



## Appeal Decision

Inquiry Held on 27 February to 1 March and 5 to 7 March 2024

Site visit made on 7 March 2024

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> September 2024

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Appeal Ref: APP/W3710/W/23/3327049

Land located to the south of The Long Shoot, Nuneaton, Warwickshire

- 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 Gladman Developments Ltd against the decision of Nuneaton & Bedworth Borough Council.
  - The application reference is 039213.
  - The development proposed is erection of up to 500 dwellings with land for primary school, public open space, landscaping, sustainable drainage system (SuDS) and vehicular access points. All matters reserved except for means of access.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. Applications for costs were made by both parties. These applications are the subject of separate decisions.

### Preliminary matters

3. National Highways (NH) were awarded Rule 6 status and participated fully in the inquiry.
4. Two case management conferences were held. Following the first of these, it was identified that significant late evidence, in the form of VISSIM traffic modelling, was not anticipated to be submitted until just one to two weeks before the exchange of proofs of evidence. In the interests of fairness, my pre-conference note for the second case management conference directed that the late VISSIM modelling results would not be accepted into the inquiry.
5. Following submission of the appeal, and an updated consultation response from the Local Education Authority, the description of the proposal was amended to include a primary school. The revised description was subject to further public consultation prior to the opening of the inquiry. I have taken account of the responses received. As a consequence of this inclusion, the appellant has proposed restricting the number of dwellings to 460 by condition, notwithstanding the description of the development. Nuneaton and Bedworth Borough Council (NBBC) agreed with this approach. I am content that no party has been prejudiced by this change.
6. NBBC's original highways witness Mr Law became unavailable shortly before the opening of the inquiry. Mr Edwards replaced him, indicating that he fully

**adopted Mr Law's** proof of evidence. At the opening of the inquiry, it became apparent that the appellant had not seen Mr Edwards' highways rebuttal. The inquiry adjourned to allow an opportunity to review the document. Additionally, on the penultimate day of the inquiry, NBBC submitted late evidence entitled NBBC note on housing shortfall (IN17). I accepted the document, and the appellant was provided with the opportunity to respond in writing after the close of the inquiry. This is discussed further in the costs decisions. I am satisfied that the appellant was not prejudiced in these matters.

7. The application seeks outline planning permission with the principal means of access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. A Development Framework Plan has been provided which would be subject to a condition requiring future applications to be in general accordance with these details. I have determined the appeal on that basis.
8. A planning obligation pursuant to s106 of the Town and Country Planning Act 1990 was discussed at the inquiry and signed and submitted shortly afterwards. I return to this below.
9. At the time of the inquiry, there were two other appeals for housing in Nuneaton, for up to 700 dwellings at Weddington Road<sup>1</sup> and up to 650 dwellings at Higham Lane.<sup>2</sup> Following public inquiries in March to April and April to May respectively, both decisions were issued in early July 2024, and I have noted their contents.

#### Main Issues

10. NBBC confirmed that it no longer intended to defend reasons for refusal 3, 5 and 6, relating to flood risk, air quality and biodiversity respectively, subject to conditions and obligation. **Whilst NBBC's second reason for refusal refers to effects on the local road network, the objection from NH relates to the strategic road network.** Following approval of a scheme for distribution and industrial development at Padge Hall Farm immediately to the east of the appeal site,<sup>3</sup> NBBC amended its landscape reason to withdraw its objection relating to the separation between the settlements of Nuneaton and Hinkley. On that basis, the main issues are:
  - whether the proposed development is in a suitable location, with regard to local and national policies for housing;
  - the effect of the proposal on the character and appearance of the site and surrounding area;
  - the effect of the proposal on the safety, operation and capacity of the road network; and
  - whether the required supply of deliverable housing land can be demonstrated.

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<sup>1</sup> Appeal ref APP/W3710/W/23/3330615 Weddington Road, Weddington, Nuneaton, determined 9 July 2024.

<sup>2</sup> Appeal refs APP/W3710/W/23/3329913 and APP/R3705/W/23/3329915 Land West of Higham Lane, Nuneaton for a single cross boundary proposal, determined 5 July 2024.

<sup>3</sup> A cross-boundary planning application was submitted to Rugby, Hinkley and Bosworth, and Nuneaton and Bedworth Borough Councils for Use Class B2 and B8 building, including ancillary offices. All three Councils resolved to grant permission and, at the time of the Statement of Common Ground, planning permission had been issued by Rugby and Hinkley and Bosworth Councils, whilst NBBC were yet to issue the permission.

## Reasons

11. The appeal site is some 34.62 hectares of agricultural land containing seven field parcels to the east of Nuneaton. The site is bounded to the north by the properties along The Long Shoot, and to the west by the dwellings at Wool Pack Drive and Top Knot Close. To the south is the Birmingham to Peterborough railway line. The land to the east is defined by the Harrow Brook watercourse, beyond which lies the open agricultural land of Padge Hall Farm (pending the above-described distribution and industrial development), the A5 strategic road and the settlement of Hinkley.
12. The proposal is for, in effect, 460 dwellings, of which 25% would be affordable. Vehicular access would be taken from The Long Shoot, Wool Pack Drive and Top Knot Close. The Development Framework Plan indicates additional pedestrian and cycle connections, mobility hub, land for a primary school east of Top Knot Close, allotments to the northwest of the site, a central green with play area, and public open space, play areas and recreational paths alongside Harrow Brook and the railway line.
13. The development plan includes the Nuneaton and Bedworth Borough Council Borough Plan (2019)(BP). The Borough Plan Review (2023)(BPR) was submitted in February 2024 and examination has commenced, and I return later to the weight to be given to this document.

## *Location*

### *The Borough Plan*

14. The BP aims to focus patterns of growth in locations which are or can be made sustainable and accessible. The settlement hierarchy set out in policy DS2 (Settlement hierarchy and roles) identifies Nuneaton as having the primary role and function in the borough for new development, including housing, and that most development will be directed to Nuneaton. The appeal site is outside of the settlement boundary of Nuneaton, albeit adjacent to it, conflicting with policy DS3 (Development principles) which indicates that new unallocated development will be limited to identified uses not normally including housing. Policy DS1 (Presumption in favour of sustainable development) incorporates the presumption of paragraph 11 of the National Planning Policy Framework (the Framework) into the development plan.
15. Policy DS8 (Monitoring of housing delivery) requires NBBC to monitor delivery of housing and publish progress against the trajectory. Whilst the most recent Annual Monitoring Statement for 2022-23 indicated an excess of supply and potential delivery **above the trajectory target, NBBC's position** was revised, with IN17 indicating a shortfall of 374 dwellings against the trajectory target of 14,060 dwellings. The appellant disputes this figure, claiming a shortfall of 2,403 dwellings.
16. Either way, delivery rates are falling short of what was anticipated, as also found below in my conclusion on housing land supply. In these circumstances, policy DS8 sets out the types of actions that NBBC is expected to take to address any shortfall, a number of which have been and continue to be undertaken, also as discussed in the fourth main issue below.
17. The third paragraph of policy DS8 goes on to state that where additional housing sites need to be brought forward, initial priority will be given to

sustainable sites including edge of settlement sites, amongst others, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. In effect, policy DS8 is restating here the presumption in favour of sustainable development found in both policy DS1 and the Framework.

18. The parties disagree on three key tests in policy DS8; whether any additional sites need to be brought forward in light of the weight to be given to the shortfall against the trajectory; whether the site is sustainably located; and what edge of settlement means.

*Need for additional sites*

19. Where delivery is falling short, policy DS8 identifies that NBBC actions may include bringing forward additional sites where it can be demonstrated that such sites will assist with delivery to address short-term needs.
20. Leading into the inquiry, NBBC argued that no additional sites were needed. At the inquiry, the NBBC planning witness conceded that the third paragraph of policy DS8 would be engaged, in essence, agreeing that there was a need for additional housing sites to be brought forward, in the event that the site were found to be sustainably located.
21. NBBC then submitted late document IN17 asserting that several proposals had emerged that were not accounted for in the 1 April 2023 trajectory, including permitted dwellings at Bedworth Rugby Club and the town centre, and undetermined units at Judkins Quarry and the town centre. In considering the weight to be given to the shortfall of 374 against the trajectory, IN17 concluded that there was no need to bring forward additional sites. In yet another volte-face, the subsequent Higham Lane appeal decision indicates that NBBC accepted that DS8 was engaged, and thus that there was an additional need for sites dependant on the size of the shortfall.
22. Whilst the appellant disputes the conclusion of IN17, there would be no benefit in resolving this matter in this appeal decision as, whichever way NBBC's case is put, it can be seen below that I have concluded that NBBC are unable to demonstrate the required supply of housing land. I describe NBBC's shifting positions here partly as context for the costs decision where this matter is discussed further.
23. Given that delivery rates are falling short of what is anticipated, bringing forward the appeal site would be a justified action to address that need. Equally, doing so would not introduce such a significant scheme that it would saturate the market or dilute ongoing delivery, particularly in light of the subsequently dismissed appeals at Higham Lane and Weddington Road.

*Sustainability and accessibility*

24. The BP identifies Nuneaton as the most sustainable settlement in the Borough. Policy TC3 (Hierarchy of centres) states that new residential development should be within 1,200 metres walking distance of a district or local centre and **8 minutes' drive time to a district centre**. The Framework also requires that new development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

25. With a district centre at Horeston Grange containing a good variety of shops and facilities **just a few minutes' walk away from** the west of the appeal site, NBBC accept that the proposal is policy compliant in this respect. The proximity of the site to this centre would significantly reduce the need for residents of the proposed development to use the car, including for short top-up journeys.
26. The appeal site would make a number of pedestrian and cycle connections with the surrounding transport network. In addition to the main site access onto The Long Shoot to the north, a dedicated pedestrian and cycle route would be provided from the northwest of the site to The Long Shoot. Also to the west, four connections would be provided to Wool Pack Drive and Top Knot Close, two of which would be dedicated for pedestrian and cycle use. Beyond this to the west, there are some five existing crossing places on Eastboro Way.
27. These connections would deliver a safe and relatively attractive pedestrian route to the town centre away from the A47 The Long Shoot. It would give the option of passing the district centre facilities, then route through Tiverton Park, where a new raised crossing across Camborne Drive for pedestrians and cyclists would be secured by obligation, even though this route is not currently designated as a cycle path. Whilst the most direct cycle route along the A47 may not be appealing to less experienced cyclists, it nonetheless provides direct and quick access to the town centre from the site in just some 12 minutes. Furthermore, a number of new pedestrian and cycle routes would be created within the site itself, also providing access to the existing rural public footpath network beyond, leading to southeast Nuneaton, the A5 and Hinkley.
28. In terms of public transport, the A47 The Long Shoot is an arterial route between Hinkley and Nuneaton which is currently served with multiple bus services per hour during the day, Monday to Saturday, to destinations including Nuneaton, Hinkley, Leicester and Coventry, albeit that Sunday services are less frequent. Two pedestrian priority crossings, facilitating access to improved bus stops, would be provided along The Long Shoot as part of the proposed development. The bus service would also be strengthened to increase the 148 and 158 services to twice hourly frequency and extend the route to include George Elliot Hospital and the Bermuda Park employment area for a period of 5 years. Additional public transport services for longer journeys are available from the train station in central Nuneaton.
29. Overall, the availability of public transport services at the site would be good, even though there is no dedicated bus lane on The Long Shoot and that the furthest parts of the appeal site may be marginally more than 5 **minutes' walk** (approximately 400 metres) from the bus stops.
30. A travel plan is intended to be secured by condition, aiming to achieve 15% modal shift, the target set out in policy HS2. Although no outline plan has been provided at this stage, and the details on the proposed mobility hub and electric vehicle sharing club are limited, my above findings on active travel options at the site suggest a reasonable baseline from which such modal shift could be achieved. Accordingly, I am satisfied that this target is attainable, at least in principle, whether this would be secured by condition or obligation, such that the absence of detailed measures at this stage does not weigh significantly against the proposal. I appreciate that this departs from the conclusion of the Inspector at the Weddington Road appeal, however, that site would appear to be starting from a less favourable base position.

31. NBBC highlight comments made by the Inspector examining the BP which suggested that further development to the north of Nuneaton would create the risk of a top heavy and unsustainable spatial strategy. However, the area referred to by the Inspector simply did not include the appeal site, which as a matter of fact lies geographically to the east of Nuneaton. Even if it did, that would not outweigh my overall finding on the sustainability and accessibility of the appeal site location.
32. As a final point, the appeal site is located a similar distance from Nuneaton town centre as the large strategic residential allocation site HSG1, which is allocated for over 4,400 units in the BP, and part of which is immediately to the north of The Long Shoot. Whilst the two sites are not directly comparable, the proposed accesses for the appeal site would be closer to Nuneaton town centre than much of HSG1 and its eastern accesses. Furthermore, the appeal site benefits from a relatively pleasant green pedestrian route much of the way to Nuneaton town centre, unlike HSG1 from what I have seen. This makes NBBC's case on locational sustainability considerably less persuasive.
33. **I appreciate NBBC's position that town centre and brownfield sites are** preferable to sites outside of the settlement edge but, on the balance of factors, I find that the site would be in a sustainable location which would, with mitigation, offer a genuine choice of transport modes. The proposal would comply with the sustainability aspects of policy HS2 of the BP.

*Edge of settlement*

34. Policy DS8 goes on to direct that initial priority for additional sites will be given to sustainable sites including edge of settlement sites, amongst others. NBBC consider that edge of settlement in this context means within the settlement boundary, arguing that this would be consistent with policy DS3 and locational sustainability. However, on a plain reading of the policy wording, and in the absence of any explanatory text, there is nothing to make this clear. On the other hand, policy DS2 already makes development within the settlement boundary acceptable, and the purpose of policy DS8 is to address delivery rates that are falling short by applying the presumption in favour of sustainable development. Taken together, the meaning of edge of settlement can just as equally include sites outside of the settlement boundary.
35. NBBC highlight that there are other sites within the settlement boundary that initial priority should be given to, with particular reference to the Judkins Quarry extension. This would potentially deliver some 150 to 200 dwellings, but this would not meet **even NBBC's** own accepted shortfall against the trajectory or housing land supply.<sup>4</sup>

*Prematurity*

36. The publication draft BPR does not allocate the appeal site for development, which would remain outside of the settlement boundary. Neither does it propose any new housing allocation sites to the north or east of Nuneaton beyond the ongoing HSG1 site. In light of this, NBBC argue that to allow development at the appeal site would be premature.
37. Paragraphs 49 and 50 of the Framework set out how applications should be determined in the context of emerging local plans. Paragraph 49 is clear that

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<sup>4</sup> As set out in paragraphs 21 and 91.

prematurity arguments would only justify refusal in limited circumstances, particularly in the context of the application of the presumption in favour of sustainable development, as is the case here.

38. Paragraph 49(a) further states that, to be refused, the development proposed must be so substantial that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan. In this respect, the proposal would be sustainably located on the edge of Nuneaton, which the BPR continues to identify as the principal town and which would have a primary role for housing. In numerical terms, 460 dwellings would represent just some 3.8% of the proposed housing supply in the BPR of 12,127 dwellings, the other two appeal schemes having been dismissed. Furthermore, there are unresolved objections to policies that are relevant to the appeal, and NBBC accept that the BPR only attracts limited weight at this stage.
39. Taking these matters together, the proposal would not undermine the plan making process or matters central to it, such that any harm to the proposed spatial strategy would not justify refusal, regardless of how advanced or otherwise the BPR may be.

#### *Conclusion on location*

40. Although the proposed development is in conflict with the locational aspects of policy DS3 of the BP, the appeal site is nonetheless an edge of settlement site that is in a sustainable and accessible location. I return to this in my overall planning balance.

#### *Landscape*

41. The appeal site is characterised as open agricultural land separated into several fields of arable and pasture use with mixed hedgerows. Whilst the site is valued by the local community, it is not a designated or valued landscape in the development plan or as described in the Framework, notwithstanding the descriptive identification of the site as a sensitive landscape in the now superseded Nuneaton and Bedworth Land Use Designations Study (2012).
42. The Nuneaton and Bedworth Landscape Character Assessment (2023)(LCA) identifies the site as being within the Anker Valley Estate Farmlands character area (AVEF). The AVEF wraps around the north and east edges of Nuneaton. The appeal site is representative of its character as gently undulating lowland rural fringe with frequent views of urban edges. The proposed development would represent a loss of part of the AVEF to the south of The Long Shoot. Even so, the LCA indicates the AVEF has capacity to accommodate change subject to careful consideration of impacts, and the identified key characteristics would be retained, including hedgerows and the wooded stream. Furthermore, the part of the AVEF that would be lost to the appeal site is now largely peripheral to the bigger part of the overall character area.
43. Policy NE5 (Landscape character) of the BP requires major development proposals to, amongst other things, respond positively to the landscape setting in which the development proposal is located. In particular, to conserve and where necessary enhance the strength of character and landscape condition, which are both currently identified as being moderate in the LCA. The landscape character of the site would inevitably be changed from open

- agricultural land to built development. Openness would be eroded and, in this respect, some harm would inevitably be caused. In mitigation, the proposal would retain the existing field patterns, hedgerows and the Harrow Brook corridor which would assist with longer term integration into the landscape.
44. Policy NE5 then goes on to set out a sequential test to direct development to areas of least landscape value first. NBBC give the example of the Hartshill Ridge character area as being of lesser quality and condition, as a result of it being an upland landscape modified by quarrying activity. However, even there, the LCA indicates that housing has already begun to encroach upon the perimeter of that character area, and that additional change should be minimised and should aim to enhance sense of place and distinctiveness. Moreover, the NE5 sequential test is not consistent with the Framework, which instead only requires a sequential approach to be taken for designations such as national landscapes, not for sites that are not designated or valued landscapes. Accordingly, the weight to be given to this conflict is reduced.
45. Visually, the site is well contained by existing development to the north and west. To the east, implementation of the permitted circa 35 hectares of distribution and industrial buildings would result in the appeal site being bounded by built development on three sides. The fourth side to the south is defined by the railway line which, whilst varying in height between embankments and cuttings, is well vegetated and provides a clear and definitive separation between the site and the open countryside to the south.
46. Views from public viewpoints would be largely limited to localised glimpses between existing buildings, from the road-ends and open space at Wool Pack Drive and Top Knot Close, and the public footpath network to the south. Views from neighbouring dwellings to the open countryside of the site would be lost, however private views are not protected. Extensive areas of proposed landscaping would provide mitigation in the longer term. NBBC do not object to the proposal on grounds of visual impacts, and I conclude that the harm caused to public viewpoints would be limited.
47. Overall, the proposed development would read as being a logical extension to the settlement of Nuneaton. It would have no more than localised adverse effects on the character and appearance of the site and surrounding area, notwithstanding the conflict with policy NE5. I return to the harm this would cause in the planning balance.

### *Highways*

48. Policy HS2 requires that proposals will need to meet acceptable levels of impact on existing highway networks. Paragraph 115 of the Framework states that development should only be refused if there would be an unacceptable impact on highway safety or the residual cumulative impact on the road network would be severe.
49. Paragraph 115 creates a high bar for refusal of permission on highways grounds. There was no suggestion from any party that there was any inconsistency between this and policy HS2 and I find no reason to conclude otherwise. The parties also agreed that the policy framework sets a high bar for highways capacity refusal. Whether or not the proposal would have a severe impact on the road network is a matter of planning judgement and, at the



- outset, it is important to highlight that neither NBBC nor NH claim that the impacts would be severe.
50. Instead, NBBC assert that the appellant has not demonstrated that the proposal would not have severe impacts, and NH indicate that insufficient reliable data has been submitted to ascertain likely effects. It is clearly essential that there should be a sufficient level of information to allow that judgement to be made. Otherwise, planning applications and appeals could be submitted without any relevant accompanying information and not be refused under the terms of this policy test. As the *Hawkhurst* judgement<sup>5</sup> makes clear, the amount of information that may be required in a particular case is a judgement which involves questions of proportionality.
  51. The Warwickshire County Council (WCC) Local Transport Plan 4 (2023)(LTP4) supersedes LTP3 referred to in the second reason for refusal. LTP4 does not form part of the development plan, but it has been produced to follow Department for Transport guidelines and has been subject to public consultation and stakeholder engagement. Policy position MS4 (Robust data-led decision making in assessing new developments) advises submission of specific technical data, such as the use of micro-simulation modelling techniques to support transport assessments, where appropriate, in accordance with the WCC Modelling Protocol (the WCC Protocol).
  52. The WCC Protocol in turn comprises a series of advice notes setting out detailed guidelines for the highways modelling process, amongst other things. For the strategic road network, **NH's Protocol for the A5 The Longshoot and Dodwells Junctions** (the NH Protocol) is a document produced by NH which has been agreed with the two relevant local highway authorities. It has been produced to address potential impacts on the operation of what is identified as a sensitive location. Both of the protocols are guidance documents which have not been subject to public consultation but are nonetheless useful mechanisms to set out expectations for the consistent assessment of development proposals, even though their purpose is not to address the Framework tests. Therefore, both protocols attract considerable weight.
  53. Following initial scoping, and in line with the WCC Protocol, WCC advised the appellants that the Nuneaton and Bedworth Wide Area (NBWA) Paramics Microsimulation Model should be used to assess the development proposals. The NH Protocol advises that junction impact assessments should utilise the VISSIM model.
  54. Instead, the appellant submitted an Interim Transport Assessment (September 2022)(ITA) which did not contain NBWA or VISSIM modelling but carried out junction modelling of The Long Shoot and Eastboro Way accesses to the site. Following refusal of the application and submission of this appeal, a NBWA Paramics Modelling Review (October 2023)(PMR) and Transport Assessment (November 2023)(TA) were provided. VISSIM modelling was not ready in time for the inquiry, as noted above, and the appellant's **case was** said to not be reliant on VISSIM modelling. The appellant undertook what it considered to be a "*rounded judgement*" based on all of the available data to assess the road network, which included consideration of disputed 2022 survey data amongst other sources. I turn now to the adequacy of this data, along with consideration of the impacts of the proposal on both the local and strategic road networks.

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<sup>5</sup> R (Hawkhurst Parish Council) v Tunbridge Wells Borough Council [2020] EWHC 3019 (Admin)

*The local road network*

55. The appellant concludes that the proposal would not have a severe adverse impact on the road network and that no specific additional highway mitigation measures are required. This is based on key contentions that there would be acceptable impacts across the network as a whole, and in terms of journey times, speed, and queueing on particular routes around the site itself.

*Journey times across the network as a whole*

56. The NBWA forecasts that the proposal would result in an increase in journey times across the network as a whole by some 14 seconds in the AM peak and 16 seconds in the PM peak, in the worst-case scenario, that being the 2031 reference scenario. Whilst extrapolating this across the number of vehicles on the network does suggest considerable overall delays, it is little more than a mathematical exercise. Such delays would barely be perceptible to most drivers and would be no more inconvenient than having to stop at an additional pedestrian crossing. This impact on the whole network would not be severe when taken on its own. The more relevant factor is the impact on individual routes, as follows.

*Route 6 (Eastboro Way and Avenue Road)*

57. The greatest impact from the development is predicted to be experienced by northbound traffic on Route 6 in the AM peak, where the journey of some 3.25 kilometres would increase by over 6 minutes (from eight minutes and 40 seconds to 14 minutes and 58 seconds) in the 2031 reference scenario. The average speed along this route would drop from 23 mph to 14 mph and northbound queueing on Eastboro Way would increase by 87 passenger car units (PCU) from 68 to 156 PCU.
58. A queue of this length would be almost 900 metres long. Even if the queue were to be what the appellant described as a moving queue, it would still stretch back very far beyond the signalised junctions to Woolpack Drive, Lambs Down Lane and Camborne Drive. Some 60% of the proposed development traffic is forecast to use Woolpack Drive and Lambs Down Lane to attempt to enter or exit this extensive queue, as opposed to using the proposed signalised junction at The Long Shoot.
59. These forecasts are modelled on the basis of the inclusion of the A47/Hinkley Road improvement scheme. There is currently a question over its funding, such that implementation of those improvement works has been paused. Nonetheless, the NBBC Strategic Transport Assessment (July 2023)(STA) identifies that this improvement scheme is necessary to prevent gridlock if planned demand is to be accommodated. In the event that the improvement works did not proceed, the above effects of the proposal on the network would be greater than forecast. However, despite the current uncertainty about implementation, there is no substantive evidence before the inquiry that the improvement scheme would not be delivered at all.
60. In ascribing a grading to these modelling results, the STA indicates that an increase in queue length of between 25 and 50 PCU would be severe, and over 50 PCU would be very severe. These are higher level values derived from those used in the STA for local plan allocations, not intended for specific development proposals, but even this grading identifies potentially very severe impacts,

therefore suggesting that further investigation is required or that additional mitigation may be necessary.

61. Indeed, the **appellant's** own PMR acknowledges that it is these queue lengths along Eastboro Way which are the most significant impact of the proposed development. Whilst the appellant asserts that these forecasts may be overstated by the NBWA software, if that is indeed the case then, to my mind, further assessment should have been undertaken to fully establish the nature and likelihood of the impact of such an irregularity.
62. When tested on this in cross-examination, the **appellant's** highways witness conceded that the impact on queuing along Eastboro Way was, with the benefit of hindsight, "*potentially severe*". This concession casts significant doubt over the strength of **the appellant's** overall highways case.
63. In light of *Hawkhurst* and the Framework's severity test, in the situation where a professional highways consultant identifies a potentially severe impact on the road network, albeit belatedly in this case, it is incumbent upon them to investigate that impact further in order to reach a firm conclusion either way, or to identify potential mitigation to satisfactorily offset the impacts. To subsequently assert, in re-examination, that there is always potential for severe impacts negates the professional judgement that is required.
64. These identified impacts may be limited to a relatively small part of the overall road network. Nonetheless, they relate to a key thoroughfare and would affect not only the 60% of movements here by residents of the proposed development but would also be experienced by other residents from the surrounding area, as well as those travelling through. I am conscious that the identified impacts could potentially be addressed with an appropriate scheme of mitigation. However, there is no such mitigation before me.
65. Consequently, in light of this evidence, I conclude that there is a significant risk of severe residual cumulative impacts in this respect. This lack of certainty regarding the severity of effects is harmful, notwithstanding that the tests in the Framework state that development should only be prevented or refused if the residual cumulative impacts would be severe, as opposed to might be. Furthermore, were this harm found to not be in conflict with this policy test, the harm would nonetheless be a material consideration to weigh in the overall balance, which would not affect my overall conclusion. Finally, even if the potentially severe impact had not been conceded, the effects outlined are such that I would have reached the same conclusion in any case. I return to this harm in the planning balance.

*Route 5 (The Long Shoot and Hinkley Road) and Route 7 (Newton Road)*

66. Route 5 is a 3.5-kilometre route from the A5 to Nuneaton town centre, including along The Long Shoot. It runs directly past the site, where a signalised junction would provide the principal access to the proposed development. The worst-case impacts, in the local plan scenario which includes the A47/Hinkley Road improvement scheme, would be on the southbound leg during the AM peak. Journey times would increase by just over two minutes (from 6 minutes 39 seconds to 8 minutes 58 seconds), resulting in a reduction in average speed from 20 to 15 miles per hour.

67. The reason for these effects are due, in part at least, to the proposed new access and other measures associated with the development such as the two new pedestrian crossings. My judgement is that changes of these magnitudes in these contexts would be acceptable and, in terms of the wording of the Framework, would not constitute a severe impact.
68. NBBC initially identified a very severe impact on Route 7, which includes a 220-metre section along the A444 town centre ring road. Here, the local plan scenario indicates a journey time increase of some 74%. However, more detailed analysis indicates an increase of a mere 18 seconds (from 24 to 42 seconds). NBBC subsequently resiled from this position, accepting it would be unnoticeable, and I agree.

*The strategic road network*

69. The A5 provides strategic access east to west across the Midlands. It also connects with the M6, M42 and M1 motorways. Locally, the A5 provides access to Nuneaton and Hinkley via the A47 and two linked junctions, which comprise a traffic signalised junction at the A5/The Long Shoot and a signalised roundabout at the Dodwells circulatory, some 550 metres apart. Both parties acknowledge that these junctions are currently functioning at or near to their operational capacity, with queues that on occasion block back through the signalised junction as well as block the arms of the circulatory. This is demonstrated by existing delays during morning and afternoon peaks, which are not disputed.
70. NH's key concerns relate to non-compliance with the NH Protocol, specifically the absence of VISSIM modelling, and the adequacy of the **appellant's** alternative Linsig modelling.

*Modelling protocol and VISSIM*

71. The NH Protocol promotes a staged approach, with methodology, parameters, assumptions and inputs to be agreed by all three highways authorities. Modelling under the protocol is required to use the Leicestershire Pan Regional Transport Model and/or **WCC's** NBWA model, **for input into NH's VISSIM model**, which is a microsimulation tool that models the interaction of the operation of multiple junctions. Consequently, modelling carried out in line with the NH Protocol would provide a very detailed assessment of how these linked junctions would be affected by the proposed development, including any necessary mitigation.
72. However, the VISSIM modelling process is complex. In this case it has been beset by lengthy delays since the pre-application stage in 2022, with each party claiming that the fault lies elsewhere. Whatever the reasons, the VISSIM modelling was not available in time for the inquiry, but the Linsig and NBWA modelling was.
73. In the absence of VISSIM modelling, non-compliance with the NH Protocol cannot be automatically taken to mean that a development should be refused. I appreciate that the adequacy of information provided and consistency of approach are matters of importance to NH. However, each proposal must also be considered on its own merits and assessed proportionately against the key policy tests on the basis of the information available, subject to *Hawkhurst*,

notwithstanding Department for Transport guidance recommending that scenario modelling be agreed in advance.

74. According to the NBWA model, the proposed development would only add some 50 vehicles in the AM peak hour against a total existing traffic flow of more than 3100 on the strategic road network. This is agreed by the parties to be a "tiny" percentage increase to existing flows along the strategic network. In this context, the absence of VISSIM modelling at the inquiry is neither disproportionate nor unreasonable, notwithstanding its considerable benefits. Instead, the question rightly turns to the likely forecast effects of the proposal on the strategic road network.

*Linsig modelling and the effect on the strategic road network*

75. Unlike the microsimulation approach of VISSIM, Linsig considers junctions in isolation. It is a widely used industry tool for assessing junction performance. It concludes that mean maximum queue lengths on the A5 at peak times would be between 21 and 32 PCU, or approximately between 115 and 176 metres in length. As such, queues are not predicted to regularly extend the 550 metres between the two junctions, even allowing for doubling of queue figures.<sup>6</sup>
76. The **appellant's** TA further clarifies that there would be an increase at Dodwells roundabout of some 5 PCU (40 metres) in the AM peak and 2 PCU (12 metres) in the PM, with the worst-case delay increasing by 20 seconds (from 58 to 77 seconds) in the AM peak on the A5 west. At The Long Shoot junction, the greatest increase in impact is on the worst case A5 east arm in the PM peak, where the degree of saturation would increase only marginally from 85.5% to 87.1%. Taken at face value, these conclusions indicate that the existing situation would not be significantly worsened by the proposal.
77. In the context of complex junctions, Linsig does have a number of disadvantages. The model only considers each junction in isolation rather than how they interact with each other, and it does not take account of queueing or exit blocking. Linsig predictions also start to break down and become unstable when the degree of saturation reaches between approximately 90% and 105%. Such saturation levels would occur at this linked junction at the A5 West and Dodwells Road arms of the Dodwells roundabout in the AM and PM peaks.
78. Given these flaws, Linsig is clearly not the optimum model for assessing this complex linked junction. This is accepted in the TA, which indicates that future iterations of the TA should fully explore the interaction between these junctions and the A5 corridor using VISSIM. These points do **make the appellant's** modelling outcomes less compelling but, even so, in the context of the very small increase in traffic generation discussed above, the **appellant's assessment** when taken as a whole does provide a sufficiently robust and useful insight into the predicted performance of the junction and the effect of the proposed development.
79. In addition, the connection between the two junctions is already being operated by MOVA software, which monitors traffic movement and flow and which can make real time adjustments to signalling to compensate. As a well-established tool for optimisation of junctions that can achieve up to around a 10% increase in efficiency, MOVA would in any case be dealing with small-scale

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<sup>6</sup> Indicated by the appellant's **highways witness** as common practice in saturated conditions.

impacts on the linked junction of the magnitude that have been forecast to arise from this proposal.

80. Overall, I am satisfied that there is sufficient information before me to be able to make an assessment on the effect of the proposal on the strategic road network. Taking all of the above points together, it is my judgement that the impacts from the proposed development would not be severe.

#### *Highway safety*

81. The road safety audit identifies no significant issues in respect of either the local or strategic road network. Queue lengths might potentially lead to blocking back of traffic at the Woolpack Drive and Lambs Down Lane junctions with Eastboro Way, a situation which is acknowledged to already occur at the A5/The Long Shoot junction. Whilst this, and slower traffic movements, may result in some driver frustration, such behaviour does not raise any obvious safety concerns in my mind, nor do slower traffic speeds or increased congestion necessarily directly correlate with an increase in accidents.
82. The **TA's collision data analysis concludes that the number and nature of incidents** is largely within normal expectations for the character of the road network and volume of traffic. Overall, there is no substantive evidence before me that significant additional risks would arise as a result of the proposal, nor have any additional mitigation measures been proposed as necessary. Furthermore, the new pedestrian crossings on The Long Shoot would improve pedestrian safety in that location. The proposal would not result in an unacceptable impact on highway safety.

#### *Other highways matters*

83. The omission from modelling of recently approved development, such as that at Padge Hall Farm, is principally a matter of timing. The recently added proposed new primary school on the site is also not included in either the modelling or the TA. But, put simply, there has to be a point of design freeze. Indeed, the NH Protocol acknowledges that it is only committed development that needs to be modelled, with specific committed sites to be agreed before any modelling taking place. To add further development thereafter on an ad-hoc basis would be impractical. Furthermore, the Padge Hall Farm scheme included mitigation at the linked junction to accommodate its impacts.
84. Many of the 210 pupils attending the new school would come from the proposed development site, and consequently would not have any impact on the wider road network. Between 57 and 115 pupils, depending on whose calculations are preferred, would travel from outside the appeal site to the **school. WCC's observed factors for primary school travel indicate that 38% of** these would travel by car, which would increase trip generation to the site. On the other hand, the TA and NBWA modelling was predicated on up to 500 dwellings and 40 dwellings have been removed from the proposal, such that trip rates from the development would fall commensurately.
85. I appreciate that parental choice complicates such predictions, but it is also reasonable to conclude, for the purpose of this appeal, that any new school can be expected to achieve satisfactory performance levels, such that the numbers of parents wishing to use other schools would not be significant. Taken

together, the inclusion of the new primary school would not significantly worsen forecast highways effects.

*Overall conclusion on highways*

86. The proposal would result in highways harm as a result of residual cumulative impacts on the operation and capacity of the local road network which cannot be assumed to be anything other than severe. Consequently, the proposal fails to accord with the requirements of policy HS2 of the BP and the Framework. I return to the harm this would cause in the planning balance.

*Housing supply*

87. **To support the Government's objective of significantly boosting the supply of homes**, the Framework emphasises the importance of sufficient and varied land coming forward where it is needed. The Written Ministerial Statement of 30 July 2024 (WMS) announced a review of housing requirements set out in the Framework, **and highlights the Government's intention to build 1.5 million homes** over the new parliamentary term. Whilst the consultation on the revisions to the Framework can only be given limited weight at this early stage, the WMS's focus on the importance of housing delivery is a matter that continues to attract significant weight.
88. The annual requirement for NBBC was agreed by the parties at the inquiry as being 812 homes, measured against the adopted housing requirement, with a shortfall of 1,005 to be addressed during the five year period, and a 20% buffer, resulting in a requirement of 6,078 homes, or 1,216 homes annually, at the base date of 1 April 2023. The BP has since become more than five years old, but no case has been made that the requirement should be calculated using local housing need as indicated in paragraph 77 of the Framework. Although the BPR sets out a reduced annual housing requirement of 442, examination is still underway and there are substantial unresolved objections to the strategic policies, such that this can only be given limited weight.
89. At the inquiry there was also a dispute as to whether NBBC was required to demonstrate a four or five year housing land supply, relating to an asserted ambiguity in the revised wording of the Framework. However, as the BP has become more than five years old, the calculation of supply prescribed by paragraph 76 of the Framework no longer applies. Instead, paragraph 77 states that authorities will only need to meet a four year supply, subject to the provisions of paragraph 226, namely that an emerging local plan, containing both policies map and proposed allocations, has been submitted for examination. The BPR meets these requirements, and therefore NBBC is required to demonstrate a four year supply of housing.
90. At the time proofs of evidence were shared, NBBC stated that it had a supply of 5.13 years. Following an update to Planning Practice Guidance in February 2024 which clarified the circumstances in which a four year supply could be demonstrated, NBBC revised its position to 4.06 years shortly before the inquiry opened. The appellant calculated supply to be 2.87 years.
91. The recent appeal decisions at Higham Lane and Weddington Road concluded housing supply to be 3.4 years and around 2.74 years respectively. Given that the evidence for the current inquiry was heard before the evidence for both of those inquiries, it is reasonable to conclude that at least some movement

would have occurred in demonstrating deliverability, or otherwise, for at least some of the disputed sites. Indeed, by the time of the Higham Road inquiry, concessions from NBBC resulted in a further reduction in its position to 3.94 years, thereby accepting a shortfall against supply of 524 dwellings.

92. In light of these changes in circumstances, it would no longer be appropriate for me to reach my own conclusion on housing land supply on what is now almost certainly outdated evidence. For the purposes of this appeal, I therefore take supply to be within the range found at those more recent inquiries, that being between 2.74 and 3.4 years.
93. In terms of affordable housing, it is not disputed that there is an ongoing need in the borough. Whereas the Coventry and Warwickshire Housing and Economic Development Needs Assessment (2022) identifies an annual need of 391 affordable homes, just an average of 142 affordable homes have been delivered each year since the start of the plan period. The proposal would deliver up to 115 new affordable homes and make a significant contribution to this shortfall.
94. NBBC have taken steps to address the overall housing shortfall. It is in ongoing discussions with developers regarding delivery of sites and has restructured the department to provide additional and upskilled staff, as well as retaining agency staff. NBBC indicate that, consequently, application determination times have been decreasing. NBBC can also demonstrate increased housing delivery in previous years, with a Housing Delivery Test of 125% for 2022. However past delivery is no guarantee of future supply. Overall, I conclude that NBBC cannot demonstrate the required supply of housing.

#### *Planning obligation*

95. The obligation would secure the provision and management of public open space, allotments, mobility hub and SUDS scheme. A contribution of 25% affordable housing would be secured, of which 74% would be affordable rented and 26% intermediate housing, to be provided in each phase before occupation of 80% of the market housing. Contributions would be made towards primary facilities, parks and open space, sports recreation and community facilities. A biodiversity enhancement scheme would be secured, as would be schemes for the allotments and mobility hub. Contributions towards county council services would be provided in respect of public transport, bus stop maintenance, bus stop display maintenance and replacement, road safety, libraries, public rights of way and sustainable travel promotion.
96. The education contribution is agreed in principle, but there remains dispute regarding pupil yield multipliers and the split between primary and secondary phases. However, given my overall conclusion, it is not necessary for me to reach a finding on this matter and, furthermore, it would not attract such weight as to cause me to adjust my overall planning balance.
97. For the above reasons, I am satisfied that the obligations are necessary, directly related to the development, and fairly related in scale and kind. They comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework and therefore can be taken into consideration.



### *Planning balance*

98. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration.
99. For the above reasons, the proposed development is in conflict with policies DS3, HS2 and NE5 of the BP. However, as NBBC cannot demonstrate the required supply of housing land, the presumption in favour of sustainable development set out in policies DS1 and DS8 of the BP, and paragraph 11 of the Framework, is engaged.
100. Paragraph 11(d) of the Framework indicates in these circumstances that the policies that are most important for determining the application should be considered as out of date. For the purposes of this appeal therefore, the above policies are of reduced but nonetheless still significant weight. There are no policies in the Framework of relevance to this appeal that protect areas or assets of particular importance that provide a clear reason for refusal. Therefore, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In ascribing weight, I use the following scale: limited, moderate, significant, very significant, and substantial.
101. In terms of harm, I have found that the proposal would result in highways harm because of residual cumulative impacts on the road network which cannot be assumed to be anything other than severe, to which I give substantial weight. Harm would also be caused in terms of the character and appearance of the site and surrounding area and, for the reasons given above, this attracts moderate weight, as does the conflict with the locational aspects of policy DS3.
102. Turning to the benefits of the proposal, the provision of up to 115 affordable homes attracts very significant weight, and the contribution to supply of up to 345 market properties is of significant weight, given the need outlined above. The economic benefits of the scheme, during construction and thereafter, are afforded moderate weight, including the creation of new jobs. Biodiversity net gain would be secured for the site but as the quantity is uncertain this only attracts limited weight. Improvements to active transport, provision of green infrastructure and public open space, and contributions to facilities and services are primarily mitigation measures required by policy. Nonetheless these measures would also benefit residents in the wider local area, thereby attracting some limited weight.
103. Drawing together the above harms and benefits, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The proposal would conflict with the development plan as a whole and there are no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan.
104. For the avoidance of any doubt as to how this conclusion has been reached, had the highways harm and conflict with policy HS2 not occurred, I would have found the proposal to accord with policy DS8 and the development plan as a

whole, given the modest landscape and policy harm found, when applying the internal presumption in policies DS1 and DS8.

Conclusion

105. Having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Patrick Hanna*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT

Zack Simons and Isabella Buono, instructed by Stuart Carvel.

They called:

Anthony Sheach BEng(Hons) C.Eng FICE FCILT FIHT	Enzygo Ltd
Clive Self DipLA CMLI MA(Urban Des)	CSA Environmental
Ben Pycroft BA(Hons) DipTP MRTPI	Emery Planning
Stuart Carvel MTCP(Hons) MRTPI	Gladman Developments
Andrew Collis	Gladman Developments

### FOR THE COUNCIL

Richard Humphreys KC, instructed by the Borough Solicitor.

He called:

James Edwards BSc	SLR Consulting
David Pilcher CMILT FIHE	WCC
Peter Radmall MA B.Phil CMLI	Peter Radmall Associates
Sarah Matile BA(MPlan) MRTPI	NBBC
Karina Duncan MA BSc(Hons)	NBBC
Jacqueline Padbury	NBBC
Phillip Richardson MA LLB(Hons) (for the obligations round table)	NBBC

### FOR NATIONAL HIGHWAYS

Ruth Stockley, instructed by Tim Reardon. Closing submissions were read by Paul Bellingham, National Highways.

She called:

Russell Gray	National Highways
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### INTERESTED PARTY

Cllr Jeff Clarke, Member for St Nicolas Ward

## INQUIRY DOCUMENTS

- IN1 Appellant opening statement and appearances
- IN2 NBBC appearances
- IN3 NBBC opening statement
- IN4 National Highways opening statement
- IN5 Appellant extract from CD10.18
- IN6 Appellant extract from CD10.19
- IN7 NBBC extract from CD10.18
- IN8 Landscape round table agenda
- IN9 Extract from Providing for Journeys on Foot by IHT (2000)
- IN10 Extract from LINSIG manual
- IN11 Housing land supply round table agenda
- IN12 Correspondences on housing land supply position
- IN13 Updated planning obligation
- IN14 Correspondence from Coventry and Warwickshire ICB
- IN15 Updated WCC CIL compliance schedule
- IN16 Landscape map
- IN17 NBBC note of housing shortfall
- IN18 Updated **note on NBBC's housing land supply positions**
- IN19 Email from National Highways with suggested condition
- IN20 NBBC comments on planning conditions
- IN21 Appellant comments on planning conditions
- IN22 Final planning obligation
- IN23 NBBC submissions on admissibility of document IN17
- IN24 Appellant submissions on admissibility of document IN17
- IN25 National Highways closing submission
- IN26 NBBC closing submission
- IN27 Appellant closing submission
- IN28 NBBC costs application
- IN29 Appellant costs application
- IN30 NBBC reply to appellant costs application
- IN31 Appellant reply to NBBC costs application

IN32 Signed planning obligation

IN33 Appellant response to NBBC document IN17

IN34 NBBC comment on Weddington Road and Higham Lane appeal decisions

IN35 Appellant comment on Weddington Road and Higham Lane appeal decisions and Written Ministerial Statement dated 30 July 2024

IN36 NBBC comment on Written Ministerial Statement dated 30 July 2024



## Costs Decisions

Inquiry held on 27 February to 1 March and 5 to 7 March 2024

Site visit made on 7 March 2024

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> September 2024

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### Costs application [A]

in relation to Appeal Ref: APP/W3710/W/23/3327049

Land located to the south of The Long Shoot, Nuneaton, Warwickshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Gladman Developments Ltd for a partial award of costs against Nuneaton and Bedworth Borough Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for erection of up to 500 dwellings with land for primary school, public open space, landscaping, sustainable drainage system (SuDS) and vehicular access points. All matters reserved except for means of access.
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### Costs application [B]

in relation to Appeal Ref: APP/W3710/W/23/3327049

Land located to the south of The Long Shoot, Nuneaton, Warwickshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Nuneaton and Bedworth Borough Council for a full award of costs against Gladman Developments Ltd.
  - The inquiry was in connection with an appeal against the refusal of planning permission for erection of up to 500 dwellings with land for primary school, public open space, landscaping, sustainable drainage system (SuDS) and vehicular access points. All matters reserved except for means of access.
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### Decisions [A] and [B]

1. Application [A] for an award of costs is partially allowed in the terms below.
2. Application [B] for an award of costs is refused.

### Procedural Matters

3. As set out above, there are two costs applications relating to the same appeal. I have considered each application on its merits. However, to avoid duplication, I have dealt with both applications together. Both main parties should properly be described in **these decisions as 'applicants' for the purposes of their own** respective applications for award of costs. To avoid confusion, they are hereafter referred to as the appellant and Nuneaton and Bedworth Borough Council (NBBC). The cases and replies were made in writing and therefore there is no need to repeat them here.

### Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a

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party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

*Costs application [A]*

5. The **appellant's** application is made on procedural grounds, relating to NBBC's conduct at the inquiry including the late submission of new evidence in the form of NBBC's note of housing shortfall (IN17).
6. Paragraph 47 of the PPG gives examples of when unreasonable behaviour by a planning authority may result in an award of costs, including:
  - delay in providing information or other failure to adhere to deadlines, and
  - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
7. The circumstances of the submission of IN17 were, in summary, as follows. NBBC's **planning witness was** questioned in cross-examination about the housing trajectory in the Nuneaton and Bedworth Borough Plan (2019)(BP) and her rebuttal, which had been jointly authored with NBBC's housing supply witness. A concession was made relating to the shortfall against the trajectory, the need for housing, and the presumption in favour of sustainable development as set out in policy DS8 of the BP. Following cross-examination, but before re-examination, NBBC indicated that it wished to clarify the position regarding the shortfall. The next morning, IN17 was produced. The appellant raised an objection, and I asked each party for written submissions on the admissibility of the document, as well as reminding NBBC of the risk of costs. The document was then accepted into the inquiry after I had considered the submissions.
8. **The appellant's concerns** relate to two key matters. First, the late document was perceived as being an attempt to renege from the concession and, second, the introduction of substantial new information.
9. Much of the concern stems from the joint rebuttal. NBBC's **planning witness** had indicated that she was unable to answer questions on part of the rebuttal as she had not written it. It was subsequently agreed between the parties that the rebuttal would be taken as correct and, in the cross examination that followed, the concession was made. NBBC argues that the appellant should have deduced the separate roles for each NBBC witness and directed questions to each separate witness session accordingly. However, to my mind it is clear that a joint rebuttal should be expected to be equally attributable to both witnesses unless otherwise stated. The document itself gives no indication that its authorship was in fact divided.
10. For the witness to disassociate from elements of the joint rebuttal, particularly given that the other witness's evidence had already been heard, introduced substantial procedural unfairness into the inquiry procedures. Although there is no evidence to suggest it was intentional, the joint rebuttal was nonetheless misleading. There is nothing inherently incorrect or inappropriate about producing a joint rebuttal, but each author must be equally willing to answer for it. Consequently, the act of renegeing from the joint rebuttal represents unreasonable behaviour.
11. This led to NBBC wishing to correct what it considered to be factual inaccuracies that had forced the concession. Rather than clarifying the position

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through re-examination, NBBC asserted that the absence of the NBBC housing supply witness from proceedings at that particular time meant instructions could not be taken, resulting in the subsequent production of IN17. However, that position only arose because of the confusion caused by the joint rebuttal. **Had NBBC's planning witness been able to respond to her rebuttal, the need for further instruction is unlikely to have arisen.**

12. It will be seen from my appeal decision that, ultimately, it was not necessary for me to establish whether there were indeed any factual inaccuracies or not, and the concession was not, in the end, determinative. Nevertheless, the production of IN17 required the appellant to provide a response to the substantive point raised by NBBC as well as to new information that had been included in the document.<sup>1</sup> Even though the appellant did not in the end dispute all of the points made in IN17, the appellant nonetheless had to respond to them, incurring additional expense in doing so.
13. Furthermore, the introduction of IN17 delayed the inquiry. The appellant initially required time to read, consult and instruct on the document. Delay also arose as a result of my direction requiring both parties to produce written submissions on admissibility, which I considered to be necessary given the highly irregular timing of IN17. In the end, the appellant agreed to respond to IN17 in writing after the close of the inquiry, which avoided the need to resume at a later date and the additional expense that would have entailed. Although the inquiry did not overrun its original timetable, it did sit for a morning longer than it otherwise would have.
14. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of preparing and responding to the late submission of IN17, and a partial award of costs is therefore warranted.

#### *Costs application [B]*

15. **NBBC's application is made on substantive grounds, namely that the appeal should never have been brought as the deficiencies in the highways evidence made it untenable for the appeal to succeed.**
16. The guidance at paragraph 53 of the PPG states that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding, and unreasonable behaviour may occur when:
  - the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
17. **NBBC's concerns regarding the adequacy of information are in summary that, firstly, the application submission was deficient due to inappropriate use of 2022 survey data and lack of sensitivity testing. Secondly, the appeal evidence was inadequate due to omitted cumulative assessment, reliance on the 2022 data, isolated junction modelling, and failure to carry out VISSIM modelling.**
18. It can be seen from my appeal decision that I have concluded that the appellant was unable to demonstrate that the proposal would not have severe

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<sup>1</sup> Identified as the 2022-23 Annual Monitoring Report; the recalculation of shortfall against trajectory in the BP; the number of dwellings in the Homes England projects; and a revised trajectory for allocated site HSG2 in the BP.



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residual cumulative impacts on the road network. In doing so, it follows that insufficient information was provided to enable an alternative conclusion to be reached. However, it is equally clear that I reached my conclusion after examination of detailed evidence and in light of a concession at the inquiry **from the appellant's highways witness.**

19. **This concession does not in itself mean that the appellant's highways evidence** was inherently inadequate. The tests on adequacy of information<sup>2</sup> and severity of impact are both matters that were agreed by the parties to involve judgement. The appellant submitted sufficiently detailed evidence to set out its case, explained its position properly, and provided reasoning for reaching its judgement. On that basis, therefore, it was not unreasonable of the appellant to have pursued the case it did, notwithstanding that one point on this position was subsequently resiled from.
20. Whilst the omission of data, or indeed the use of unsupported alternative data, as identified above, may make the evidence less reliable, a judgement must still be made as to the extent of its reliability, as I have done in the appeal decision. Indeed, in respect of the strategic road network it can be seen that I have concluded that, despite the various flaws, the evidence when taken as a whole is sufficiently robust to reach the judgement that the impacts would be acceptable.
21. The appellant had earlier indicated it would provide some of the additional information requested by NBBC, however those undertakings were not followed through. This has led to clear frustration being expressed by NBBC, to which I am sympathetic, but on the other hand it is not unreasonable for the appellant to have subsequently concluded that there was already sufficient information available for the decision maker to reach a judgement. In addition, the omissions identified by NBBC relate to the advice provided in protocols and guidance documents, but these are not development plan policy requirements. They offer guidance only.
22. A particular point must be made in respect of VISSIM. At my direction in the second case management conference, the VISSIM modelling was not accepted into the inquiry. In turn, the appellant made it clear that it did not rely on that modelling to present its case. My direction was made to ensure fairness, given the lateness of the proposed submission and the time that would have been required to properly assess such evidence. It would be irrational for me to now award costs for VISSIM modelling not having been submitted.
23. Unreasonable behaviour may occur where the development is clearly not in accordance with the development plan. In this case, the dismissal of the appeal came down to a relatively narrow point relating to forecast traffic conditions on Eastboro Way, on which a judgement was made. Had this particular point not arisen, it can be seen that I would have reached a different conclusion on the appeal. In addition, despite the asserted inadequacy of information, I concluded that the impact on the strategic road network would not be severe. In short, this appeal is far from being a case that was clearly not in accordance with the development plan, notwithstanding the adequacy or otherwise of the supporting evidence.

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<sup>2</sup> With reference to R (Hawkhurst Parish Council) v Tunbridge Wells Borough Council [2020] EWHC 3019 (Admin)

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24. The appellant did not withdraw either the application or the appeal despite requests from NBBC. However, the appellant was fully entitled to expect both to proceed to determination, so long as it had put forward a reasonable case in support of its position, which I have found above that it did.
25. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred and an award of costs is not justified.

Costs Order [A]

26. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Nuneaton and Bedworth Borough Council shall pay to Gladman Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and responding to the late submission of IN17; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. Gladman Developments Ltd is now invited to submit to Nuneaton and Bedworth Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Patrick Hanna*

INSPECTOR