirement of the Dean Slade Concept Statement at Appendix H (at H3, see paragraph 8, above) and of the IDP. It is clear from the figure in the Concept Plan that parts of the Canal route are within the northern boundary of the SDA. It is quite understandable for the applicant to exclude this land from the application, as they have done, as it falls outside the applicant's ownership. However, it is still within the SDA and it does not permit the applicant to argue, as they appear to have, that they are not required to comply with local plan policy in this regard, on the basis that it is outside their application boundary; it still forms part of the SDA. It is noted that neither the applicant nor officers appear to contest this policy requirement or to find it controversial in this regard, although it relies on exactly the same analysis as for the provision of the road bridge, which they do contest, namely the combination of express policy wording, and the incorporation through that wording of the Concept Statement at Appendix H and of the IDS.



- 16.** The applicant has failed adequately to address integration of the future canal with its proposals to comply with policy. It is not addressed at all sufficiently within the application material, in order for officers reasonably to conclude that this policy requirement has been addressed. It cannot be addressed at this stage by the imposition of a condition; no material has been formally submitted to form the basis of a conclusion by officers that these matters have been addressed and that integration can be achieved. It is another significant failure to take into account adopted policy, both in the application and in the manner dealt with in the officer's original report, which adds to the susceptibility of any decision made on this basis to legal challenge.

Conclusion

- 17.** For the reasons stated above, any decision made on the basis of officer's conclusions that either policy does not require the provision of the road bridge and integration of development with the canal route (as appears to be the current position) or that the application need not comply with adopted policy, would be unsound and susceptible to legal challenge.

Oliver Goodwin

**Consultant Barrister
Keystone Law
7th December 2018**



Appendix 2

APPLICATION AT DEANS SLADE SDA (17/01191/OUFMEI)
FURTHER OPINION PROVIDED TO:
THE LICHFIELD & HATHERTON CANALS RESTORATION TRUST ("LHCRT")
RESPONSE TO REPORT TO COMMITTEE FOR 14TH JANUARY 2019

1. The report to committee for 14th January reports further representations from LHCRT ("the Trust") and from the Inland Waterways Association ("IWA") under "Additional Consultations" from page 60 of the report. The report addresses these representations under "Further Determining Issues", including the legal opinion submitted in December by the Trust, from iv.5 on page 71. One correction to point out is that in summarising the legal opinion of 7th December, at p.67, 2nd bullet point, the report states "it is reasonable to argue" when it should read "it is unreasonable to argue". I have been instructed by the Trust to respond to the points made in relation to the legal opinion, and the officer's resulting conclusions. For convenience these are set out in the order they appear in the report, using the same references. The officer's response to the representations on behalf of the Trust and IWA go no way in redressing the serious flaws identified in the report and to committee and its conclusions. Any decision in support of the recommendation will as a result be susceptible to legal challenge, for the reasons set out below.
2. At iv.9 the officer states that the bridge required for the canal lies outside the application site. This is not contested or controversial, nor does it have a bearing on the requirement for its provision. This point may be taken briefly. Local Plan Strategy policy IP 1 provides that *"to ensure that all new development provides the necessary infrastructure....[the Council] will require all eligible development to provide the appropriate infrastructure **on and off site** in line with other policies and the Infrastructure Delivery Plan"* (emphasis added). Such a policy is not exceptional; as a matter of principle and practice, infrastructure requirements of major developments very often, if not always, extend beyond the boundary of the site; for example, highways improvements, public transport improvements, education provision. Indeed, they all extend beyond the site on this scheme. The Infrastructure Delivery Plan ("IDP") at Appendix H identifies the location of the bridge, outside the boundary of the SDA, which is required to be funded by the development. There is no ambiguity, or reason why location within the site is to be distinguished from locations outside it, in exactly the same way as for identified highways improvements. The Council have taken this correct approach in its plan. An illustration of the point is that no distinction is made in the IDP for the infrastructure requirements in association with the SDAs as to whether the associated works are within or outside the boundary of the SDA, other than identifying where the works are located.

3. At iv.10 and iv.11 the officer has with respect missed the point; the Trust does not argue that the new roundabout prejudices future delivery of the bridge or the canal. Nor has the Trust argued, as suggested at paragraph iv.11, that the development should be delayed until the bridge has been provided; the Trust says that the bridge should be provided as part of the infrastructure for the development. Indeed, the Officer notes later in his report, at iv.19, that *“page 69 of the IDP indicates that the applicant is responsible for an appropriately phased provision of the identified works, running alongside the construction of the housing development”*. The Trust does not agree that the closure of Claypit Lane after completion of the development will be easy to address. The main access for the new homes is via Claypit Lane, and I am instructed that requiring the sole access to be via the southern access at Birmingham Road will not be feasible, even temporarily, and would cause major congestion such that the highway authority would not accept it.
4. The remainder of the Officer’s response relating to the legal submission on behalf of the Trust can be summarised as making two points. Firstly, that the IDP can be treated separately from the Local Plan Strategy, and although a material consideration carries less weight in determining the application. Secondly, that the Council’s own adopted planning documents are confusing and conflicting insofar as the provision of essential infrastructure is concerned. The Officer, after asserting the IDP carries less weight, does not in terms state the reasons why the express requirement in the IDP may be set aside.
5. The only factor set out in the report which could be argued, on the strength of the report, to form a basis for setting aside part of the requirement of the IDP – but which claim has not expressly been made - is the alleged confusion and conflict within the Council’s adopted policies. First, it is not accepted that the Council’s adopted policies are confusing and conflicting. Two independent Inspectors agree with this conclusion; the Examiner who found the Local Plan Strategy to be sound, and the Inspector who subsequently found the CIL Regulation 123 List, which is reliant on the Local Plan Strategy, to be sound. The question of soundness and confusion is addressed further below from paragraph 17. Second, even if there was actual or potential confusion, this does not provide a sound reason not to apply the requirement. Finally, it is noted that the officer does not argue that the development would not be viable if it complied with the infrastructure requirements –and there is no evidence submitted which could support this; the applicant has not submitted a formal viability assessment to seek to establish this.
6. The Spatial Policy & Delivery Manager has commented in the report that he agreed with the legal opinion on policy of Eversheds Sutherlands LLP, which unhelpfully did not address in any detail the IDP policies or their relationship to the Local Plan Strategy. It is conspicuous that either the same officer has not been invited to comment upon the legal opinion submitted on behalf of the Trust, or has declined to do so.



Policy through Local Plan Strategy coupled with the IDP

7. The essential linkage between the Local Plan Strategy and the IDP was set out in the Legal Opinion of 7th December and it is not necessary to rehearse it in full here. A short example will suffice. Core Policy 4 provides “*Phasing and specific infrastructure requirements are set out in the Infrastructure Delivery Plan (IDP) and the Concept Statements relating to the Strategic Development Allocations (SDAs)...*”
8. The Local Plan Strategy is incomplete, and cannot be construed as to its requirements, without the IDP. If, as the officer now argues, the provisions of the IDP are not Plan requirements, but are rather matters to which regard may be paid, this renders the Local Plan Strategy fatally flawed insofar as the delivery of infrastructure essential in association with development is concerned. This does not just affect the SDAs, it relates to all the infrastructure policies in the Plan related to new development. Developers could argue that they are not requirements, and the Council would be powerless to resist. But that is simply not the case. This formulation and relationship between the two documents was before the Inspector for consideration, and he had the draft IDP as a supporting document. If the combination of the two documents failed to deliver the infrastructure required by the Local Plan Strategy, as now argued by the officer, the Inspector would not have found the Plan to be sound.
9. It is worth considering why the IDP should be treated separately from the Local Plan Strategy, when both documents were before the Inspector. It is not, as now appears to be argued by the officer, that the infrastructure policies are of less importance or weight for decision making than other policies. When Local Plans contained all their policies in one document, these included all the provisions relating to infrastructure. The Planning Acts were changed to provide that Local Plans were separated into different documents in order to speed the system and to allow flexibility. The officer notes that the IDP is a “living document” and subject to frequent review, as stated within Local Plan Strategy and the IDP itself. It is not, therefore, practical for each iteration to be subject to independent review by an Inspector as required in order for it as a whole to constitute a formal part of the Local Plan. It is a practical arrangement, addressed in policy terms by cross referencing from the Local Plan Strategy to specific provisions of the IDP to ensure delivery of the infrastructure policies.
10. The officer does accept (at iv.17), that the policy requirement in the IDP is a material consideration, just as an adopted policy is, but, he argues, there is a difference in the weight to be applied in determination of the application; the IDP carries less weight. Whilst this analysis is not accepted in this instance, it is appropriate to consider what weight should be applied if the approach is valid, whilst noting again that, as stated at



paragraph 5 above, the officer has not given a clear reason for not applying the policy in this case.

11. There are a number of factors to be taken into account in determining what weight to attach to the policy requirement for provision of a road bridge over the canal. First, the degree of importance in policy terms of the canal. It is one of the most important strategic infrastructure projects in the Local Plan Strategy, expressly supported by a range of policies, as listed by the officer at iv.5. Second, this SDA is one of three SDAs released from former green belt land. Justifying release of land from the green belt is one of the highest policy hurdles in the planning system. Exceptional circumstances are required. The reason for the canal route in this location, passing through and linking the three SDAs, is to provide a green transport corridor and network. This compensatory green public open space and green transport corridor was one of the exceptional circumstances and an important consideration in justifying release from the green belt. It should therefore carry the highest weight. The officer has failed to attach due weight to these two important policy matters.
12. The third factor going to weight is a uniquely site specific factor. Officers formally agreed to incorporate the infrastructure requirement for a road bridge in the Local Plan Strategy, on the strength of which the Trust's objection was withdrawn, but due to acknowledged error this was not carried through into the final submission version and was not included. Officers proposed to add the wording instead into the IDP and asserted, correctly, that this should carry the same weight. This was set out in the December legal submission but the officer has failed to address this in his response.
13. As the Council have not acknowledged this point, an extract of documentation submitted by IWA to the Council in relation to the Local Plan Allocations Examination (Exam Ref. EX9) is set out here;
"... Dean Slade SDAs as Main Modifications (Jan. 2014), removing them from the Green Belt. All 3 of these SDAs will extend the City to the south of the agreed restoration route for the Lichfield Canal (the section adjoining South of Lichfield and Dean Slade being a diversion from the original route due to development following its closure in 1954). These sites require road access across the line of the canal from Falkland Road (Dean Slade), the Southern Bypass continuation (South of Lichfield), and Tamworth Road (Cricket Lane). In order to avoid additional physical obstacles and significant extra cost to the restoration project it is important that the developments each provide a new road bridge over the canal line and associated canal channel works. IWA's representations on MM12, MM13 and MM15 and LHCRT's representation on MM15 made this case, and it was accepted by LDC in the Council Responses [Document 1] which agreed to add the words: LPMM30 Deans Slade Farm: "including the provision of a new road bridge over the lowered canal channel and any further necessary canal channel works".



14. The error on failing to include this wording was acknowledged in an exchange of correspondence between the IWA and Council on 25th May and 12th June 2015, in which the officer maintained that incorporation of the wording instead in the IDP was equally as effective in policy terms. I respectfully agree. In such circumstances, where the Council had intended the wording to be a part of the policy in the Local Plan Strategy, officers should place the same weight on the wording now as if it was in the Plan. To fail to do so now is clearly unreasonable.
15. The fourth factor going to the weight to be applied is whether there has been some major change in material planning circumstances, which has not been claimed. The policy wording has remained identical in successive IDPs, most recently adopted in March 2018 (and since the CIL List of 2017). The officer does not argue that the Canal has become incapable of delivery since adoption of the Strategy in 2016 or adoption of the latest IDP in 2018. In fact the reverse is the case; further sections of the infrastructure have been commissioned, funded and construction has commenced. However, completion of the canal will be severely prejudiced if funding of elements to be secured through related development in accordance with policy is not delivered.
16. The fifth factor is the question of precedent, and also bears upon the issue of change of circumstances. In relation to one of the other of the three SDAs which share similar infrastructure requirements through the IDP, the Council resolved in November 2016 to grant permission for development at the South of Lichfield SDA (South of Shortbutts Lane now known as St. Johns) subject to the requirement in a planning obligation to provide road bridges over the route of the future canal (similar to Deans Slade). This is summarised in the report to committee at paragraph 2.20. The permission has since been granted. To the extent that the officer's reasoning relies on the IDP carrying less weight than the Local Plan Strategy, he fails to distinguish this directly comparable and recent precedent. At South of Lichfield, the part of the canal route is within the SDA site, but this is not relevant in the case of infrastructure provision, for the reasons set out at paragraph 2 above. It is not a distinction made in the wording of the IDP in relation to requirements in connection with the SDAs.

Funding of the infrastructure; s106, CIL, Other Sources.

17. The report at iv.17 notes that the IDP identifies the improvements are to be funded by (quoting from the IDP); *"Developer/s106"* and phasing *"alongside development of the site, to be completed by full construction stage with ongoing programme for maintenance"*. The officer's report continues; *"The developer is identified as the delivery lead. However, there is no indication of how the developer should lead on delivery nor how the 3 SDAs would contribute to the provision of this infrastructure"*. This statement is disingenuous. The officer can find the answers he seeks by referring to his authority's recently completed section 106 agreement for similar canal bridge



works for the South of Lichfield SDA, to which very similar wording in the IDP applies. It is a standard process, and there is no reason the officer should become suddenly mystified by his own authority's policy wording. The process can be the same as for off-site highways works required for the development; the developer estimates the cost of the works, submits this to the highways authority, enters negotiations with the landowner, which in this case is the County as highway authority, carries out the design, "*working with the Trust*", as required by the specific wording of the IDP, secures the Council's approval, completes a legal agreement and arranges for the works to be carried out, or a third party carries the works out under contract.

18. The officer's report deals with possible contributions through CIL from iv.20. it is claimed that the wording of the CIL Regulation 123 List of February 2017 List is confusing, and that there is a contradiction between the list and the explanatory notes. This conclusion can only be drawn from a very basic mis-reading of the document. The canal infrastructure is dealt with as follows; *Environment and Biodiversity. Infrastructure to be funded in whole or in part by CIL. Infrastructure works relating to the restoration of the Lichfield Canal will potentially benefit from CIL funds, apart from works required in relation to any on-site provision by the developers connected to the three SDAs in the vicinity of the canal: South of Lichfield, Deans Slade Farm, Cricket Lane. Notes. Section 106 agreements will be required where appropriate to secure infrastructure works relating to the restoration of the Lichfield Canal for the three SDAs in the vicinity of the canal: South of Lichfield, Deans Slade Farm, Cricket Lane.*
19. Table 5.3 in the IDP relating to Dean Slade states "...works to include the provision of a new road bridge and the lowering of the canal channel and any other further necessary canal channel works to facilitate its integration. " Funding is identified as "*Developer / s.106*". There is no room for confusion, if it is read with reference to Map H2 in the Concept Statement for Dean Slade SDA at Appendix H in the Local Plan Strategy (as acknowledged by the officer at iv.9).
20. The CIL list was drafted after the adoption of the Local Plan Strategy, with its associated IDP. The IDP formed part of the evidence base in the preparation of the CIL List (see IDP at 1.10). The IDP states at 1.11 that "*the latest review of the IDP (2018)) was undertaken to reflect the adoption of the CIL Charging Schedule and to ensure the document is able robustly to support the development of the emerging allocations document.*" It is an absolutely basic legal requirement under CIL Regulations that a party may not be charged twice for the same infrastructure. It is clear from the careful cross referencing of the documents, and use in preparation of later drafts, that the Council has scrupulously taken care to avoid any unlawful duplication or ambiguity, as evidenced by findings of soundness. Policies under the earlier Strategy are explicit and unambiguous as to which works are to be funded by s.106. Both the item in the list itself and the explanatory note use the phrase "*in the vicinity of the canal*". The only reasonable interpretation is that the Council were dove-tailing the two provisions, rather than seeking to duplicate or override provision through the s.106. To do otherwise would plainly have been in breach of CIL Regulations.



21. If it was the intention of the CIL List to change any funding of parts of canal infrastructure associated with the SDA from s.106 to CIL, especially in circumstances where it is acknowledged that CIL funding would not meet the cost of works identified as necessary in connection with the development of the SDA, then this would have been set out clearly within the CIL submission, for the Examiner's consideration. It was not, because it was clearly not the intention to do this. On the contrary, the CIL documentation makes it clear that it was intended to be consistent with the IDP. The CIL Examiner was fully aware of the recently adopted Local Plan Strategy, including the references to infrastructure provided by the IDP. If he had considered there was the possible duplication of payments, as now raised by a Council officer for the first time since adoption, he would not have declared the document to be sound.
22. The officer's report goes on to note, at iv.24, that; *"It should be noted that the regulation 123 list includes a commitment to "be updated on a regular basis, taking into account the Council's Infrastructure Delivery Plan (IDP) and any changes to the CIL regulations". Thus, this statement, utilising reasonable consideration, implies that the 123 list will be altered to replicate advice within the IDP"*. It is instructive to know that the officer considers that if necessary, it is the wording of the CIL List which should be amended to take account of the IDP, under the umbrella of the adopted Strategy. This interpretation makes it clear that if there is any doubt, it is to be resolved in favour of the Strategy and IDP, by amending the CIL List *"to replicate the advice in the IDP"*. However, this is not the approach the officer has adopted in this instance.
23. Having claimed that the documents are conflicting and confused, the officer however claims at iv.25 that the CIL List is unambiguous in its effect of significantly changing the infrastructure requirements of the Local Plan Strategy and IDP relating to the SDA, despite there being no evidence whatsoever that this was the intention of the Council. Such a conclusion is irrational. The officer notes the provision within the CIL List for future revisions of the list to reflect changes to the IDP, and the proper conclusion is that in the event of any genuine doubt, the CIL List should be construed as being consistent with the IDP, as is the stated intention of the Council, and that if any correction or clarification is required for the avoidance of doubt, such correction should be made to the CIL List upon its next review. To do otherwise flies in the face of the clear interrelationship between the documents and the intention of the Council. The IDP has been reviewed since the CIL List of 2017. It was published in March 2018 and addresses CIL issues at paragraphs 37 and 38, explains how the CIL List has been taken into account in review of the document, and concludes that it is satisfied that there is no "double counting". Had the Council intended, via the CIL List, to transfer the obligation from infrastructure requirements pursuant to strategic policy from the owners of SDAs to general provision, it would have set this out somewhere in writing, and revised the IDP accordingly. It did not happen because this was never the intention, and to claim as such now is disingenuous in the extreme.
24. It is extra-ordinary that a Council officer is now claiming, for the first time so far as the Trust understands, that its own adopted policies are in conflict with each other, when they have been adopted for a number of years, their provenance as set out within the documents makes clear that they have been carefully cross referenced and have informed each other and are mutually



consistent, and have been declared sound by the Local Plan Inspector, by the Secretary of State and by the CIL Examiner. The officer does not claim that any conflict is deliberate, there was no suggestion, in the documents in support of the draft CIL List or elsewhere, that there was an intention in the CIL process to vary the infrastructure requirements for the SDA in the Local Plan Strategy and the IDP. Having created this alleged dilemma, it is perverse to purport to resolve it by discounting the provisions of the Local Plan Strategy and the IDP, which has the effect of impacting upon the viability of delivering the canal and bridge, as concluded by the officer at iv.25.

Integration of the Restored Lichfield Canal in association with the SDA

25. The Points of principle set out above apply equally to the obligation through the Local Strategy Plan via the IDP to make adequate provision to accommodate integration of the canal route within the SDA site, including any re-grading within the application site, to be funded by the developer through s.106, as set out at Table 5.3 – Dean Slade- within the IDP and The Concept Plan for Dean Slade SDA at Appendix H of the Local Plan Strategy. It is revealing that the Council has not sought a commitment through a section 106 agreement to contribute to the integration of that part of the land within the SDA which does adjoin the route of the canal, as required by the Local Plan Strategy and IDP (at page 69). The officer's response does not address the issue of why the Council has not ensured that the applicant comply with this requirement, supported by a s.106 agreement. Further, having acknowledged that this is a material consideration, the officer does not set out planning reasons as to why it is proposed that the requirements are set aside. The officer suggests that the proposed condition 29 is sufficient to address the policy requirement. It patently does not; it provides only for at least one footpath connection from the residential development. Further, the Council does not have the apparently newly discovered excuse here of any potential conflict with the CIL List, and yet no provision has been sought. This is again revealing in how the Council's approach as a whole may be viewed.

The officer's conclusion

26. The officer's conclusion in the report state that the proposal is in conformity with the requirements of the Development Plan. It plainly is not, compliance with the infrastructure policy Core 4 and the policy for the SDA Lichfield 6 (and other policies listed in the report at iv.5) entail compliance with the infrastructure requirements as specified in detail in the IDP. The officer accepts that these are material considerations. They have not been complied with.
27. Regarding the obligation to provide for integration of the canal route, including open space, with the SDA through a section 106 agreement the officer does not offer any reason for not insisting on compliance.



28. Regarding the obligation to provide for a new road bridge over a new canal cutting in the vicinity of the site the officer suggests now for the first time that, because of a confusion or conflict with the CIL List, or alternatively that the CIL List is clear that there is now no such obligation, this somehow amounts to compliance with planning policy. I am instructed that there has been no indication from negotiations or discussions on this application hitherto that this was the Council's view of the matrices of the Council documents, or of the officer's conclusions now arising from this. It is telling that this new analysis formed no part of the officer's consideration of matters material to the consideration of the application in either the report to committee for July 2017 or for December 2018.

Conclusion

29. The Suite of the Council's adopted documents spell out explicitly, clearly and unambiguously the requirement on the developer of Dean Slade to fund the road bridge and lowered canal cutting outside the SDA, and accommodation works for integration with the canal within the Northern boundary of the SDA. The documents spell out that these are to be funded by s.106 and not by CIL contributions.
30. The additions to the officer's report in response to the first legal opinion, including an entirely new point in relation to CIL hitherto not mentioned in consideration of the application or drawn to members' attention, go no way to redressing the failure to provide for infrastructure relating to the canal, nor does it provide any sound reason for failing to do so. The officer's failure to provide any reason for setting aside the requirement to provide for canal infrastructure within the SDA is a serious flaw in the report. The fresh reason given for setting aside the requirements for funding a new bridge and canal cutting adjacent to the SDA, namely that the Council's recently approved plans are inconsistent and confused, to be resolved by ignoring the Plan requirement, is a wholly incorrect approach both in its analysis and its conclusions derived from such analysis, and is seriously flawed.



31. The conclusion therefore remains the same as in December; if the Council resolves to grant permission on this basis, such a decision is susceptible to legal challenge. The only proper course open to the Council is to resolve that permission may be granted only subject to obligations in s.106 agreement for the provision of the canal related infrastructure pursuant to the Local Plan Strategy with the IDP, and subject to appropriately worded conditions as set out in the separate representations of the Trust.

Oliver Goodwin
Consultant Barrister

Keystone Law

11th January 2019



Appendix 3

Bal Nahal
Head of Legal, Property & Democratic Services
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Date: 29 January 2019
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By Email only

Dear Sirs

17/00977/OUTMEI – Deans Slade SDA

We write in connection with the above application and in response on behalf of the applicant to the latest legal opinion ("the Further Opinion") submitted on behalf of the Lichfield and Hatherton Canal Restoration Trust ("the Trust") dated 11th January 2019.

This response should be read in conjunction with our previous letters of 8th March 2018 and 6th November 2018 which dealt with points raised previously by the Trust and in particular in its original legal opinion dated 7th December 2018 ("the Original Opinion"). Since the Further Opinion does not raise any substantive new points of law, those responses are equally relevant to the Trust's position. Whilst the Further Opinion does attempt to provide more detail in support of the Trust's argument, for the reasons we set out below those submissions do not assist it.

Regulation 123(2) of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations") states:

"A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure."

The effect of this provision means that Lichfield District Council cannot grant planning permission subject to a section 106 Agreement to fund or provide an item of infrastructure that appears on its Regulation 123 List.

The Council's current Regulation 123 List is effective from 23rd February 2017, it includes (inter alia):

Environment and Biodiversity

CIL funds may be spent on improving the public realm, landscapes and habitats; and improving access to green space, to include:

- Chasewater Country Park improvements.
- Central Rivers Initiative projects.
- Improvements to the canal network to improve Green Infrastructure Links.

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- Local Nature Reserves.
- Woodland and hedgerow projects.

Except on sites identified as biodiversity offsetting recipient sites.

Infrastructure works relating to the restoration of the Lichfield Canal will potentially benefit from CIL funds, *apart from works required in relation to any on-site provision by the developers connected to the three SDAs in the vicinity of the canal: South of Lichfield, Deans Slade Farm, Cricket Lane.*

The accompanying notes state:

Section 106 agreements will be required where appropriate to secure infrastructure works relating to the restoration of the Lichfield Canal for the three SDAs in the vicinity of the canal: South of Lichfield, Deans Slade Farm, Cricket Lane.

The Regulation 123 List is unambiguous. Its effect is that CIL funds may be used to fund any works related to the restoration of the Canal, with the sole exception of those works relating to on-site provision in the three SDAs. The notes then clarify that in respect of those excepted works, they are to be secured by section 106 Agreement. The notes do not add any further explanation as to the extent of the works anticipated to fall within the exception.

We note that the Trust agree that the bridge on Claypit Lane falls outside of the Deans Slade SDA (Original Opinion para 12; Further Opinion para 29).

The applicants' position is also consistent with that conclusion. The bridge forms infrastructure works related to the restoration of the Canal, and as those works lie outside of the SDA they cannot be described as "on-site provision". By default they are therefore a CIL item and cannot be required to form part of the s106 agreement relating to the development.

The Further Opinion argues that if the Regulation 123 List is inconsistent with the Trust's position that the bridge should be addressed in the s106 Agreement, then it is also inconsistent with the IDP, and in such circumstances the terms of the IDP should prevail. Such an approach effectively seeks to set the Regulation 123 List to one side to the extent of any inconsistency.

It is the applicants' view that there is no legal basis for that approach. The Further Opinion quite correctly points out that it is not possible for CIL and a section 106 Agreement to cover the same infrastructure, but as a consequence of the express provisions set out in Regulation 123(2) referred to above, it is clear that the Regulation 123 List takes precedence.

Consequently, to the extent that the funding or provision of the bridge may be considered to be a requirement of policy the applicants' position is that they are satisfying that requirement through payment of CIL in accordance with the Regulation 123 List. It would be manifestly unreasonable for the Council to withhold consent on that basis, particularly as the Trust acknowledges that the applicants' proposals do not prejudice delivery of the bridge or the Canal restoration (see Further Opinion para. 3).

In any event, the applicants do not believe that items in the Regulation 123 List represent an error. If the development does not proceed then the Canal restoration project will still have to cross under Claypit Lane presumably providing a new bridge in so doing. The bridge cannot therefore be a requirement directly related to the proposed development since the need for it in the event that the Canal is restored, dates back to the construction of the Claypit Lane/Falkland Road junction in the mid-2000's and long before the allocation of the Deans Slade SDA. This provides an entirely reasonable explanation as to why the Council sought to include off-site infrastructure works such as the bridge within the scope of its Regulation 123 List. It potentially assists the Trust by providing access to CIL funds to deliver the restoration in any event, should the Deans Slade SDA not come forward for development.

It is the applicants' position that, irrespective of the position on CIL, the provision of a new bridge on Claypit Lane to remove an obstruction to the route of the Canal which already exists, which lies outside of the allocation, and which would need to be overcome irrespective of whether the development proceeds cannot be said to be necessary nor directly related to the development and therefore would not satisfy the tests for a valid Section 106 Obligation as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

The Trust's position therefore, both in relation to its interpretation of the Regulation 123 List and the requirement to provide a new bridge under a Section 106 Agreement are entirely without merit.

We therefore reiterate our previously stated position. The bridge constitutes off-site infrastructure works and therefore falls within the scope of the Council's Regulation 123 List, and consequently cannot be included within the Section 106 Agreement relating to the development. Further and separately to the CIL position, we have also demonstrated that requiring the provision of such a bridge would not meet the tests set out in Regulation 122 of the CIL Regulations for a valid s106 obligation.

Finally, in relation to the integration of the Canal route into the development's green infrastructure network, the particular engineering issues that will need to be addressed in the construction of the Canal mean that this can best be achieved only once the detailed design of the Canal is known. The applicants agree that a condition is an appropriate way to secure this, and are currently working with the Council to discuss appropriate wording.

The applicants trust that the application can now proceed to Committee with an Officer recommendation for approval.

Yours faithfully

Eversheds Sutherland (International) LLP

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