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## Appeal Decision

Inquiry Held on 17-20 April 2018

Site visits made on 16 & 20 April 2018

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 23 May 2018**

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**Appeal Ref: APP/P3040/W/17/3185493**

**Land north of Asher Lane, Ruddington, Nottinghamshire NG2 7YG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Space Foods Limited against the decision of Rushcliffe Borough Council.
  - The application Ref 16/03123/OUT, dated 22 December 2016, was refused by notice dated 7 April 2017.
  - The development proposed is for 175 dwellings including vehicular access, pedestrian links, public open space, car parking, landscaping and drainage (outline application with all matters reserved).
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### Decision

1. The appeal is allowed and outline planning permission is granted for 175 dwellings including vehicular access, pedestrian links, public open space, car parking, landscaping and drainage (all matters reserved) at land north of Asher Lane, Ruddington, Nottinghamshire NG2 7YG in accordance with the terms of the application, Ref 16/03123/OUT, dated 22 December 2016, subject to the conditions below.

### Procedural Matters

2. A certified copy of a S106 planning agreement dated 20 April 2018 was submitted on the last day of the Inquiry signed by the owners of the site, the developer and the Council. I address this in more detail below.
3. All matters are reserved including access. The appellant in its written submissions prior to the Inquiry argued that access could therefore in principle be taken from Asher Lane or from Musters Road, via demolition of the existing house at No 75. However, a subsequent outline application also with all matters reserved (18/00300/OUT) was submitted which encompassed that alternative access, and that application remained to be determined at the close of the Inquiry. In the light of this I indicated at the start of the Inquiry that in my view, taking into account the Council's views on the matter, it would be inappropriate to consider access from Musters Road and that this appeal should focus on the principle of access being taken from Asher Lane. The appellant consented to that and agreed to strike out any evidence referring to access from Musters Road.
4. I conducted an unaccompanied site visit in the afternoon of the day before the Inquiry and an accompanied visit on the morning of the last day.

5. The application was refused for three reasons but the Council did not contest the third reason relating to potential noise from the dog kennels at Premier Pets to the west of the site because it was content that any such issues could be satisfactorily addressed by condition.

### **Main Issues**

6. Consequently the main issues are:
  - (a) Whether the proposed development would result in severe residual cumulative impacts on the local highway network; and
  - (b) Whether 'very special circumstances' exist that would outweigh the identified harm to the Green Belt by reason of inappropriateness and any other harm.

### **Reasons**

#### Effect on the Local Highway Network

7. There are four principal concerns raised by the Council in regard to this issue. First, the concern that the section of Asher Lane included within the site is not adopted highway and cannot be made so, and is therefore unsuitable as an access. Secondly, that the adopted northern part of Asher Lane within the village is too narrow to allow two vehicles to pass each other and will result in severe adverse impacts on highway safety. Thirdly, that the appellant's suggested signalisation (provision of traffic lights) of the High Street/Kirk Lane/Charles Street junction (J4) is undeliverable and in its absence there would be severe impacts on the village's highways. And fourthly, that there would, irrespective of whether or not the above junction would be signalised, be unacceptable congestion at the Kirk Lane/A60/ Flawforth Road junction (J5) in the absence of any mitigation scheme to address the additional traffic arising from the proposed development.<sup>1</sup>

#### Preliminary Issues

8. The Council agreed at the Inquiry that the assessment of local highway effects should be based on the most recent available data<sup>2</sup>. This includes the appellant's updated traffic survey information taken on Tuesday 9 January 2018 at Musters Road/Asher Lane and its surveys of the various junctions taken on Thursday 4 May 2017<sup>3</sup>; its updated 5-year period for assessing traffic growth – 2018-2023 as opposed to 2016-2021 in the TA using the undisputed TEMPro model; and utilising the distribution patterns from the 2011 census rather than the TA's use of the 2001 census patterns.
9. I agree that using such data is likely to give the most accurate forecasts of traffic and its distribution patterns. The Council queried whether 9 January was a representative day for the survey but this was a normal working day after the schools had gone back after New Year and I have no reason to conclude that it was unrepresentative.
10. The Council did not disagree with the appellant's methodology in regard to the industry standard programmes that were used in determining the 2023 traffic

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<sup>1</sup> Refs to J4 & J5 are in the appellant's submitted Transport Assessment (TA)

<sup>2</sup> JW in cross-examination (XX)

<sup>3</sup> NB Appendices P & H respectively

flows at the above junctions. It agreed that the traffic generated by the proposed development along Asher Lane would increase to approximately 3 cars every minute from about one car every minute now.<sup>4</sup> The parties agreed that the AM and PM peak hours were the times at which any traffic impacts would be the greatest.

11. The Council also agreed<sup>5</sup> that the meaning of the term 'severe impacts' in the last bullet point of paragraph 32 of the National Planning Policy Framework (NPPF) as set out in the recent *Hartnell's Farm* appeal decision<sup>6</sup>, which cross-referred to an earlier Secretary of State decision, was a fair approach. That approach was that the term 'severe' sets a high bar for intervention via the planning system in traffic effects arising from development; mere congestion and inconvenience are insufficient in themselves but rather it is a question of the consequence of such congestion.
12. As well as the main parties' highway evidence I have also had regard to that provided by residents who spoke at the Inquiry.<sup>7</sup>

*The Status of the western part of Asher Lane*

13. Asher Lane is an adopted highway maintainable at public expense only as far south as the point where it turns to run south westwards just to the south of Barleylands, the easternmost extent of the site as shown by the red line on the submitted location plan. The rest of it is unadopted.<sup>8</sup>
14. The appellant has confirmed that the whole of that part of Asher Lane within the site, from which access will be taken into the field where the proposed dwellings would be built, shall be brought up to adoptable highway standard if permission is granted including the provision of a footway along the northern side of the road. This will be achieved by an agreed condition, which would prevent occupation of the new dwellings until it and other highway mitigation measures (see below) have been completed.
15. This indicates to me that the appellant is confident that it can overcome the objections of the Harem Gardens Allotment charity, along with its evidence that Nottinghamshire County Council (NCC) as Highway Authority (HA) has statutory powers to instigate or compel adoption without any risk to the public purse, and bring this part of Asher Lane up to an adoptable standard.
16. It was pointed out to me at the accompanied site visit on the last day of the Inquiry that the road verge next to the allotments approximately opposite the junction with Barleylands was too narrow to provide for the continuation of the proposed footway to link into the one already existing further north on this side of Asher Lane. That may well be so, especially if the allotment's owner did not allow the existing hedge to be moved back or trimmed. It may be that pedestrians on the new footpath would have to cross the road onto the footway that already exists next to the house on the southern corner of Barleylands, but if so that would be acceptable.
17. The appellant also put forward evidence to show that this part of Asher Lane has been a highway, albeit not maintainable at public expense, since at least

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<sup>4</sup> JW XX

<sup>5</sup> Ibid

<sup>6</sup> CD7.11: APP/D3315/16/3157862 §15

<sup>7</sup> Mr Breakwell's including his diagram of conditions at J5 and Mr Brownett's/Reedman's traffic survey on 16 April

<sup>8</sup> JW Appendix B

1913 and this was not challenged by the Council. There is no evidence that anyone has ever challenged its status as a public highway and it is clear from my visits that there are no restrictions to using it including for parking. It is a fairly wide road, with space for two vehicles to pass each other, and it has speed humps installed by NCC as well as a Council recycling centre on its southern side.

18. Several residents<sup>9</sup> raised concerns that Asher Lane continues in a loop around the southern edge of Rushcliffe Country Park linking to the A60 and that it will be used as a rat-run for residents on the development seeking to avoid traffic congestion in the centre of the village.
19. I appreciate that this could occur, but at the 90° left hand bend in the road where it turns south eastwards towards Moorend Farm there is a sign indicating the private nature of this part of Asher lane and that there is only access to the farms. I also noted that at both ends of this private part of the Lane there are metal gates and Ms Dixon confirmed that these were controlled and could be closed by the frontage owners of this part of the Lane. I understand that these owners may not wish to have the inconvenience of having to do so to prevent such rat-running. But nonetheless it is within their powers to do so and consequently I consider that these concerns are insufficient to prevent access to the site from higher up Asher Lane.
20. Consequently there are no reasons why access would be unsuitable from Asher Lane as a result of its currently unadopted status.

#### *The Northern Part of Asher Lane*

21. The section of Asher Lane between Musters Road and Distillery Street is narrow and does not allow two-way traffic. It would not be possible to widen it between Top Road and Distillery Street. However, there is scope to widen the carriageway between Musters Road and Top Road without the need to encroach into the attractive landscaped bank because of the wide footway on the east side of the Lane. It is also possible to formalise the existing on-street parking arrangements on alternate sides of the Lane between Musters Road and Distillery Street by the introduction of double yellow lines through a Traffic Regulation Order (TRO). The appellant is offering to meet the costs of these measures. This would be another part of the highway mitigation that would be conditioned to be delivered prior to occupation of any of the dwellings.<sup>10</sup>
22. The Council argues that the TRO may never happen and so the above parking restrictions must be discounted. However, even if that were the case it seems unlikely that local residents would not continue to park on alternate sides of the Lane as they do at present – simply in order to allow the free passage of traffic – and so the Council’s argument is largely irrelevant. Some residents also argued that the proposed yellow lines would result in the loss of existing parking spaces. At most this may lead to the loss of 2 or 3 spaces. Such a loss would be insignificant in terms of the available on-street spaces in the vicinity. The main point is that the road widening on the east side of Asher Lane between Musters Road and Top Road would preserve the vast majority of the existing on-street parking whilst allowing two-way traffic.

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<sup>9</sup> Including Ms Dixon and Mr Vassallo at the Inquiry who own/work at businesses further west down Asher Lane

<sup>10</sup> As shown on NB Appendix O

23. The proposed development would increase the volume of traffic traversing this narrow part of the Lane from about one vehicle a minute to about 3 vehicles a minute in each direction. This increased volume of traffic, generally northwards in the AM peak and southwards towards the site in the PM peak, would still have to negotiate the one-way stretch of road between Top Road and Distillery Street. But 3 vehicles a minute is not a significant volume albeit that it may be frustrating for the drivers of vehicles coming up against the main flow, and the widening of the lower section of this part of the Lane would help to mitigate its impacts. A mere increase in inconvenience, as may occur here, would not amount to a severe impact to users of this stretch of Asher Lane.
24. I acknowledge that Mr Brownett's 5-6PM peak survey on Monday 16 April at the Top Road/Asher lane junction shows a higher volume of traffic on Asher Lane (76 vehicles heading south, 55 heading north) than the appellant's survey at the Musters Road junction at the 5-6PM peak on Tuesday 9 January (40 heading south, 45 heading north). But even so, both sets of figures essentially confirm that there is a flow of approximately one vehicle a minute in each direction: the difference between them is not significant.
25. It may be that rather than choosing to wait for a gap in the traffic those drivers going against the flow may be tempted to engage in rat-running through the neighbouring residential roads to the east or west. I acknowledge this is a possibility. But these alternative routes, for instance via Musters Road/Sandhurst Road/Distillery Street or Barleylands/Leys Road/Moor Lane/Elms Park are fairly circuitous and it is unlikely, given the above road widening and the length of time that drivers may have to wait, that journey times would be cut significantly. Consequently such rat-running would be unlikely to be a major problem.
26. For these reasons I conclude that the narrowness of this part of Asher Lane would be unlikely to give rise to a severe impact on highway safety.

#### *The High Street Junction (J4)*

27. The appellant acknowledges that the development would have a significant impact on the operation of this junction as a result of the increase of approximately 100 two-way vehicles movements in both the AM and PM peaks. It intends to mitigate this impact by signalling the junction. Again, such mitigation would be provided prior to occupation of the proposed dwellings as per the agreed condition.
28. The Council acknowledges that if it were possible to signalise the junction then the signals would provide betterment to the existing working of the junction.<sup>11</sup> But it maintains that the junction is too physically constrained and that installing signals here would fail to meet the required standards and compromise the servicing and viability of existing businesses near to the junction.
29. I agree that providing signals at this junction would allow a much improved flow from Kirk Lane onto the High Street and would thus significantly reduce the queue on Kirk Lane. This would of course increase the queue on both arms of the High Street (to up to 71m at peak hours), which is negligible at present

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<sup>11</sup> JW XX

- because traffic here currently has right of way. Parked cars on both arms of the High Street could potentially cause obstructions to the passage of vehicles with such queuing and it may be necessary to alter the position of or prevent such parking in the future if it compromises the efficient operation of the junction. However, in spite of this the Council conceded, and I agree, that signalising this junction would provide betterment in terms of traffic capacity.
30. It would also improve pedestrian safety and convenience. This is because at present pedestrians must simply cross the roads at this junction when there is a gap in the traffic. The signals would allow phases where pedestrians would have a dedicated time to cross. There would also be a new kerb alignment at Charles Street and new tactile pavements next to designated crossing points on the High Street and Kirk Lane arms of the junction.<sup>12</sup>
  31. The Council is concerned that the pavement is too narrow, particularly on Kirk Lane and that the necessary positioning of the signals would impede the passage of pedestrians, especially those in wheelchairs or with children. But I agree with the appellant that the dimensions given in the Manual for Streets extracts<sup>13</sup> are not mandatory requirements but recommended guidelines to be achieved where possible and in this context I note that the signals would not narrow the footways any more than the existing bollards already do.
  32. I acknowledge that local businesses would like to maintain the maximum amount of parking possible on the High Street and surrounding roads because they benefit from passing trade. But this junction is in the very heart of the village and it is not unusual to signalise busy junctions like this, which itself is already suffering from over capacity.
  33. I acknowledge that the dray lorry delivering beer to The Frame Breakers on the northern corner of Kirk Lane appears to park immediately next to the access hatch to the pub's cellar located on the footway near the junction. But such deliveries are often outside of peak hours, are of limited duration and are generally limited to a few occasions per week.<sup>14</sup> I also note residents' concerns that similar loading takes place at Allen Vending on the opposite side of Kirk Lane, albeit I note that this firm has a front yard of sufficient depth for vehicles to pull off the road. But there is no right for vehicles to obstruct the junction in any case and the above custom and practice is insufficient reason to prevent J4's signalisation.
  34. The junction lacks the standard inter-visibility between the junction heads at Kirk Lane and the southern arm of the High Street as set out in the Design Manual for Roads and Bridges (DMRB) and the need for large vehicles to have sufficient turning room would exacerbate this. Recourse was had at the Inquiry to the advice in the DMRB (Volume 6, Section 2, Part 3 TD 50/04). Where constraints exist due to the existing road geometry and buildings, as is the case here, it is possible to seek a departure from standards (paragraphs 1.6, 1.17, 1.18 and 2.16). The appellant maintained that such departures are common at existing junctions, this assertion was not challenged by the Council and it seems to me inevitable that this must be the case especially at historic built-up junctions such as this in the middle of a village.

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<sup>12</sup> NB Appendix J

<sup>13</sup> JW Appendix C

<sup>14</sup> Oral evidence of Mr Heath, Operations Manager at Nottingham Brewery (owner of The Frame Breakers)



35. I agree that 'Signal Ahead' warning signs do not adequately address this lack of inter-visibility and the problem of 'amber gamblers' (drivers who run red lights) who, as the Road Safety Audit<sup>15</sup> suggests, could result in mid junction collisions. But this could be easily addressed by varying the inter-green phasing thus reducing the risk. Whilst I appreciate that this could potentially increase the queues it is unlikely to do so significantly and there would still be betterment to the functioning of the junction overall. The phasing of the signals would obviously rest with the HA.
36. The Road Safety Audit is a Stage 1 Audit – Completion of a Preliminary Design. I note in paragraph 3.1 that it recommends that signals should not be installed at the junction due to the above safety concerns but in my experience it is not the auditor's role to exclude signals and it appears to me that the above solution would adequately lessen the risk of mid-junction head-on collisions. In terms of its paragraph 3.2 recommendation I acknowledge that it may be necessary to remove some parking spaces close to the junction but I believe the risk of head-on collisions is exaggerated on these straight sections of road that have good visibility and the Audit is overly pessimistic in this regard.
37. The stop lines at the junction would be set back to allow large vehicles to adequately manoeuvre round the corners, and I acknowledge above that this would worsen inter-visibility between the arms of the junction. The Council argues that it has not provided tracking for the largest HGVs such as articulated lorries. However, the appellant's highway witness explained that the fixed axle single deck bus was the worst case scenario<sup>16</sup> in terms of the turning circle required and was greater than that required for an articulated lorry. The Council did not demur from that assertion. I was also able to watch an articulated lorry negotiate the junction at the accompanied site visit and it appeared to me that there would be sufficient room for it to comfortably do so if the stop lines were marked out as the appellant proposes.
38. For these reasons I conclude that signals can be safely installed at the High Street junction and that these would not only mitigate the effects of the traffic from the proposed development but would, as the Council acknowledges, provide betterment in terms of capacity at a junction which is already over capacity and will become more so by 2023. The signals and associated works would also improve pedestrian convenience and safety at the junction.

#### *The A60 Junction (J5)*

39. The HA devised a feasibility scheme to improve this already signalised junction in about 2008 but this was abandoned in 2015/16 because it was not deemed to be a priority. The appellant proposed an improvement scheme to this junction involving the creation of a right turn lane on both Kirk Lane and Flawforth Lane.<sup>17</sup> That scheme was essentially the same as the HA's abandoned scheme. The appellant said that it was willing to make a contribution to this improvement scheme, albeit that it does not consider it to be necessary in terms of mitigation. But NCC does not require one since it has no intention of implementing such an improvement scheme.

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<sup>15</sup> CD4.1

<sup>16</sup> In NB Appendix K

<sup>17</sup> NB Appendix L

40. The Council argued that the additional traffic from the development would have a disproportionate and exponential effect on the junction because it is already over capacity. By the appellant's figures this would produce an additional 168.5m of additional queuing traffic on the southern arm of the A60 in the AM peak.<sup>18</sup> However, this arm of the junction would operate at well over capacity in the absence of the development by 2023. Furthermore that is without factoring in the potential traffic from the Council's preferred alternative housing allocation sites at RUD05 and RUD13, which together would generate substantial additional traffic at this junction. Yet in spite of this NCC does not have an improvement scheme for the junction and so is not seeking pro-rata contributions. This indicates to me that it does not really regard congestion at the junction in the future to be a serious cause for concern, even with the proposed development's traffic.
41. The signalisation of the High Street junction would also lessen queuing on Kirk Lane at J5 and this itself would improve its operation because the phasing of the lights could be altered to allow a longer time for the A60 to clear.
42. This junction on the A60 caters for a large volume of traffic. The appellant has undertaken a percentage impact assessment which shows that traffic from the development would have a 2.5% impact during the AM peak and a 2.9% increase during the PM peak and the Council did not dispute these percentage figures. This is well within the daily variation of traffic in the order of +/-10% and this would be unlikely to curtail the efficient operation of the junction despite the increase in queuing traffic on the A60.
43. The accident data at this junction provided by the Council<sup>19</sup> did not amount to a 'pattern of accidents' at the junction; 6 'slight' and one 'serious' accident between 2009 and 2017 (i.e. in 8 or 9 years) cannot be considered a 'pattern' especially in light of the fact that they did not all relate to right turn movements from the minor roads.
44. For these reasons I conclude that the proposed development would not result in unacceptable congestion at the A60 junction in the absence of any mitigation scheme.

#### *Conclusion on Highway Impacts*

45. I have concluded above that the currently unadopted status of that part of Asher Lane within the site would not prevent suitable access to the proposed development; that the narrowness of the northern adopted part of Asher Lane within the village would be unlikely to give rise to a severe impact on highway safety; and that the proposed development would not result in unacceptable congestion at the A60 junction in the absence of any mitigation scheme there.
46. I acknowledge that there may be a necessity at the High Street junction to prevent parking and servicing near to the junction and that this will cause inconvenience and possibly some loss of passing trade to the shop premises in the vicinity of the junction. But the highway impacts of this, in terms of capacity at this junction as well as pedestrian safety and convenience would not only mitigate the impact of the traffic from the proposed development but would actually provide betterment and this would outweigh any such impacts.

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<sup>18</sup> NB Figure 6.5, page 21

<sup>19</sup> CD15.3 & 15.4



47. For these reasons I conclude that the proposed development would not result in severe residual cumulative impacts on the local highway network and would therefore comply with NPPF paragraph 32 and Policy GP2 of Rushcliffe Borough Non-Statutory Replacement Local Plan adopted in 2006 (RLP).

*Whether 'Very Special Circumstances' (VSCs) Exist*

48. The appellant acknowledges that the proposal scheme would be inappropriate development in the Nottingham-Derby Green Belt and should not be approved except in VSCs, as per NPPF paragraph 87.
49. NPPF paragraph 88 states that VSCs will not exist unless the harm to the Green Belt (GB) by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
50. There would be no severe residual cumulative impacts on the local highway network as set out above. There would clearly be harm, as well as by reason of inappropriateness, by loss of openness and incursion into the countryside resulting from the construction of 175 dwellings because the site is currently an open agricultural field. Ruddington is inset from the Green Belt, which completely encircles it.
51. The Local Plan Part 1: Core Strategy (CS) was adopted in December 2014. CS Policy 3 (Spatial Strategy) subsection 2 b) states that approximately 5,500 homes will be provided beyond the main built up areas of Nottingham (within Rushcliffe) including vii) a minimum of 250 homes in or adjoining Ruddington. The Council acknowledges that the majority of these will have to be on GB land.
52. But the Council's assessment of the site is that it has the lowest GB value of all the GB land assessed on the edge of Ruddington.<sup>20</sup> The latest Rushcliffe Green Belt Review (CD5.11) is a comprehensive document that scores each possible GB site against the five purposes of the GB contained in NPPF paragraph 80. It does not itself determine whether or not land should remain within the GB but is a technical document that will be used to aid decisions on where the GB may be amended to accommodate future development requirements. This will be done through the Local Plan Part 2 (LPP2), which is likely to be submitted to the Secretary of State shortly, following agreement by the Council at its meeting on 26 April.
53. CS Policy 4 (Nottingham-Derby Green Belt) subsections 3 and 5 confirm that inset boundaries will be reviewed through the LPP2. Subsection 7 of Policy 4 states that when reviewing GB boundaries consideration will be given to a number of considerations including the statutory purposes of the GB, in particular the need to maintain openness and prevent coalescence of settlements; establishing a permanent boundary which allows for development in line with the settlement hierarchy and/or to meet local needs; and retaining or creating defensible boundaries.
54. I cannot attach significant weight to the LPP2 because it has not yet been examined, as per NPPF paragraph 216. But the evidence base and the Council's reasons for its preferred allocation sites at Ruddington are issues that are relevant to this case and to which I attach considerable weight. The Council expressed its preference for sites: RUD01 – Land to the west of Wilford Road

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<sup>20</sup> Council's Closing Statement, paragraph 61 and CD5.11

(south), estimated capacity now 130 homes; RUD05 – Land south of Flawforth Lane, estimated capacity around 50 homes; and RUD13 – Land opposite Mere Way, estimated capacity around 170 homes.<sup>21</sup> However, it did so on the basis that the appeal site was severely constrained as a result of highway impacts, which I have concluded above is not the case and therefore not a bar to its development.

55. The site is sandwiched between the Country Park and the rear gardens of the houses on Musters Road and is settlement edge in character, especially given the presence of the allotments. To the east across Asher Lane are Barleylands and the other residential roads on the southern edge of the village. As such the development of this site chimes with the morphology of Ruddington. It would be located a short walk from the village centre with its shops and other facilities. The northernmost proposed dwellings would be able to access such facilities via the existing footpath next to the western boundary of the site because it is proposed to link the development to this footpath.
56. It has strong defensible boundaries: the village to the north, Asher Lane and the Country Park to the south and the railway line and public footpath adjacent to it to the west. Being on Ruddington's southern urban fringe and protected by these strong defensible boundaries, the proposed development would have minimal incursion into the wider surrounding open countryside; the Council agrees it is well contained. There are no near settlements to the south and so no possibility of coalescence. There are no heritage assets on the site nor is it within the setting of any as far as I am aware.
57. The Council's preferred sites do not demonstrate all of these advantages. Whilst RUD01 is also urban fringe it is, in my judgement, far more prominent than the appeal site especially when viewed approaching the village on the south sloping Wilford Road next to the golf club. Its northern boundary is only a field ditch and this offers no screening to any new development, albeit that landscaping could be provided. Nonetheless, this boundary cannot realistically be termed strong or defensible. The green gap between West Bridgford and Ruddington is relatively narrow and development at RUD01 would narrow it even more. The majority of RUD01 is also in Flood Zone 2. Although the Council has carried out a sequential test<sup>22</sup> its decision to prioritise RUD01 above the appeal site is in essence based on the latter's highway constraints. National policy does not favour development on sites in Flood Zones (FZ) 2 and 3 where land in FZ 1 like the appeal site is available.
58. RUD05 and RUD13 lie on the east side of the A60 unlike the village which lies on its west. There is some development on Flawforth Lane and Flawforth Avenue and RUD05 adjoins it. But at RUD13, which would take its access off the Mere Road roundabout, there is no existing development on the east side of the A60. Both sites, and especially RUD13, would be disconnected from the heart of the village, with relatively poor accessibility compared with the appeal site. In my opinion the A60 acts as a considerable physical and visual barrier to development on the eastern side of the village. Neither site would follow the historic morphology of the village and neither would have strong or defensible boundaries, merely field hedges.

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<sup>21</sup> As set out in CD5.8

<sup>22</sup> CD5.25

59. It is not my role to define the future boundary of the GB in Ruddington. The Council does not raise prematurity as an argument but I note that the Parish Council does. Planning Practice Guidance (PPG) states that arguments that an application is premature are unlikely to justify refusal other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking NPPF policies and any other material considerations into account.
60. The examples of such circumstances set out in the relevant PPG extract are: (a) the development proposed is so substantial or its effect so significant that it would undermine the plan-making process by pre-determining decisions about the scale or location of new development and (b) the emerging plan is at advanced stage but is not yet formally part of the development plan. The proposed development would not be of such a scale as set out in (a) above and in terms of (b) the rest of the extract states that refusal on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination. I am aware that the publication draft of the LPP2 has recently been published for consultation but it has not been submitted, albeit the Council hopes to do so shortly. For these reasons I conclude that dismissal of the appeal on grounds of prematurity cannot be justified.
61. The fact that 175 homes could be delivered out of the 250 homes set out in existing CS Policy 3 on the appeal site without undue harm to the GB compared with other mooted sites is an important 'other consideration' given that development on the Council's preferred sites would clearly, even by its own admission, create more harm in terms of the five purposes of the GB in NPPF paragraph 80.
62. The Council acknowledges that it only has, at best, a 3.1 years supply of housing land, a shortfall which is significant and justifies the considerable weight I attach to the proposed development, as per *Phides*.<sup>23</sup> I acknowledge that PPG states "*unmet housing need ...is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt*".<sup>24</sup> But contrary to the Council's assertions I agree with the appellant that the above 'other considerations' amount to more than just an argument to provide more homes. Ruddington is a Key Settlement as defined by CS Policy 3, one of six large villages in the second tier of the spatial strategy, second only to the main built up area of Nottingham. There is an expectation that such settlements will make a significant contribution to delivering homes. There is acknowledgement that at Ruddington this will have to include the development of greenfield sites within the GB.
63. In conclusion, there would clearly be harm to the GB by inappropriateness, loss of openness and some incursion into the countryside to the south of the village. But such harm would be minimal in terms of the five purposes of the GB set out in the NPPF and the criteria in CS Policy 4. The harm would be less than that created by the development of the Council's preferred sites, which in themselves attest to the need to develop GB sites on the edge of Ruddington. There is no other harm that would arise from the proposed development, given my conclusion that it would not result in severe residual cumulative impacts on the local highway network.

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<sup>23</sup> *Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)*

<sup>24</sup> PPG Reference ID: 3-034-20141006

64. In my judgement the harm to the GB by reason of inappropriateness, loss of openness and incursion into the countryside would be clearly outweighed by these other considerations and VSCs have been successfully demonstrated. The proposed development would accord with the Council's spatial strategy in CS Policy 3, which requires a minimum of 250 new homes at Ruddington within the plan period (to 2028). This can only be achieved by building in the GB and in this respect the proposal would accord with the direction of the emerging LPP2, albeit not on the likely favoured sites.
65. For these reasons the proposed development would comply with CS Policies 3 and 4, albeit this decision does not change existing GB boundaries. It would comply with NPPF Chapter 9, specifically with paragraphs 80, 87 and 88, and therefore also with Policy EN14 of the RLP which has the same requirements.

### **Section 106 Agreement**

66. The Agreement provides for: 30% of the homes to be affordable as per the NPPF definition (10 Social Rent units, 21 Affordable Rent units and 22 Intermediate units) to be provided in a suitably phased programme; financial contributions towards health, education, library, sports and public transport in the local area payable prior to occupation of any dwelling on site; and the provision and permanent maintenance of open space on the site (including an equipped children's play area and a sustainable drainage system).
67. Regulation 122 of the *Community Infrastructure Levy Regulations 2010* states that planning obligations should only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
68. The largest financial contributions are in respect of primary and secondary education. The primary contribution will be directed towards the improvement of educational provision at James Peacock Infant and Nursery School and St Peter's Church of England Junior School in Ruddington. The secondary contribution will be directed towards the improvement of educational provision at Rushcliffe School in West Bridgford, the nearest secondary school to the site. The library contribution will fund the provision of additional stock at Ruddington Library. The public transport contribution will fund the provision of transport improvements including the provision/upgrading of bus stops within the vicinity of the site to 'real time' stops. These contributions have been calculated through formulae set out in NCC's Planning Obligations Strategy.<sup>25</sup>
69. A similar formula for the health contribution is set out in the Agreement and that will fund additional health care facilities in Ruddington (there is a GP surgery here). The sports contribution will help fund, via a pro-rata contribution, the provision and/or improvement of sports pitches and changing rooms in the village.
70. These contributions, the phased provision of affordable housing on site and the provision and maintenance of the open space in perpetuity, all meet the tests of necessity because they are required to be provided through CS Policies 8, 18 and 19. The relevant facilities that will be funded by the contributions are either on-site or the nearest facilities to the site and so are directly related to

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<sup>25</sup> As set out in NCC's Position Statement – Developer Contributions

the development. They are all based on established adopted formulae and are thus fairly and reasonably related in scale and kind to the development. There is no dispute between the main parties that the obligations therefore meet the relevant legal and policy tests. I agree that they do so.

### **Conditions**

71. The Council has suggested 21 conditions.<sup>26</sup> My references are to that list. The Council's Conditions 6, 7 and 12 relate to reserved matters and so are unnecessary at this outline stage. Conditions 14 and 15 relate to details of the prospective Travel Plan but the main parties could not agree on them and opted to replace them with a single condition requiring the submission and prior approval of such a Plan prior to the dwellings' occupation (Condition 11 in the Schedule below). All the conditions in the Schedule below are necessary and meet the other tests set out in the NPPF and PPG for the reasons set out next to each of them.

### **Conclusion**

72. For the reasons set out above the proposed development would comply with relevant policies in the development plan, the RLP and the NPPF. There is harm to the Green Belt by reason of inappropriateness, loss of openness and incursion into the countryside and I give such harm substantial weight as per NPPF paragraph 88. However, other considerations as indicated above comprise the very special circumstances necessary to outweigh such harm. The proposed development would also deliver a substantial amount of new housing including affordable housing in an area which has a significant under supply of deliverable housing sites and a severe need for additional affordable housing.

73. For these reasons, not only would the scheme accord with the development plan as a whole, but the balance of material considerations also weighs in its favour. Consequently I conclude that the appeal should be allowed subject to the conditions below.

*Nick Fagan*

INSPECTOR

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<sup>26</sup> CD11.5

## **Schedule of Conditions**

### TIMESCALES / RESERVED MATTERS

1. Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

*R. To comply with Section 91 of the Town and Country Planning Act 1990, as amended by the Planning & Compulsory Purchase Act 2004.*

2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

*R. To comply with Section 91 of the Town and Country Planning Act 1990, as amended by the Planning & Compulsory Purchase Act 2004.*

3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

*R. To comply with Section 91 of the Town and Country Planning Act 1990, as amended by the Planning & Compulsory Purchase Act 2004.*

4. Application for approval of reserved matters shall be in accordance with the parameters set in the Development Framework (drawing no. AND0176-DF-001) and the Illustrative Master Plan (drawing no. AND0176-IM-002) dated November 2016 and the Design and Access Statement dated December 2016.

*R. For the avoidance of doubt and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan.*

5. The development hereby permitted shall only be carried out in accordance with detailed plans and particulars relating to the following items, and the development shall not be commenced until these details have been submitted to and approved in writing by the Borough Council:

- a) A detailed layout plan of the whole site;
- b) The siting, design and external appearance of the proposed buildings;
- c) The means of access
- d) The finishes for the hard surfaced areas of the site;
- e) Sections and cross sections of the site showing the relationship of the proposed development to adjoining land and premises;
- f) The finished ground levels for the site and floor levels of the dwellings relative to existing levels and adjoining land;
- g) The means of enclosure to be erected on the site;
- h) Cycle and bin storage facilities;
- i) The layout and marking of car parking, servicing and manoeuvring areas;
- j) Plans, sections and cross sections of any roads or access/service roads or pedestrian routes within the site, and this shall include details of drainage, sewerage and lighting;
- k) The detailed design of all junctions, which shall include details of visibility splays.



*R. The condition needs to be discharged before work commences on site as the information was not included in the application and it is important to agree these details in the interests of visual and residential amenity, and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan.*

#### VISUAL AMENITY

6. No operations shall commence on site until the existing trees and/or hedges which are to be retained have been protected in accordance with details to be approved in writing by the local planning authority and that protection shall be retained for the duration of the construction period. No materials, machinery or vehicles are to be stored or temporary buildings erected within the perimeter of any fence erected to protect the retained trees and/or hedges, nor is any excavation work to be undertaken within the confines of the fence, without the written approval of the local planning authority. No changes of ground level shall be made within the protected area without the written approval of the local planning authority.

*R. To ensure existing trees are adequately protected during the development in the interests of the character and appearance of the area, and to comply with policy EN13 (Landscaping Schemes) of the Rushcliffe Borough Non Statutory Replacement Local Plan and Chapter 7 of the NPPF. This is a pre-commencement condition to ensure that all retained trees and hedges are protected throughout the construction period.*

7. With the exception of the sections to be removed to enable the provision of the vehicular and pedestrian access, the hedgerows located along the southern, western and northern boundaries of the site shall be retained and any part of the hedgerows removed, dying, being severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species, details of which shall be submitted to and approved in writing by the local planning authority, within one year of the date of any such loss being brought to the attention of the local planning authority.

*R. To ensure the existing hedges are retained in the interests of the character and appearance of the area, and to comply with policy EN13 (Landscaping Schemes) of the Rushcliffe Borough Non Statutory Replacement Local Plan and Chapter 7 of the NPPF.*

#### CONSTRUCTION METHODS

8. No development, including any site preparation works, shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include:

- a) the measures for ensuring the means of access/exit for construction traffic;
- b) parking provision for site operatives and visitors;
- c) the siting and means of loading and unloading and the storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities (including full details of its specification and siting);

- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from construction works;
- h) the siting and appearance of the contractors compounds and cabins, including heights of stored materials, boundaries and lighting, together with measures for the restoration of the disturbed land and noise mitigation;
- i) the days and times of construction activity and of materials delivery and disposal activity;
- j) A scheme for traffic management measures including temporary signage, routing and access arrangements;
- k) A scheme to treat and remove suspended solids from surface water run-off construction works.

*R. In the interests of highway safety, to protect the amenities of the area and reduce the risk of surface water pollution, in accordance with Policy GP2 (Design and Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan and Policy 10 of the Rushcliffe Core Strategy. This is a pre-commencement condition due to the need to establish acceptable construction methods and working arrangements before such works commence.*

#### HIGHWAYS

9. No dwellings shall be occupied until the following off-site highway improvement works have been completed:

- a) The whole section of Asher Lane located within the application site shall be brought up to adoptable highway standard, including the provision of a footpath along its entire length.
- b) Junction Improvements including traffic signals to the High Street / Kirk Lane / Charles Street junction and the A60 / Kirk Lane / Flawforth Lane junction, in accordance with details which shall first be submitted to and approved in writing by the Borough Council.
- c) Mitigation of on-street car parking on Asher Lane, between Musters Road and Distillery Street.

*R. To ensure that a safe and suitable access can be provided to the site, and that the impacts upon the local highway network are less than severe, in accordance with Paragraph 32 of the NPPF.*

10. No development hereby permitted shall take place until an appropriate agreement under Section 278 of the Highways Act 1980 has been entered into with Highways England to facilitate improvements to A52 junctions in accordance with the provisions of the *A52/A606 Improvement Package Developer Contributions Strategy Memorandum of Understanding* September 2015.

*R. To ensure a proportionate contribution to improvements to the A52 is secured to ensure that the A52 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980, to comply with Policies 3, 15 and 18 of the Rushcliffe Local Plan Part 1: Core Strategy, in the interests of road safety.*

11. The dwellings hereby approved shall not be occupied until a Travel plan has been submitted to and approved in writing by the Borough Council. The requirements as set out in the approved Travel plan shall be implemented from occupation of the first dwelling and operated thereafter.

*R. To promote sustainable travel and reduce the number of journeys made by car, in accordance with Policy 14 of the Rushcliffe Local Plan Part 1 Core Strategy.*

## DRAINAGE

12. Prior to the commencement of development details of the design, layout and specifications for the surface water drainage system shall be submitted to and approved in writing by the Borough Council. The submitted details shall include detailed evidence in the form of fully referenced plans and calculations to demonstrate the following:

- a. All surface water outflows from the site to be restricted to the greenfield discharge rates for the mean annual flood flow from a rural catchment in m<sup>3</sup>/s with the excess flows attenuated on the sites in suitable holding ponds, tanks or similar. The drainage design standard is 100years + 30% allowance in peak flow rates to allow for climate change effects.
- b. The developer is to assess the performance of the drainage system using intense storm events ranging in length from 15 minutes to 24 hours for the 100year +30% event. This will identify where the plot drainage and highway drainage may flood in extreme events. Once identified in calculations and on a plan, the developer is to identify how these flows are to be directed overland towards the surface water attenuation system. The site layout, levels, highway and drainage design should enable pluvial overland flows to be intercepted and directed away from dwellings, sensitive infrastructure and 3rd parties. The flows should be directed passively towards the surface water attenuation system and should not flow across the site boundary.
- c. The developer should demonstrate that they have intercepted pluvial flows that could enter the site from 3rd party land and directed these away from properties.
- d. cross sectional bank profiles of any open water areas, mean residence time of attenuated water and mean water levels.

No part of the development shall be occupied until facilities for the disposal of surface water drainage have been provided, in accordance with the approved details and the development shall be constructed in accordance with the approved drainage details, levels and layout.

*R. To prevent the increased risk of flooding, to reduce the likelihood of hazardous birds in aircraft flight lines, in the interests of aviation safety, and to comply with policies WET2 (Flooding) and WET3 (Ground Water Resources) of the Rushcliffe Borough Non Statutory Replacement Local Plan. This is a pre-commencement condition because it is necessary to establish construction details, including levels prior to the setting out of the site and associated highways.*

13. The development shall not be brought into use until facilities for the disposal of foul water drainage, including details of the location and design of any pumping station, have been provided, in accordance with details previously submitted to and approved in writing by the Borough Council.

*R. To ensure that adequate drainage facilities are provided in connection with the development and to comply with policy WET3 (Ground Water Resources) of the Rushcliffe Borough Non Statutory Replacement Local Plan.*

## NOISE

14. Prior to the commencement of the construction of the dwellings hereby approved, a scheme detailing the following shall be submitted to and approved in writing by the Local Planning Authority:

- a) Acoustic glazing and passive ventilation to achieve a 33dB sound reduction in internal night time noise levels predicted in all bedrooms throughout the development
- b) 1.8m high close boarded acoustic boundary fence specifications and a plan identifying the plots and boundaries upon which the fencing will be installed

The dwellings hereby approved shall be constructed in accordance with the glazing and ventilation specifications so approved. The said glazing and ventilation shall thereafter be retained and maintained to the approved specifications. Each dwelling, to which the acoustic boundary fencing is to be installed, shall not be occupied until the approved acoustic boundary fencing for that dwelling has been installed. The acoustic fencing shall thereafter be retained and maintained to the approved specifications.

*R. To ensure that future occupiers of the dwellings are protected from unacceptable levels of noise disturbance; and to comply with policy GP2 (Design & Amenity Criteria) and EN22 (Pollution) of the Rushcliffe Borough Non Statutory Replacement Local Plan and paragraph 123 of the NPPF, and in order to overcome the Council's third refusal reason.*

## ECOLOGY ENHANCEMENT

15. The dwellings hereby approved shall not be occupied until bird boxes and bat boxes and/or access points to bat roosts have been installed in accordance with details previously submitted to and approved in writing by the Borough Council. Thereafter the bird and bat boxes and/or access points shall be permanently retained and maintained.

*R. To ensure that adequate ecological enhancement measures are carried out, to comply with policies GP2 (Design & Amenity Criteria) and EN12 (Habitat Protection) of the Rushcliffe Borough Non Statutory Replacement Local Plan, and guidance contained within paragraphs 109 and 118 of the NPPF.*

## AIRPORT SAFEGUARDING

16. No development, including site clearance, shall take place until a Bird Management Plan (BMP), which encompasses both construction and operational phases, has been submitted to the Local Planning Authority for approval. The development shall thereafter be carried out in accordance with the approved BMP.

*R. To reduce the attractiveness of potential feeding, nesting, breeding and roosting opportunities for hazardous bird species in the vicinity of the airport in order to avoid the interception of bird and aircraft flight lines in the interests of aviation safety. This is a pre-commencement condition to ensure that the risks to aircraft are minimised throughout the construction period.*

## ARCHAEOLOGY

17. No development, including groundworks, shall take place until a geophysical survey of the site has been undertaken. This survey shall inform the proposals for a scheme of targeted archaeological evaluation trenching, including phasing, for which a written scheme of investigation shall be submitted to and approved in writing by the Borough Council prior to development commencing, including ground works. The approved evaluation shall then be undertaken prior to any groundworks within each phase of development on the site, and the findings thereof submitted to the Borough Council. The extent of trial trenching shall initially be informed by the results of the geophysical surveys for the first phases, with an option to revisit scale of excavation in later phases should excavation on the earliest phases return little or no archaeological information.

*R. To assess and record the archaeological potential of the site as identified within the applicants Desk Based Archaeological Assessment and in accordance with the archaeological mitigation measures considered as being applicable within that report, and in accordance with EN7 (Sites of Archaeological Importance) of the Rushcliffe Borough Non Statutory Replacement Local Plan. This is a pre-commencement condition in order to prevent any archaeological remains from being disturbed during the ground works, but in order to allow an earlier commencement of development the condition does allow such to be undertaken in phases across the site.*

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*End of Conditions*

## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY: Jonathan Owen of Counsel

He called

- Jan Witko FIHE, Principal Highways Officer in Development Control Team, Nottingham County Council (NCC)
- Richard Mapletoft MRTPI, Planning Policy Officer, Rushcliffe Borough Council (RBC)
- Kirsty Catlow MRTPI, Area Planning Officer, RBC

FOR THE APPELLANT: Paul Cairnes QC

He called

- Neil Benison BSc (Hons) IEng MICE, Associate Director, Mewies Engineering Consultants (MEC)
- Nigel Wakefield BA (Hons) BTP/DIP LA DIP/MA UD MRTPI, Managing Director, Node Urban Design Ltd

### INTERESTED PERSONS:

Paul Reedman	Ruddington Parish Council & Ruddington Action Group
Julie Dixon	J D Woodhouse
Martin Breakwell	Local Resident
Andrew Heath	Operations Manager, Nottingham Brewery
Joan Husbands	Local Resident
George Holly	Local Resident
Peter McGowan	Local Resident
Jean Greenwood	RBC Ward Councillor & on behalf of village residents
Martin Buckle	As above
John Lungley	As above
Barbara Venes	Local Resident
Robert Vassallo	Owner of Premier Pets and local resident
Andrew Norton	Contributions Officer, NCC

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*End of Appearances*



## **DOCUMENTS**

Some of the documents submitted at the inquiry were given Core Documents (CD) numbers and these are set out in brackets below

- 1 Accident data summary at A60 junction 2009-2017 (CD15.4)
- 2 Email dated 21 March 2018 from Environmental Health officer to KC regarding noise from dogs at Premier Pets (CD15.5)
- 3 Email dated 15 February 2018 attaching mitigation measures at the High Street junction from MEC to JW (CD15.6)
- 4 DMRB Volume 6 Section 2 Part 3 TD 50/04 (CD15.7)
- 5 Report to RBC Council 26 April 2018 regarding LPP2 (CD15.8)
- 6 The Council's list of appearances
- 7 The appellant's list of appearances
- 8 The Council's opening statement
- 9 The appellant's opening statement
- 10 Mr Breakwell's diagram of the traffic and parking situation at the High Street junction
- 11 Mr Reedman/Mr Brownett's traffic survey Monday 16 April 5-6pm
- 12 Statement read out on Day 1 of the Inquiry by Mr Reedman on behalf of Ruddington Parish Council and Ruddington Action Group
- 13 Signed S106 Agreement dated 20 April 2018
- 14 The Council's closing statement
- 15 The appellant's closing statement
- 16 NCC Planning Obligations Strategy

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*End of Documents*