

Representations to Outwoods Draft Neighbourhood Plan

On behalf of
Barwood Strategic Land LLP et al

February 2015

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REPRESENTATIONS IN RESPECT OF OUTWOODS DRAFT NEIGHBOURHOOD PLAN 2014-2031 SUBMISSION DRAFT 2015

ON BEHALF OF: BARWOOD STRATEGIC LAND LLP ET AL

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1.0 INTRODUCTION

- 1.1 Alliance Planning act on behalf of Barwood Strategic Land LLP et al ('Barwood'), in respect of their land interests at Red House Farm, Burton upon Trent, which falls within the Outwoods Parish Council Neighbourhood Area ('the Parish Council'/'Neighbourhood Area') and within the administrative area of East Staffordshire Borough Council ('ESBC'/'the Borough Council'). These representations are submitted to the present consultation under Regulation 16 of the Neighbourhood Plan (General) Regulations 2012 and follow on from those made to the first draft of the Neighbourhood Development Plan published for Regulation 14 consultation in June 2014. Many of the comments made at that stage remain valid, although few have been addressed in the present iteration. They are therefore repeated here.
- 1.2 Barwood have also instructed specialist Counsel from No5 Chambers to advise and these submissions make reference to the relevant legal framework and planning policy and guidance and the flaws demonstrated within the Neighbourhood Plan. These submissions are however strictly without prejudice to the identification of further legal errors arising out of any Examiner's Report produced and any other course of conduct by the Borough Council who would be the primary defendant in judicial review proceedings.¹
- 1.3 Barwood Strategic Land LLP et al already have outline planning permission, granted at appeal (APP/B3410/A/13/2197299) for the erection of up to 250 dwellings at Red House Farm, granted in November 2013. A plan identifying the site that benefits from this planning permission is attached at **Appendix 1**.
- 1.4 Alliance Planning submitted an outline planning application to ESBC on 26th November 2014 for the development of Phase II of the Red House Farm development. The outline planning application (ref: P/2014/01530) proposes the erection of up to 150 dwellings, associated landscaping, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works.
- 1.5 The current outline planning application seeks the delivery of up to 150 new homes with ancillary infrastructure in the adjacent site which is itself a sustainable location. The scheme will also deliver a number of wider benefits for the future and existing local community. These will include:
- High quality new homes including affordable properties;
 - High quality designed development;
 - New public open space;

¹ Section 61N of the Town and Country Planning Act 1990

- National Forest tree planting;
 - The protection and enhancement of existing landscape features and biodiversity habitats;
 - Improved linkages to the surrounding area;
 - New Homes Bonus of £1.06m over 6 years; and
 - Provision of land for a new Primary School.
- 1.6 The sustainable location of the Site was confirmed by the Secretary of State when determining the planning appeal for the Phase 1 development at Red House Farm. The Site is accessible by a range of sustainable modes of transport, including pedestrian and cycle access, and with access to a public transport service. The sustainability will be further increased through the introduction of new pedestrian linkages throughout the site and the introduction of a public service bus link as part of the adjacent residential proposals.
- 1.7 The scheme's design has been informed by the detailed Landscape and Visual Impact Assessment and Ecological Surveys produced by specialist consultants, (Influence and the Environmental Dimension Partnership (edp)), which have assessed the existing landscape/biodiversity features present at the site and the likely impact that the proposed development would have upon its surrounding environment. The proposed development will sit within the existing landscape features which will screen the development from long distance views.
- 1.8 The proposed development will deliver a high quality environment and a mix of housing types that vary in size, type and tenure to provide choice for the local and future community. The proposed development will also deliver a range of affordable houses in accordance with the identified need.
- 1.9 The site will set aside new areas of open space and woodland planting in accordance with relevant policies. The scheme has demonstrated that it is able to accommodate 20% new woodland, and it will enhance the woodlands setting of the site and future residents' access to green spaces, in circumstances where the site is presently inaccessible to the public and would remain so if permission were not granted or a Local Green Space designation were imposed.
- 1.10 The proposed development also includes the transfer of land to Staffordshire County Council's Education Department, in the event that planning permission is forthcoming for the proposed development. The Education Authority has stated to Barwood Strategic Land LLP that they would accept the transfer of land for a new primary school and Heads of Terms

have been agreed to transfer land to the County Education department. This will be secured through commitments made in the Section 106 Agreement.

- 1.11 The Planning Acts (s70(2) TCPA 1990 and s38(6) PCPA 2004) require that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The principal East Staffordshire Borough Council (ESBC) housing policy (Policy H1) is out of date as it was established against the now revoked Regional Spatial Strategy and Structure Plan policy with a 2011 end date and is not a saved policy. The Council also acknowledges that it cannot demonstrate a five year supply of housing land, which currently stands at 3.89 years (Council published figure). In this case, para 49 of the NPPF is engaged and with it the para 14 *“presumption in favour of sustainable development.”*

2.0 LEGISLATIVE FRAMEWORK AND PRINCIPLES OF POLICY INTERPRETATION

2.1 Before addressing our specific objections to the policy content of the plan and its evidence base, we wish to emphasise the following points about the basic conditions set out in Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

Paragraph 8(2)(a) National Policy and Advice Contained in Guidance

2.2 The National Planning Policy Framework (“NPPF”) is the sole document comprising “national policies”. The Planning Practice Guidance (PPG) is covered under “advice”, it does not rewrite the NPPF or supersede it. (All references below to the PPG three-digit paragraph references are to the Neighbourhood Planning chapter unless otherwise stated).

2.3 It is now well established that the meaning of policy provisions within development plan policies and national planning policy is a matter of objective interpretation for the courts.² Generalising, broad brush statements as to compliance with national policy, without any enumeration, citation and express interpretation of the relevant policy will invariably indicate a failure of interpretation.

2.4 The NPPF must also be read as a whole, which will usually require examination of a number of different provisions³. Selective citation of the NPPF, without consideration of the full text is equally impermissible and will amount to a failure of interpretation.

Having Regard to National Policy/Appropriate to Make the Plan

2.5 The statutory requirement under paragraph 8(2) (a) requires an Examiner (and a qualifying body in preparation) to carefully and systematically assess the accordancy and consistency of each draft neighbourhood plan policy with identified national planning policy.

2.6 A qualifying body in producing a draft neighbourhood plan and a Basic Conditions Statement for Regulation 16 consultation must clearly identify for each neighbourhood plan policy:

- (a) what the relevant NPPF paragraphs are;
- (b) what the relevant provisions of the PPG are, with express reference back to the lead policy wording within the NPPF;
- (c) whether the proposed neighbourhood plan policy is in specific accordancy with those NPPF and PPG paragraphs;

² *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 [18]-[19]; *City and District Council of St Albans v R (on the application of) Hunston Properties Limited and the Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610, [4]; *Gallagher Homes Ltd v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin), [25], [91]

³ *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin), [62]

(d) finally, whether the neighbourhood plan policy is in accordance with the NPPF's overarching approach to neighbourhood planning at paragraphs 14, 16 and 184, read as a whole.

The finalised Basic Conditions Statement is the key document for demonstrating compliance (see PPG 070).

- 2.7 NPPF, paragraph 14 makes clear that the presumption in favour of development requires:
“local planning authorities should positively seek opportunities to meet the development needs of their areas and should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change.”
- 2.8 NPPF, paragraph 15 confirms that that requirement extends to neighbourhood plans:
“All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.”
- 2.9 NPPF, paragraph 16 then confirms that:
“The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should: develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development...”
- 2.10 NPPF, paragraph 17 then provides:
“Every effort should be made objectively to identify and then meet the housing ... needs of an area.”
- 2.11 It is also clear from NPPF, paragraph 47 that the assessment of full, objectively assessed needs must proceed on the basis of adequate, up-to-date and relevant evidence (see also NPPF, paragraph 158).
- 2.12 Under NPPF, paragraph 49, a policy which cannot provide for objectively identified need and instead imposes a housing constraint will be automatically become out-of-date from the moment of adoption, thus activating the paragraph 14 presumption.
- 2.13 NPPF, paragraph 156 provides:
“Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver: the homes and jobs needed in the area;”
- 2.14 Paragraph 184 is central to the correct assessment of basic condition 8(2) (a). Read properly, it clearly requires that if a neighbourhood plan seeks to constrain housing delivery, there

- must be an up-to-date local plan in order for a neighbourhood plan to be able to reflect the policies of the local plan and for it to plan positively to support those policies.
- 2.15 The third sentence states that *“Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan”*, and this provides the context for the two sentences that follow. The fourth sentence states that *“To facilitate this, [i.e to make it possible for neighbourhood plans to be in general conformity] local planning authorities should set out clearly their strategic policies for the area and ensure that an up to date Local Plan is in place as quickly as possible.”* The fifth sentence ties neighbourhood plans to policies in up to date local plans: *“Neighbourhood plans should reflect these policies [i.e policies in up to date local plans] and neighbourhoods should plan positively to support them.”*
- 2.16 PPG 069 makes clear that the central consideration is that *“a neighbourhood plan must not constrain the delivery of national policy objectives”*. It has now been established by the High Court and the Court of Appeal that paragraph 47 contains a *“policy imperative”* to boost significantly the supply of housing.⁴ PPG 070 makes clear that NPPF, paragraph 16 requires that neighbourhood plans must support strategic development needs set out in neighbourhood plans, including housing needs (see also NPPF, paragraph 156 and PPG, 075).
- 2.17 Where, as here, certain policies within the plan have been included with the express intention to shape the delivery of housing within the neighbourhood plan area for the full plan period, but the qualifying body’s apparent intention in making the Plan is thereby to prevent further housing provision beyond existing permissions in a time of recognised shortfall in five year supply of housing land, then paragraph 8(2)(a) requires full regard to national policy on housing development, NPPF, paragraphs 14, 16, 47, 49, 156, 159, 184: objective assessment and provision for housing needs.
- Paragraph 8(2) (d)
- 2.18 Paragraph 8(2) (d) requires evidence to be presented in accordance with PPG, 072 and 073, which is normally a sustainability appraisal. The qualifying body must identify that *“consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset.”* (PPG, 072).
- 2.19 This basic condition reinforces paragraph 8(2) (a). A neighbourhood plan that does not contribute to sustainable development will not be in accordance with national planning

⁴ *Hunston*, as applied in *Gallagher v Solihull MBC*, 31(ii) (upheld by the Court of Appeal: [2014] EWCA 1610 and [91] “a consideration of particular standing” and *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), [108])

policy and guidance and will automatically infringe Paragraph 8(2)(a) [and vice versa], see NPPF, paragraph 6:

“6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.”

2.20 This is, in turn, underscored by NPPF paragraphs 14, 16, 17 and 184.

Paragraph 8(2) (e)

2.21 Paragraph 8(2) (e) also demands a structured approach. Parliament’s clear intention in legislating for paragraph 8(2) (e), through the Localism Bill (as expressed by the Minister of State promoting the Bill, Greg Clark MP, in unambiguous terms in the Commons Committee debates) was that “the development plan” was to be an up-to-date development plan with strategic policies which had been examined against up-to-date national planning policy contained in the NPPF.

2.22 Mr Clark MP observed in the Committee debate 17th sitting: House of Commons 1 March, 2011 (1), Column number 700:

“it was clear from our extensive discussions that the national planning policy framework and its responsibility for lower-tier plans should be explicit and in the Bill. It is absolutely our intention, that everything conforms to that, so that there is a trickle-down through the whole process. One test of the soundness of a neighbourhood plan—as the hon. Gentleman knows, that is a requirement for it even to go to a referendum—is that it has to be consistent with the local plan, which itself has to be consistent with national policy. We are clear, therefore, that that thread needs to run through everything, and the examination arrangements need to reflect that.” [emphasis added]

2.23 The qualifying body must therefore begin by clearly identifying for each policy:

- (a) what the relevant “development plan” is;
- (b) whether there are “strategic policies”, with which conformity can actually be assessed
- (c) what those policies state;
- (d) finally, it must demonstrably assess conformity between the neighbourhood plan policy and those relevant strategic policies.

2.24 Paragraph: 074 Reference ID: 41-074-20140306: What is meant by ‘general conformity’? provides:

“When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy the rationale for the approach taken in the draft Neighbourhood plan or Order and the evidence to justify that approach.”

2.25 Paragraph: 075 Reference ID: 41-075-20140306 What is meant by strategic policies? provides:

“Paragraph 156 of the National Planning Policy Framework sets out the strategic matters about which local planning authorities are expected to include policies in their Local Plans. The basic condition addresses strategic policies no matter where they appear in the development plan. It does not presume that every policy in a Local Plan is strategic or that the only policies that are strategic are labelled as such.”

2.26 Paragraph: 076 Reference ID: 41-076-20140306 How is a strategic policy determined? provides:

“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- *whether the policy sets out an overarching direction or objective*
- *whether the policy seeks to shape the broad characteristics of development*
- *the scale at which the policy is intended to operate*
- *whether the policy sets a framework for decisions on how competing priorities should be balanced*
- *whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan*
- *in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan*
- *whether the Local Plan identifies the policy as being strategic*
- *Planning practice guidance on Local Plans provides further advice on strategic policies.”*

2.27 Strategic policies on housing provision are therefore the quintessential strategic policies within the development plan (see NPPF, paragraph 156, and PPG 075). The prime example is

a policy setting out the overall housing target for a district. Where, in the case of housing or for policies that restrict housing: such as Local Green Space, there are no “strategic policies” with which to assess conformity of a key policy then the Examiner cannot properly undertake the task under paragraph 8(2)(e) and must consider that the basic condition cannot be met in respect of that policy. In such a case, the appropriate course will usually be a modification to remove the relevant neighbourhood plan policy from the plan or a recommendation that the Plan cannot proceed to referendum.

Basic Condition 8(2) (f)

2.28 Basic condition 8(2)(f) underscores the requirement to have regard to and apply relevant European legislation, notably:

(a) The Habitats Directive: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended and consolidated by Council Directive 2006/105/EC of 20 November 2006); implemented in UK law by the Conservation of Habitats and Species Regulations 2010/490 and of particular relevant to Special Conservation Areas (SAC);

(b) The Birds Directive: Council Directive 2009/147/EC on the conservation of wild birds) on the protection of all European wild birds and the habitats of listed species, in particular through the designation of Special Protection Areas (SPA);

(c) The SEA Directive: Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (implemented in UK law by the Environmental Assessment of Plans and Programmes Regulations 2004).

2.29 A breach of either Directive through a failure to meet their requirements will amount to a straightforward obstacle to further progress (as in the Slaughtam Neighbourhood Plan, considered further below), see section 38A(6) PCPA:

“(6) The authority are not to be subject to the duty under subsection (4) (a) [to make the neighbourhood plan following a supportive referendum] if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation.”

3.0 PREMATURITY

- 3.1 Before addressing the specific policy wording and content of the Submission Version of the Neighbourhood Plan, we wish to emphasise that there is a significant issue of prematurity in the submission of the Neighbourhood Plan at all at this stage. By seeking to progress the Neighbourhood Plan (NP) ahead of the Council's own Development Plan process, the NP is leaving itself open to early obsolescence. As the Submission Draft NP acknowledges, it needs currently to demonstrate compliance with the Development Plan; in this case, that is the 2006 East Staffordshire Local Plan. That Local Plan has a time horizon for strategic housing policies of 2011 and is therefore already out-of-date, a point now acknowledged in numerous appeal decisions.
- 3.2 Whilst PPG 009 contemplates that there may be circumstances where a NP may come forward alongside an emerging Local Plan, there is a high risk of potential conflict between plans and consequent abortive work. This is especially so in the circumstances pertaining to East Staffordshire, whereby the current Development Plan is out of date and provides no strategic guidance for emerging NP's. The emerging plan is still the subject of significant unresolved objection and may need to be altered in ways material to the Outwoods NP before it can be adopted.
- 3.3 Attention is drawn to s38 (5) of the Planning and Compulsory Purchase Act 2004, that makes it clear that in the event of conflict between plans of equal Development Plan status, then the most recently adopted plan will take precedence. PPG 009 makes express reference to the importance of minimizing conflicts between the Local and Neighbourhood Plans to avoid the operation of s38(5).
- 3.4 Therefore, if the Outwoods NP is pushed forward and adopted ahead of emerging Local Plan being resolved there is a real risk that upon any subsequent adoption of the Local Plan the NP may be immediately out of date where there is a conflict in objectives. In any event, given the 'basic conditions' for adoption of a NP, it is difficult to see how the NP could be adopted, given that it is patently not in conformity with the out of date Development Plan's Housing Spatial Strategy. This is more than a point of legal technicality, it goes to the heart of the soundness of the NP if it does not address the housing requirement aspects of its own plan period. Indeed it cannot do so while the emerging Local Plan remains untested. The accompanying 'Basic Conditions Statement' and its Appendix 2 which identify how the NP complies with the adopted Local Plan, are wholly silent on how the emerging NP is compliant with either the policies directing the quantum of residential development or their spatial

distribution. It is therefore impossible to assess how the NP's housing requirements or spatial distribution policies meet the Basic Condition test of general conformity to the Development Plan. It is also made more problematic by the adopted Local Plan having no 'allocated sites', as it was brought forward against a context of a then full supply – it therefore had no spatial distribution policy or settlement hierarchy/strategy. It should be further noted, that in fulfilling the basic conditions test against the adopted Local Plan policies, the NP is aligning itself to both revoked Structure Plan and RSS policies, which provided the strategic context of the adopted Local Plan.

- 3.5 This goes to the heart of the appropriateness of making the NP for the purposes of basic condition 8(2) (a): the Plan does not address the housing requirement aspects of its own plan period and therefore it cannot be appropriate having regard to NPPF 16, 47 and 187 to impose any policies that restrict the total quantum of housing that can be delivered, notably restrictive Local Green Space policies.
- 3.6 In all these regards, the Parish Council and the Borough Council, properly exercising their statutory responsibility under paragraph 3 of Schedule 4B TCPA are strongly urged to place the progression of the NP on hold until the emerging Local Plan is settled, and then to progress the NP against the settled policies of a current and recently adopted Development Plan, thus producing a robust NP which will meet the needs of the Parish for the full plan period. Failure to do so leaves the emerging plan at risk of early obsolescence and legal challenge.

4.0 PLANNING POLICIES OF THE OUTWOODS NEIGHBOURHOOD PLAN

4.1 Without prejudice to the above submissions, we set out our objections on the drafting of the policies in order of their importance to the Phase II site:

- LR5 – Local Green Space and Views
- CF1 – Schools and Education
- TA1 – Public Realm
- TA3 – Parking
- TA5 – Public Transport

4.2 In summary, Policies LR5: Local Green Space and Views and CF1: Schools and Education have been produced on such a legally flawed basis, without regard to national policy and relevant legal framework, that these raise fundamental obstacles to the progress of the plan.

4.3 We consider that in the first instance LPA should request that the plan is sent back for further amendment and a further re-consultation, compliant with Regulation 16.

4.4 If the Plan does proceed, then the Policies (or the identified component parts which directly impact on the Red House Farm Phase 2 site) should be deleted or be subject to extensive modification through textual addition and deletion under paragraph 10 of Schedule 4B.

Policy LR5: Local Green Space and Views

4.5 Policy LR5 seeks to impose a Local Green Space designation on an area termed: “Fields behind Burton Hospital (accessed from Lower Outwoods Road)” and identified on the attached Proposals Map (internal page 56). Below, we identify the relevant policy, assess evidence that has been produced and the consultation responses, and make the recommendation that the Plan cannot proceed to referendum without deletion of the reference to this land as to do so would be contrary to basic conditions 8(2) (a), (d) and (e).

4.6 The detailed representations to draft Policy LR5 are supplemented by a Position Note on landscape issues in respect of this draft policy. The Note has been prepared by ‘edp’ (a consultancy firm who provide independent environmental and design advice) and is attached to these representations at **Appendix 2**.

4.7 The fundamental starting point is the text of the NPPF; this makes clear that Local Green Space (LGS) is an exceptional designation. NPPF 77 states that LGS designation is not appropriate for most green spaces or open space, as under NPPF 78 LGS is equivalent to Green Belt. The imposition of a “very special circumstances” approach inevitably carries with

- it the same exceptionality requirement for designation at the plan-making stage to be applied in the Green Belt context.
- 4.8 Second, any LGS site must be physically limited and constrained: NPPF, 77: “reasonably close proximity” and cannot be an “extensive tract of land”.
- 4.9 Third, LGS must also serve some community activity or purpose (it is not a Green Belt prevention of development policy):
“the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife;”
- 4.10 Finally, and most importantly: LGS can only be designated where a determination has been made in respect of the sufficiency of housing provision, NPPF, 76:
“Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.”
- 4.11 Thus an Examiner can only approve an LGS designation (especially one that impacts upon a site that is already the subject of an application for sustainable residential development that forms the second phase of a permitted site), where he has made a prior, positive finding that the NP has made provision for sufficient homes. That “sufficiency” can only be assessed by reference to Objectively Assessed Needs (OAN), NPPF, 47.
- 4.12 NPPG, Paragraph: 007 Reference ID: 37-007-20140306 ‘How does Local Green Space designation relate to development?’ further provides:
“Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.”
- 4.13 Paragraph: 015 Reference ID: 37-015-20140306 ‘How big can a Local Green Space be?’:
“There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 77 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name.”

- 4.14 Paragraph 019 ‘Does land need to be in public ownership?’ provides:
“A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.”
- 4.15 For the purposes of basic condition 8(2) (a), the above policy must be read as a coherent whole (see the High Court authorities: *Tewkesbury, Hunston, Gallagher*). Basic condition 8(2)(a) requires the Examiner to engage closely with the policy wording and determine that the designation would be in accordance with the NPPF tests within the text of the Report, applying a very close reading (in light of the stringency identified above).
- 4.16 Basic condition 8(2) (d) reinforces basic condition 8(2) (a) and requires a careful examination of the national policy and guidance requirements, see the text of NPPF, 76.
- 4.17 Basic condition 8(2)(e) is also engaged: where there is no strategic guidance in the development plan in respect of sufficiency of housing needs, then the assessment cannot be undertaken.
- 4.18 The exceptional nature of the designation has been recognised by the Examiners of the Rolleston-on-Dove, Backwell and Chapel-en-le-Frith Neighbourhood Plans (**Appendix 3**).
- 4.19 In the Rolleston-on-Dove Report (October 2013), Examiner Christopher Collison held *“The Framework recognises that local communities, through neighbourhood plans, should be able to identify for special protection green areas of particular importance to them. The Local Green Space designation should only be used where the green space is local in location and character and is special to the local community holding a particular local significance.”* In respect of the College Playing Fields site, which was deleted he stated: *“On my site visit I did not see anything to indicate that this land was available for public recreational use. In addition I cannot identify any particular feature of this land that would distinguish it, from the vast majority of other land surrounding the village nor can I see that it has any particular merit for special designation.”* The same approach applies in the instant case.
- 4.20 In the Backwell Report (29 October 2014), Examiner Nigel McGurk observed that Local Green Space is a *“restrictive and significant policy designation”* equivalent to Green Belt designation. He held that *“it is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full.”* The Examiner then made observations on the size of the site, but based his decision on the

importance of robustness of evidence not size alone. He found that the direct conflict with national policy meant that the Local Green Space Policies in the Neighbourhood Plan did not meet the basic conditions under paragraph 8(2) of Schedule 4B and that national policy did not permit a failure to meet policy requirements to be balanced against other considerations when designating LGS and therefore proposed deletion.

- 4.21 In the Chapel-en-le-Frith Report (January 2015), Examiner Janet Cheesley observed at paragraphs 158 and 159 that *“I must emphasise that in order for an area to be designated as a Local Green Space, it has to meet all the criteria for designation.”* The Examiner dealt with the individual sites in some detail, and deleted those that did not meet all the relevant tests. Her comments in respect of 7. Target Wall Field and woodland adjacent to Warmbrook at 170 should be noted: *“170. It is not the purpose of the Local Green Space designations to include countryside land that provides wider views of the countryside.”* [emphasis added]

Assessment of Plan Content

- 4.22 Appendix 4: Local Green Spaces Assessment Table of the draft NP document records that the land is:
- (a) 3.1 hectares in size;
 - (b) Surrounded by housing and hospital land on two sides;
 - (c) There is no public access to the site – it is privately owned;
 - (d) No Local or Community Vale has been identified: “None known”;
 - (e) No Historical Value has been identified: “None known”;
 - (f) The land has no formal landscape designation, simply: “attractive rising views of the countryside from the hospital”;
 - (g) The land has no wildlife value;
 - (h) The purpose of the designation is to “offer a buffer from developments at Redhouse Farm”.
- 4.23 No supporting technical information has been provided to alter or qualify the above conclusions: for example to explain recreational, heritage or wildlife use. This is confirmed in the Position Note at **Appendix 2** of these representations, which identifies, from the Neighbourhood Plan’s own Appendix 4 assessment, that the site is well enclosed by development, has no local community value, no historic value and no recreational value.
- 4.24 The Basic Conditions Statement records that the policy has no Local Plan/strategic support beyond Policy BE1: Design. It further records that in formulating the policy, the plan-makers

- had regard to NPPF 76 and 77 only. No reference is made to any provision of the Practice Planning Guidance, including those cited above.
- 4.25 We commented on this matter earlier in Regulation 14 submissions: submission (b) (internal page 17). The response does not illuminate the position any further:
- “The Local Green Spaces have been designated and are therefore fill [sic] gaps in order to create the Green Space Strategy. The vision for the future of these spaces is clearly identified within Policy LR5. To go into more detail is unnecessary and would resemble an Implementation Plan as opposed to a NDP. Your suggestions are therefore beyond the remit of the Plan.”*
- 4.26 None of the concerns expressed therein have been addressed. In our view, the site remains far too large (at 3.1 hectares) to be designated as a Local Green Space, but in any event, the robust evidence required has simply not been provided.
- 4.27 The Health Check Examiner Ann Skippers (a Neighbourhood Plan Examiner and former president of the Royal Town Planning Institute) was particularly unimpressed by the Local Green Spaces designation. She identified this as one of four main problems with the Plan: *“There is insufficient justification for each of the proposed Local Green Space designations”*. The response recorded thereafter states: *“Noted. More work need to be done to demonstrate compliance with NPPF.”* To date, that work has still not been undertaken and her comment has effectively been ignored.
- 4.28 To be clear, the Local Green Spaces Assessment Table shows a serious gap in the plan preparation work: where the only argument to support an LGS designation is *“to create a buffer to development”* (i.e. a Green Belt by another name); and to protect *“attractive rising views of the countryside from the hospital”*, on a site that has no public access and the robust evidence base expected has simply not been provided.
- 4.29 In stark contrast the development of the land at Red House Farm that is currently subject to a planning application for residential development will provide public access to the land through improvements in pedestrian linkages in and around the site and the proposed open space offer. However, the proposed LGS designation would not result in public access to the land, which would remain in private ownership and not accessible to the public.
- 4.30 As set out in these representations and in the ‘edp Position Note’ at **Appendix 2**, the proposed Local Green Space designation at Red House Farm is in conflict with the NPPF particularly para 7. The Outwoods Neighbourhood Plan is not considered to have demonstrated that the hospital Local Green Space site is ‘demonstrably special’ or that it

'holds particular significance'. For both these reasons plus the other points made above, Policy LR5 and the reference to the Red House Farm Phase II land should be deleted.

Policy CF1: Schools and Education

- 4.31 Policy CF1 contains a confusing policy wording which appears on its face to frame 'in principle' resistance to educational development, e.g. new primary/secondary school buildings unless these are on "allocated sites". It is considered to be fundamentally flawed and is objected to.
- 4.32 The definition in the Glossary of the Outwoods NP (page 53) states: *"Allocated sites are identified on a Policy [Proposals] within the Local Plan and illustrate the delivery of spatial policies and objectives of planning authorities."* This refers to a document that does not exist, nor will do until after adoption of the NP.
- 4.33 By the plan's own admission Education is a key issue, and the system locally is "already experiencing capacity issues". However the response of the NP is to only permit the creation of new primary or secondary schools on allocated sites or sites with outline planning permission. This approach will fail to deliver the Plan's objectives for a number of reasons;
- 1) There are no allocated sites in the adopted Local Plan, against which the NP's basic conditions statement is prepared.
 - 2) Those sites with outline planning permission are identified at page 10 of the Plan: Red House Farm permission makes no education provision, Lower Outwoods also has outline permission, and makes education provision in the form of a 210 place, one form entry primary school with a pre-school children's nursery. There is no opportunity to retrospectively insert additional primary school building into these consented schemes.
- 4.34 Whilst the NP recognises:
- a) that the County Council has not planned for sufficient spaces at both Primary and Secondary level,
 - b) 1,700 new homes within the parish and immediately adjoining will create even greater pressure on the education system, and
 - c) The existing education system is 'already overloaded',
- the response of the NP is to produce a policy which specifically excludes the potential to address that need by locating new educational facilities where they are needed on the urban fringe to the west of Burton. The NP fails to provide any practical alternative solution, or

- proposed site to address the need. The County Council has undertaken an exhaustive site search exercise, and has not identified an alternative opportunity.
- 4.35 Our client has agreed Heads of Terms to transfer land for a new primary school site, adjacent to their existing consented site at Red House Farm – exactly where the new and additional demand will be arising, thus reducing (not increasing as the plan alleges) traffic movements onto the wider local network. However the policy as drafted would expressly exclude the potential of that site to be realised. This runs in direct conflict with Objective 2 of the NP, and will fail in the delivery of the very community facility which the NP states is necessary. The policy should be re-worded to allow for new sites to come forward, wherever they are located within the NP area, subject to normal design and development management considerations.
- 4.36 Ms Skippers also criticised this policy asking (somewhat incredulously): *“is a policy that resists school development unless it is connected to a new allocated site, really what is sought?”* She observed that as framed the Plan had to offer flexibility and could not prevent development.
- 4.37 We also made clear in our Regulation 14 representations on “Future Opportunities” that an approach that restricted development of the site would be contrary to the basic conditions. The NP’s response does not grapple or conscientiously take on board that component of the consultation response.
- 4.38 Policy CF1 – Schools and Education is contrary to basic conditions 8(2) (a), (d) and (e) and should be removed. The sole purpose of the policy appears to be to resist applications such as the current Phase 2 application, in order to protect existing undeveloped land from development. The policy is inflexible and prevents development, contrary to NPPF.

Policy TA1 – Public Realm

- 4.39 Policy TA1 sets out an “expectation” for the highest quality of “public realm design” and requires the preparation and implementation of a public realm design strategy. The Basic Conditions Statement accompanying the draft policy provides reference to NPPF paragraphs 57, 58 and 59 which seek to encourage high quality design in new developments, but there is no reference to PPG.
- 4.40 The requirement for production of a ‘Public Realm Design Strategy’ goes significantly beyond any requirement of the Local Plan, indeed the only ‘policy’ which the NP states this draws upon is the National Forest policy NE14. Policy NE14 does not seek to require production of

general Public Realm Strategies. It does not support or promote the use of Public Realm Design Strategies. In any event, such provision will be required as part of any Design & Access statement, which is a national requirement of planning applications. It is not therefore necessary for this policy to require production of additional application supporting material. In the event that the policy is sought to be retained within the NP, it ought properly to distinguish between the level of detail necessary to accompany an outline planning application (where many of the detailed requirements sought would not necessarily be specified), or a Reserved Matters or Full application.

- 4.41 It is not therefore necessary for this policy to require production of additional application supporting material and it conflicts with basic conditions 8 (2) (a), (d) and (e) as it does not refer to PPG or a strategic policy in the Development Plan on design of the public realm.

Policy TA3 – Parking

- 4.42 The requirements of this policy go above and beyond that of the Development Plan. Specifically the establishment of a minimum ‘garage size’. PPG para 41-005-20140306 requires that: “If the policies and proposals are to be implemented as the community intended a neighbourhood plan needs to be deliverable. The National Planning Policy Framework requires that the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.”
- 4.43 There is no evidence that the NP has sought to understand the viability and/or cost implications of this ‘over sizing’ of standard house/garage design, which is likely to have a significant impact on layout/design. At approximately 0.5m over-sized to a standard garage plot, on a development of 150 units that could represent 75m of lost ‘frontage’ to a developer. The NP needs to demonstrate how it has assessed and/or understood the viability implications of this requirement and its potential impact. There is no evidence produced to justify this standard, simply an anecdotal reference to modern cars getting ‘wider and longer’. As an example, a Nissan Qashqai, being one of the largest 4x4 vehicles commonly available, is only 1.8m wide, and does not require a 3.5m wide garage to enable driver access.
- 4.44 Staffordshire County Council in their Regulation 14 response indicated that flexibility should be included in the policy to avoid excessive amounts of hard landscaping.

- 4.45 The policy conflicts with basic conditions 8 (2) (a), (d) and (e) with regard to conformity with the thrust of the NPPF and should be amended.

Policy TA5 – Public Transport

- 4.46 The requirement that all development should be within 300m of a bus stop is objected to. There is no evidential basis to support this requirement. It is of note, that despite the Basic Conditions statement seeking to rely to support this policy upon adopted Local Plan Policy T1 and T8, neither of those policies encourage the use of the 300m distance.
- 4.47 The Department for Transport Inclusive Mobility guide (2002) confirms that bus stops in residential areas should be located within a 400 metres walkable distance from anyone's home, and this is widely recognised as the industry standard. Indeed, it is also the figure referenced at the NP's policy CF2, as being the distance which is 'accessible by sustainable transport options'. Again, without any evidential basis for reducing the standard 400m distance to 300m, or an assessment of its viability implications the plan is flawed.
- 4.48 Staffordshire County Council, in their Regulation 14 response to the NP indicated that whilst the promotion of sustainable development is supported, they questioned the reasonableness of requiring all developments of 5 or more dwellings that are not within 400m of a bus stop to subsidise a new route/extension of an existing route.
- 4.49 It is of note that the supporting text can only justify this requirement by reference to emerging plan policy. However that is neither the adopted Development Plan which the Basic Conditions Statement requires the NP to be in conformity with, nor has the emerging Plan policy been independently tested through examination.
- 4.50 On this basis the policy conflicts with basic conditions 8 (2) (a), (d) and (e) and should be reconsidered.

5.0 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 5.1 In *R (Larkfleet Homes) v Rutland County Council* [2014] EWHC 4095 (Admin) Mr Justice Collins made clear at paragraph 1 the importance within neighbourhood plan-making that *“all necessary procedures are followed and that powers are not misused.”* These remarks are of overarching relevance to this plan, but particularly in respect of the Screening Assessment document.
- 5.2 The Screening Assessment is a very basic document. It relies to a significant extent upon the Local Plan Strategic Environmental Assessment (SEA) work but this is now overshadowed by the Inspector’s recent decision, which puts the future of the Local Plan in doubt. PPG, Paragraph: 046 Reference ID: 11-046-20150209 makes clear that *“A strategic environmental assessment may be required, for example, where:*
- *A neighbourhood plan allocates sites for development*
 - *The neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan*
 - *The neighbourhood plan is likely to have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan.”*
- 5.3 The Plan covers a very significant quantum of housing and if adopted will be the most up-to-date component of the statutory development plan.
- 5.4 In the specific case of the Red House Farm Phase II site, we consider that the cumulative impact of the policies raised above and the plan’s intention to constrain the delivery of housing beyond the existing allocations ensures that if implemented the plan would give rise to significant environmental effects by preventing development in a sustainable location and therefore restricting housing supply, whilst further disrupting the proper planning for delivery of the site. The decision not to subject the plan to full SEA is therefore legally flawed and the Neighbourhood Plan is therefore proceeding towards adoption contrary to Regulation 8 of the Environmental Assessment of Plans and Programmes Regulations 2004 (“EAPP”), transposing the SEA Directive 2001/42/EC, to take into account *“(a) the environmental report for the plan or programme;”* because there is no environmental report. In particular, it has failed to identify, describe and evaluate the likely significant effects on the environment including in respect of reasonable alternatives, notably the allocation of the Red House Farm Phase II site contrary to Regulation 12(2) (b) and Schedule 2, paragraph 8.

6.0 EXAMINATION PROCEDURE

- 6.1 We have five combined observations in respect of examination procedure, if the Neighbourhood Plan proceeds towards examination under paragraphs 8-12 of Schedule 4B.
- 6.2 First, in our submission this is a case that would be suitable for a hearing. The Examiner must have regard to the statutory requirement to ensure adequate examination of the above issues and to give Barwood and Alliance, the Environmental Dimension Partnership and legal representatives acting on their behalf a fair chance to make their case (paragraph 9(2) and 9(6)).
- 6.3 Second, each of the policies explored above is a distinct issue, “a particular issue” in the terms of paragraph 9(2). Each needs to be addressed separately, by reference to the applicable law. We request that individual agenda items covering each identified policy and the strategic environmental assessment issue are allocated in the hearing agenda and formal timetable.
- 6.4 Third, detailed submissions on planning policy (and where necessary neighbourhood planning case law and legislation) are an essential part of the examination process in what is now an increasingly complex area of planning law.
- 6.5 Fourth, therefore, the examination must be conducted in a manner that allows detailed expert planning and legal submissions to be made, if necessary, by reference to the relevant legislation or case law. In the instant case, following the delay to the East Staffordshire Local Plan, the current examination would stand in the place of a more detailed Sites/Allocations development plan document and a consequent Examination in Public. Paragraph 9 of Schedule 4B requires an Examiner carefully to consider the interests of all participants. In our experience from the inquiry and local plan examination context, allowing experts to speak on technical issues and answer public questions, notably on landscape/green space/planning benefit issues is a more direct and effective way to ensure effective community understanding and participation than simply relying on written documentation. We would therefore request a time allocation for the hearing that permits sufficient time for the complexity of the subject matter. The well-established principles on the conduct of hearings are set out in *Dyason v Secretary of State for the Environment* (1998) 75 P & CR 506, 512, which makes clear that informality of procedure must not give rise to laxity in examination:

“The danger is that the “more relaxed” atmosphere could lead not to a “full and fair” hearing but to a less than thorough examination of the issues. A relaxed hearing is not necessarily a fair hearing. The hearing must not become so relaxed that the rigorous examination essential to the determination of difficult questions may be diluted. The absence of an accusatorial procedure places an inquisitorial burden upon an Inspector.”

- 6.6 The examination hearing should therefore be scheduled for at least one full day. Examiners at Cringleford (Timothy Jones), Winsford (Charles Mynors), Slaugham (Ann Skipper) Neighbourhood Plan, all held examinations over one or two days. In the instant case, a hearing of at least one day would be appropriate given the scale of policy and legal objections, and the need to explain the relevant submissions to the Examiner. The practice of conducting examinations in half-day sessions which has emerged elsewhere, including artificially limiting submissions to units of 10-15 minutes prevents effective discussion of the relevant issues. It serves no useful purpose in terms of making the process more accessible, as members of the public are actually prevented from making their own contributions and participants are left unable to explain their case publicly.
- 6.7 Fifth, and finally, this is a fast-moving area within planning law and planning policy. The end of the consultation period on 16 February 2015 does not represent the end of new and relevant developments. It may therefore be necessary to send further submissions in due course, in respect of a number of outstanding and forthcoming High Court and Court of Appeal judgments. Consideration of submissions (with appropriate time allowed for response by the District Council and Parish Council) after the Regulation 16 deadline is entirely consistent with 9(1) of Schedule 4B which provides that the general rule is that an examination is “to take the form of the consideration of written representations” and the broader duty to approach procedural matters in such a way as to ensure adequate examination of the issues and to allow parties a fair chance to put their case, by analogy with paragraphs 9(2) and (5). Paragraph 22 of the NPIERS document “Top Tips for Local Planning Authorities – Independent Examination of a neighbourhood plan” provides that “The Examiner should set ground rules for dealing with late representations on a case by case basis.” (This is the only formal statement that we are aware of as to correct procedure towards written submissions). As soon as the Examiner is appointed, we therefore request that the ground rules on additional submissions are made clear to all participants.

7.0 CONCLUSIONS

- 7.1 Alliance Planning act on behalf of Barwood Strategic Land LLP et al in respect of their interests at Red House Farm, Burton upon Trent. These representations to the Outwoods Draft Neighbourhood Plan 2014-2031 Submission Draft 2015 make reference to the relevant legal framework and legal and policy interpretation flaws within the draft Neighbourhood Plan.
- 7.2 The representations are made with reference to the Barwood land interests at Red House Farm and have reiterated the benefits of the current outline planning application (Ref: P/2014/01530) before the Council for up to 150 dwellings, associated landscaping, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works. The outline planning application is currently before the Council and will deliver up to 150 new homes in a sustainable location along with a number of wider benefits for the future and existing local community, including:
- High quality new homes including affordable properties;
 - High quality designed development;
 - New public open space/National Forest tree planting;
 - The protection and enhancement of existing landscape features and biodiversity habitats;
 - Improved linkages to the surrounding area;
 - New Homes Bonus of £1.06m over 6 years; and
 - Provision of land for a new Primary School.
- 7.3 The Plan has been shown to be premature in light of the emerging East Staffordshire Local Plan and by seeking to progress the Plan ahead of the Council's own Development Plan process, the Neighbourhood Plan is leaving itself open to early obsolescence and legal challenge.
- 7.4 The Parish Council and the Borough Council, properly exercising their statutory duty under paragraph 3 of Schedule 4B of the Town and Country Planning Act are strongly urged to place the progression of the NP on hold until the emerging Local Plan is settled, allowing a robust NP to then be pursued which will meet the needs of the Parish for the full plan period.

- 7.5 Alongside the comments made on prematurity of the NP and the discrete policy objections made within these representations, we have emphasised relevant points relating to basic conditions and their application to the formulation of policies within Neighbourhood Plans.
- 7.6 In particular, Policies LR5: Local Green Space and Views, and CF1: Schools and Education, have been produced on such a legally flawed basis, without regard to national policy and the relevant legal framework that they raise fundamental obstacles to the lawful progress of the Plan.
- 7.7 In addition, Policies TA1: Public Realm, TA3: Parking and TA5: Public Transport are also flawed and in conflict with the requirements of basic conditions and need to be reconsidered.
- 7.8 If the NP does proceed then the policies (or the identified component parts which directly impact on the Red House Farm Phase 2 site) should be deleted or subject to extensive modification through textual addition and deletion under paragraph 10 of Schedule 4B to the Town and Country Planning Act.