

CLOSING SUBMISSIONS OF THE APPELLANT

APPEAL BY NEWETT HOMES

LAND NORTHEAST OF SHEPLEY ROAD, STOCKSMOOR,
HUDDSFIELD, HD4 6XW

S78 TOWN & COUNTRY PLANNING ACT 1990

PLANNING INSPECTORATE REF: APP/Z4718/W/25/3375000

LOCAL AUTHORITY REF: 2024/91242

1 Introduction

- 1.1 This appeal relates to the delegated refusal of an application for planning permission for 50 homes at Shepley Lane, Stocksmoor.
- 1.2 Between the Council and the Appellant there is only one substantive issue, and it relates to the effects of the development on Stone Wood Lane, an existing lightly trafficked road that connects Stocksmoor to Shepley. It is not the only or even main way route in and out of Stocksmoor. Its use is a choice, with the alternative routes to Shepley taking an extra 3-4 minutes to drive. Stone Wood Lane is confirmed by the Council as a road that is currently safe and suitable for use as a two-way highway and in relation to which there are no proposals to change the 60mph speed limit, with a review of the national speed limit having taken place some 4 years ago¹. The Council has no plans to close it to traffic due to safety or indeed any other reason².
- 1.3 The second reason for refusal is addressed by the now agreed S106 Agreement.
- 1.4 Additional matters, related to effects on the nearby ancient woodlands are raised by the Rule 6 party, but no one else (including all statutory and expert consultees from both inside and outside the Council). These topics raise questions that require expert assessment, but none is forthcoming from

¹ A Darwin in answer to Inspectors questions

² A Darwin XX

the Rule 6 party. This is significant as there is a considerable difference between raising a topic that could in theory cause deterioration to an area of woodland and evidence that a scheme will cause such deterioration. It is also important not to equate change with deterioration and have in mind that the approach of NPPF is to avoid deterioration of *ancient woodlands*³. This should not be equated to any effect to the woodlands of any nature.

1.5 Some important matters have been agreed between the Appellant and the Council, and it is worth summarising these from the SoCG:

1.5.1 The principle of residential development of the site is accepted subject to the effects on Stone Wood Lane; its safeguarded land allocation is not a basis for refusal⁴,

1.5.2 The site is in a sustainable/accessible location and its sustainability/accessibility by different modes of transport is not a basis for refusal⁵,

1.5.3 The Council does not object to the development due to potential increased delay to vehicular traffic on Stone Wood Lane and this is no part of the Council's refusal of permission⁶.

1.5.4 There is, subject to conditions and the S106, no basis for refusing permission, beyond the contested issue of the development's effects on Stone Wood Lane.

2 Identification of the Site

2.1 The Site is safeguarded land in the adopted development plan (Adopted in 2019). It was removed from the Green Belt because it was needed to meet longer term development needs. The justification was that it would accommodate housing.

2.2 The Site was assessed by the Council four times for its suitability through the Local Plan Examination process, always in terms of an assumed capacity of 87 units. This took place first in November 2016⁷

³ NPPF 193 (c)

⁴ Statement of Common Ground, 6.2.

⁵ Statement of Common Ground 6.4 – 6.14.

⁶ Statement of Common Ground 6.16.

⁷ CD 6.14

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and no highways concerns were expressed. Then in May 2017⁸ it was reconfirmed that the site scored well against the criteria of securing an effective and safe transport network, with the comment that there should be "*further consideration of the **scale** of the development in relation to the local road network*". The scale issue has to be understood in the context of an 87-unit assumption for the site, not the 50 units we have now. The site was considered again in July 2017 - with the same outcome, after the Council Highways Department had undertaken a "**detailed assessment**" of safety and the **effects of development on the local road network**⁹. A further supportive response was given to the Inspector's questions in May 2018, with the Council removing some safeguarded sites from the Plan and making specific comments about their effects on highways safety and local road suitability yet leaving the appeal site as a safeguarded designation ¹⁰.

2.3 There can be little doubt that the Council's Planning and Highways Departments would have been fully aware of the nature of Stone Wood Lane through the Local Plan process.

2.4 The Inspector's final comments about the site were that "*impacts on the nearby wood could be dealt with as part of the process of option assessment in the context of the Local Plan review*¹¹. *Exceptional circumstances have been demonstrated to release the site from the Green Belt. Third party land is needed to provide access but there a reasonable prospect of securing this beyond the Plan period*". The wood in question is clearly the ancient woodland¹². The third-party land cannot sensibly have been part of the woodland along Stone Wood Lane¹³ and was described by the Inspector as being for the access. The upshot was therefore that the site was found by the Inspector to be suitable and deliverable with no reference to concerns about Stone Wood Lane, based on Council assessment of the effects on highway safety and the local highway network. Even now Mr Darwin has reconfirmed that there are no insurmountable issues with highway safety on Stone Wood Lane subject to mitigation, which he doesn't suggest needs third party land or works in the woodland and his

⁸ CD 6.8

⁹ CD 6.13

¹⁰ CD 6.10

¹¹ Now overtaken because of the lack of 5 year supply and low delivery

¹² Described as such in the LWS citation at the time

¹³ If it was needed for development there would have been an obvious and direct impact on the very thing the Inspector was seeking to avoid impacting

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consultation response¹⁴ on the application indicated the TPS improvements were likely to be the most that can be achieved.

2.5 The adopted Local Plan proceeded to identify Stocksmoor for development of well over 100 dwellings¹⁵ either in the plan period or beyond, having determined exceptional circumstances to take those sites out of the Green Belt. Indeed, one of those allocated sites now has permission, without any mention of concern about harmful effects associated with Stone Wood Lane being raised by the Highways Department at all¹⁶.

2.6 These matters are important context. They define both the Council's corporate view and previous highways department officer's professional views about the appropriateness of more housing in Stocksmoor. Mr Darwin also says he does not seek to frustrate the delivery of the Local Plan and was fairly able to confirm that his concerns relate to the scale of development on the appeal site. In this regard he accepted that with the Appellant's view of traffic distribution, at least 25 dwellings could be accommodated without material impact on Stone Wood Lane, as long as improvements were made to it. In accepting this point, he also confirmed that no further improvements could be made in the area of Stone Wood Lane that he is most concerned about (through the woodland area of Shepley Mill Wood) and whilst a bit coy about the exact improvements on the rest of the Lane, he was not seeking works outside the highway. Indeed, he subsequently made clear the importance of not over improving the Lane¹⁷.

3 Housing

3.1 The Council has no 5-year housing land supply (4.18 years is claimed) and worse still has a delivery rate of just over half of what it should be (54%). There is, what can only be described as, a chronic and acute housing supply and delivery problem. The Interim Housing Statement¹⁸ was introduced but has yet to address the problem. It advocates the release of safeguarded land for development, and has been operative to that effect, in common with other similar instances (and appeals) around the Country. There can be no question that the so-called tilted balance in NPPF 24 at paragraph 11 is

¹⁴ CD 4.16

¹⁵ Some 114 if the appeal site is taken as 50

¹⁶ Cross Lane- P Owen Appendix L

¹⁷ A Darwin XX

¹⁸ CD 6.3

engaged and it is common ground with the Council that it is not disengaged by any other aspect of the Framework. It follows that the most important policies for determining this appeal are to be viewed as out of date and that permission *should be granted* unless the adverse effects of doing so would *significantly and demonstrably* outweigh the benefits.

4 Highways

Approach

- 4.1 In NPPF terms, the test to be applied to the issues raised by reason for refusal 1 is that set out in paragraph 116. Development should ***only be prevented*** on highways grounds if there would be an ***unacceptable impact on highway safety***, or the residual cumulative impact following mitigation would be ***severe***, taking account of all ***reasonable*** future scenarios¹⁹. It is within this context that the terms of paragraph 117 apply when that paragraph talks of priority to pedestrian and cycle movements. These are matters of encouragement, not a basis for refusal²⁰.
- 4.2 The assessment of reasonable and realistic scenarios does not in my submissions include sensitivity test "*what if*" scenarios, nor does it require assessments to be "*robust*" in the sense of testing something beyond what is realistic.

Traffic Generation and Distribution

- 4.3 The main parties are broadly in agreement as to the appropriate traffic generation from the appeal scheme. The Appellant says 30 trips and the Council 32. The difference was explained by Mr Darwin as immaterial. The protestations from Mr Darwin about a previous agreement to 35 trips by a former consultant need to be considered with caution. The TAA to which he refers²¹ set out a TRICS figure that produced 26 trips and then ran a "sensitivity test" as we understand this was suggested by Mr Darwin himself, of 35.
- 4.4 However, the real issue on this topic is how many of the trips generated by the appeal development would go along Stone Wood Lane, and whilst the Council is quick to criticise others, it is important to

¹⁹ Defined as a range of *realistic* scenarios ... to assess impacts and determine the optimum solution mitigation

²⁰ P Owen Re X

²¹ CD 1.33

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recognise that the Council has no evidence at all to support its position on the question of distribution. The best we have is Mr Darwin's rather opportunistic borrowing of figures from the TAA, even though he is clear that he disagrees entirely with how they have been derived. The chronology of how this happened is rather illuminating.

4.5 Initially, Mr Darwin told the Appellant's consultant that commuter trips represent a minority of trips and that education trips the majority²². This led to the TAA focussing on education trips and arguing, based on the Education Department consultation response, that no trips would go to Shepley for education purposes and so **even if every other trip did** (which appears entirely unrealistic), that would mean 16-19 trips²³, if the earlier sensitivity test for total trips (35) suggested by the Council was used. When read as a whole, even with the conclusions at the end of that document, it is a massive stretch, in my submission, to suggest that 16-19 trips was anything other than a sensitivity test twice over. It was simply a what if.

4.6 Mr Darwin's subsequent consultation response²⁴ tells us that he doesn't agree with the TAA or the assumptions at 4.11 of that document (summarised above). He then speculates that 30% more houses in Stocksmoor would potentially increase traffic on Stone Wood Lane by 30% but proceeds to reject even that approach as being unlikely to be accurate as it would include through traffic that didn't originate in Stocksmoor. He ultimately alights on a figure of 16-19 vehicles distributed to Stone Wood Lane from the development, which is some 50% of the trips generated, but for no apparent reason at all. He has no assessment of his own, disagrees with the TAA and the best he could explain in cross examination for his guess was it was judgment. He points to nothing to back it up. It is an opportunistic attempt to alight on a number in the TAA that he disagrees with, and which is based on a series of sensitivity tests both as to generation and distribution. Mr Darwin's view on the matter is entirely unevicenced, unsupported and unreliable. The Council's only way forward on this topic is therefore to attack others.

4.7 There are three separate assessments of distribution that corroborate each other: the Appellant's SoC "journey purpose" method, the Appellant's survey of Stocksmoor and the survey of the 17-unit

²² CD 4.14 last page

²³ CD 1.33 at 4.11

²⁴ CD 4.16

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Stocksmead area of Stocksmoor by local residents. If the Council suggests that it is mere coincidence that all three align this can only be viewed as a position of last resort when it has nothing else.

4.8 The criticisms from the Council of Mr Owen's SoC "journey purpose" work on distribution were responded to:

4.8.1 The super output areas used for trips to work, are the smallest available and the Council suggests no other. In terms of trips to Leeds or Sheffield through both mapping (distance and times for journeys) and rather extreme sensitivity tests, Mr Owen has shown his work to be reliable²⁵. Stocksmoor has a railway station with wide access to work locations by train, unlike several other settlements in the MSOAs.

4.8.2 Education trips are addressed in a very robust way by Mr Owen, in the light of Mr Darwin's appendix D (Table C). Mr Darwin's position is that such trips form the majority and exceed commuting trips²⁶. With that in mind, Mr Owen has assumed half of all primary school trips will go to Shepley, when Mr Darwin suggests 55% but his appendix D shows as low as 14% given the current school patterns – which chimes with the Council's education department which says there is capacity – at Thurstonland²⁷.

4.8.3 For shopping and other trips Mr Owen has a reasonable and reliable distribution.

4.8.4 Overall, Mr Owen's work has to be contrasted with the lack of evidence from the Council, which whilst stated to be judgement is in truth no more than a guess with no attempt at all to explain or support it.

4.9 The other source of Mr Owen's distribution case, which leads to the same conclusion, is based on an empirical survey of Stocksmoor of the sort suggested by Mr Darwin elsewhere²⁸ and is in principle the best means of assessing which routes the inhabitants of a place will travel along²⁹.

²⁵ See in particular P Owen rebuttal section 2.1

²⁶ See CD 4.14 – 1st Highways consultation response

²⁷ CD 4.3

²⁸ See P Owen App E

²⁹ A Darwin XX
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- 4.9.1 There is common ground that the first day's morning survey was undertaken when there were no roadworks on Station Road. The notion that residents had prior warning is not supported by what the survey company have checked on, and no one from Stocksmoor Vision has suggested they had such notice, having listened to that debate.
- 4.9.2 Mr Owen is clear that the roadworks when they were in place, on the afternoon of day one and on day two, were on a two-way section of Station Road, and had no bearing on distribution or the amount of traffic entering Stone Wood Lane. No drives were blocked, the lights were quick, the traffic was light. He has relied on an independent and experienced survey company known and used by Mr Darwin³⁰.
- 4.9.3 The suggestions of insufficient small properties having been included in the survey is wrong. In any event small properties are likely to generate less traffic according to Mr Owen and the appeal proposal has a range of property sizes as well as 20% affordable housing, which is also likely to lead to lower traffic generation.
- 4.9.4 The suggestion that the demographic profile of the new residents will be different to those surveyed is not evidenced, is based on speculation and is inconsistent with the local residents survey which is stated by them to be of houses chosen to be most reflective of the appeal proposal. It resulted in a morning peak distribution to Stone Wood Lane of 7.6 vehicles³¹.
- 4.9.5 The idea that the start of November is not an appropriate month for survey is not supported by DMRB guidance for speed surveys on trunk roads (not what we are dealing with here at all), which says no more than which months are *usually* considered for that purpose and the NPPG leaves the matter to the judgement of the decision maker.

4.10 Overall, it is clear why the Council wants to pour cold water on all the work of others (and now most bizarrely Stocksmoor Vision wants to distance itself from its own survey of 17 properties at

³⁰ A Darwin Rebuttal 2.8

³¹ Aligning very closely to Mr Owens 7 with confirmation from _____ that there are no new nurseries in the area since the survey that could affect the outcome in that respect

Stocksmead³²), when it has no analysis of its own on the question of distribution, but the remarkable similarity of 3 different pieces of work cannot be passed off as coincidence. It should also be noted that Mr Darwin's proof, at the end of his section on this matter, in Tables 4 and 5 describes his distribution as no more than a "*sensitivity test*" – in other words- a *what if*.

4.11 The Appellant's work before the Inquiry shows that 7 development trips, two way, along Stone Wood Lane in the weekday peak hours, is a reliable basis for determining the appeal. Indeed, Mr Owen's survey indicates that the correct figure is 5 – 7, with 7 therefore at the top of that range. This is important. Not only has the Council dropped voluntarily from 19 to 16 vehicles (a reduction of 16 %) but a reduction in peak hour traffic to 7 vehicles is a 63% reduction from what Mr Darwin relied on at the time of refusal of the application. This is a significant change when the issue, as agreed by Mr Darwin, is the effect of the development, balanced against the effect of the mitigation, noting that any mitigation is also mitigation for all users of Stone Wood Lane and so the improvement's effects are multiplied by at least three times³³.

Materiality

4.12 Whilst naturally a matter of judgement it is important to clear up a few misunderstandings:

4.12.1 There is no current threshold of when a TA is needed.

4.12.2 There were thresholds in GOTA (2007)³⁴ and GTIA (1994)³⁵ of 30 two-way movements and 10% or 5% extra traffic, but both have been cancelled and were not thresholds for determining any level of acceptability of a proposal, only whether a TA was needed or not: effectively therefore defining a level of immateriality below that.

4.12.3 The additionality of the appeal development traffic is however within the bounds of current daily variations³⁶, a measure typically used by highways engineers to express marginal effects³⁷.

³² The Appellant's being of 104 properties

³³ A Darwin XX

³⁴ CD 7.17

³⁵ CD 7.16

³⁶ P Owen proof at Table 6.11

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4.12.4 There is and never has been a percentage-based threshold for increases in a car meeting one coming the other way (presents his material this way without it being suggested in any guidance, policy or standard at all).

4.12.5 The level of 100 vehicle movements on a stretch of road is and never has been a threshold of acceptability in any guidance, policy or standard.

Surveys

4.13 There is agreement on the reliability and usability of the surveys of both traffic and active users. Stone Wood Lane currently carries some 69/74 two-way movements on average in the AM/PM weekday peak hour. It is lightly trafficked. There is no guidance at all that suggests the use of maximum flows in this sort of situation, but those are around 90 vehicles in the peak hour. Stone Wood Lane is still to be viewed as lightly trafficked. The addition of 7 vehicles in the peak hour from the appeal scheme is under 10% and indeed even more so if the maximum flows are used³⁸

There is ample clarity from surveys as to non-motorised use of the Lane. The maximum daily use is in the low 50s or approximately 4-5 per hour on average- across all types of active user.

Accidents and Safe Operation

4.14 The significant and telling thing about how Stone Wood Lane operates now is that there has not been a single personal injury accident in the last 15 years when the guidance³⁹ asks one to look three years back or 5 years in the case of high accident areas (which this isn't).

4.15 Indeed, despite all the suggestions of danger and lack of safety there are no photographs or any other evidence of the sort of debris one might expect from a minor bump, and only two anecdotal tales of bumps, neither of which was a personal injury accident and one of which was a single vehicle loss of control⁴⁰. We have no details of the cause or circumstances of either of these. We don't know when and what happened, but if that's it, over as long as anyone can recall, it seems unremarkable. Whilst the recently produced photographs of an accident in November 2024 have been put forward by

³⁷ P Owen XX

³⁸ A Darwin proof at Table 5

³⁹ NPPG para 014 at CD 7.8

⁴⁰ A Darwin proof 3.36 and XX

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Stocksmoor Vision⁴¹ (and may even be one of the events already mentioned), all these show is a single vehicle accident with a claim that the driver crashed his car, didn't injure himself and blames some stone in the road.

4.16 In terms of accidents there is simply nothing to support vehicle conflict collisions that is remotely out of the ordinary or would indicate a road that is unsafe in its operation.

4.17 Stone Wood Lane is of course an existing road and so its operation can be seen and judged. One doesn't need to speculate about how it might work. We are not dealing with construction of a new road. That makes a difference, particularly when the only empirical means of recording safety shows no areas for concern and when all the claims for the inherent lack of safety of rural roads made by Mr Darwin are only ever supported by personal injury accident statistics, without any such records here. This is all the more telling when, as Mr Darwin accepts it is highly likely that an accident with a pedestrian would be a PI accident and the same can be said of cyclists and even horse riders.

4.18 It is therefore no real surprise that _____, a keen cyclist, chooses to cycle (and indeed drive) the Lane regularly being fully aware of its nature, width and forward visibility and that Mr Darwin in a more unguarded moment described it as an "easy route" to use.

4.19 Stone Wood Lane is a route much like the example at Bird Lane⁴² but safer. It is also relevant to compare it to the terms of the Quiet Lanes Advisory Leaflet⁴³, which describes quiet lanes as being pleasant to walk and cycle with low speeds, below 35 mph, low vehicle flows of under 1000 per day and width below 5m- all of which describe Stone Wood Lane.

4.20 Although Mr Darwin has sought to suggest that the recorded accidents here are little different to the national average, in reality when that average is calculated by considering some 151 billion miles travelled, and will include masses of inherently safe roads, all he has really shown is that Stone Wood Lane is no more unsafe than a rather meaningless average, but certainly does not suffer the level of safety issues he attempts to portray. This is so, notwithstanding that, with a weekly traffic flow of some

⁴¹ This period is already picked up by the Appellant – so it is clear it wasn't a personal injury matter

⁴² CD 7.7

⁴³ CD 7.5
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3,600- 4,300 vehicles⁴⁴ some 187,000 to 224,000 vehicles will have used the Lane each year (over 15 years there will have been in the order of 2.8m – 3.3 m trips). Indeed, according to [redacted], the Lane is currently dealing with some 50 occasions when a vehicle meets another each day (combining the weekday peak hours). This means that even if one only takes the weekday peak hour and excludes all other times of the week, over 15 years that is some 195,000 events of cars meeting others coming the other way on one-way sections, with not a single recorded personal injury accident.

4.21 It follows that any claim that the Lane is unsafe now is simply not supported by the evidence and Mr Darwin was quite right to confirm that it is currently safe and suitable to be used as a two-way highway with its current speed limit⁴⁵.

Forward Visibility

4.22 It is within this context of the current operation of the Lane that issues of visibility and road width should be assessed. It is clearly not a lane that conforms with the expectation of design and geometry of a new road, but that isn't the issue. We don't have to speculate about how it would operate with current traffic levels, because it exists and its operation is known. Even for those who know it and use it regularly it proves not to pose a concern that stops continued and repeated re-use⁴⁶.

4.23 There are two areas of the Lane described in Mr Darwin's evidence as being of concern to him in terms of forward visibility. The one of most concern is at the bend at the top of the downhill section into the woods (when travelling towards Stocksmoor) and the second is to the west of current passing place E/4 (Darwin lettering /Owen numbering).

4.24 As to the first location, Mr Darwin calculates a need for a forward visibility of 28m based on two factors; the recorded speed at a point some 30m before the point where the road narrows (recorded in a wider section of two way working) and the driver being just 1.5m out from the lefthand carriageway edge. He agrees that the actual forward visibility is 22m and accepts that if a driver was to have slowed to 18 mph from 22 mph in the approach to that single way working section, the visibility that is available, would meet guidance, save for a gradient and HGV proportion calculation, which Mr Owen

⁴⁴ A Darwin 3.35

⁴⁵ Answer to Inspectors questions

⁴⁶ See [redacted] and A Darwin- who described it as an easy route when trying to address distribution of traffic along it

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explained makes a difference of only 1 metre. The slowing down and moving out to see around the corner only has to be modest to meet the visibility required for a new road on that basis.

4.25 Whilst Mr Darwin's Appendix F Plan 1 shows the area of the road he claims needs to be seen and can't be (orange), assuming a driver doesn't slow and reposition in the road, it is important to note that this is next to an area where the driver can see (not orange on the plan) and is likely to show visibility of at least part of an oncoming vehicle. His closing speed calculation whilst interesting doesn't change the distance vehicle drivers can see ahead and is also based on an assumption of Shepley bound vehicles travelling at 22 mph, which is unevidenced.

4.26 In reality (otherwise we would have massively more evidence of accidents) drivers must be slowing and/or positioning themselves so as to see further around the corner. The consequence of meeting another vehicle is not an accident but how that other vehicle is negotiated. This is where Mr Owen's 14m of reversing has come from - it is the distance back to the two-way section of road if a Stocksmoor bound vehicle, travels round the corner and sees another approaching up the hill through the woods. It is the situation shown in Mr Darwin's photographs 3 and 7. It is not ideal, but neither is it dangerous and is a repeated choice that many Stocksmoor residents are happy to accept, rather than travelling for an extra 3-4 minutes by another route to Shepley.

4.27 Mr Darwin's other (lesser) area of concern about forward visibility is in the Lane to the west of passing place E/4. That section of the Lane is proposed to be improved by Mr Owen's passing place 5, which brings the new passing place materially closer to passing place 4 and addresses the issue of forward and inter visibility Mr Darwin raises (see page 5 of Mr Owen's Appendix O - part 2 where the location of the new passing place is visible in the top right photograph by the positioning of a person in a high visibility jacket). The location of the view that allows that better visibility has been challenged, but it is a matter of driver choice. A driver can move into a widened passing space to get better visibility if they choose and it is certainly better than now.

Road Width

4.28 It would be wrong to simply conclude, as Mr Darwin appears to, that because a new road should ideally be 5.5m with margins either side of 0.6m, anything less can't work, when it does now. The existing

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Lane clearly has sections that allow only one way working in either direction. The widths of the road along its length are shown on Mr Owen's plans at Appendix P. These shows those sections that are less than 4.1m (pink), 4.1m - 4.8m (orange) and 4.8m and greater (green). As the case has progressed it is clear that the area of dispute on road widths relates only to the ability of a 4.1m carriageway to allow two cars to pass⁴⁷.

4.29 The road width dispute however has to be seen in context. The appeal proposal doesn't narrow the road that currently copes with the levels of traffic already discussed. It also has to be recalled that MFS 1 shows 4.1m as the width that *can accommodate* 2 cars passing, whilst not necessarily recommending it⁴⁸. MFS2 reinforces this width and says it can be used as a guide⁴⁹. The Council's own Highways Design Guide reproduces the same figure from MFS 1⁵⁰, and whilst it says the typical width of a new road is to be 5.5m to allow vehicles to pass *with ease*, the Guide then produces and thereby endorses Figure 7.1 of MFS 1 and its 4.1m width.

4.30 Whilst Mr Darwin spends considerable time explaining the widths needed for cars to pass cyclists, horse riders and pedestrians, he doesn't suggest that they are wider or need more space than a vehicle and the space available for each of these in a 4.1m section of road is over 2m. It is important not to apply trunk road standards for horse, cycle and pedestrian routes as Mr Darwin attempts to do⁵¹. It is also important to note that all of Mr Darwin's analysis of safe passing distances for active travel users is based around assumptions of vehicles passing them at minimum speeds (10mph for horses, 20 mph for cyclists and pedestrians). This is not the observed reality. Where the road is narrow, passing is likely to be at speeds that are based on giving way or stopping temporarily.

4.31 Whilst not to be praised or repeated, the fact that a low loader HGV can negotiate the Lane now, is testament to the operational capability of the Lane in terms of its width and alignment, and Mr Darwin has confirmed that he doesn't suggest Stone Wood Lane should be closed because of its width or the visibility it allows.

Highway Improvements

⁴⁷ Mr Darwin accepts that a 4.8m carriageway allows a car to pass a van at speeds up to 20 mph – proof 4.46

⁴⁸ CD 7.3 page 79

⁴⁹ CD 7.4 at 8.6.4

⁵⁰ CD 6.6 at

⁵¹ His reliance on CD 7.21- see first page for applicability

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- 4.32 The whole approach to understanding the highway improvements must be set in context. The question is not whether they are designed and set out as perfect passing places, in terms of length, width, tapers and distances between each other, but whether they are better than what is there now and by how much. This has to be set in the context of the very modest additionality of use of Stone Wood Lane from the appeal proposals (under 10% additional traffic- or some 8% if compared to current maximum surveyed figures⁵²). Any improvements that mitigate the effects of the appeal development will also have benefits for all existing users of Stone Wood Lane. As Mr Darwin fairly accepted there will be a multiplier effect of at least three times to be weighed in the planning balance. That should not be misunderstood as providing unnecessary improvements but is the consequence of providing improvements that are proper mitigation for the appeal scheme.
- 4.33 Mr Darwin accepts that both sets of works – TPS or Optima - do provide improvement⁵³ .
- 4.34 The improvements preferred by the Appellant are those of Mr Owen. It appears that Mr Darwin concurs. These result in only one passing place having a width that is just above 4.1 m (passing place 5- at 4.2m) and one with a width of 4.4 m (passing place 8). All the rest are at least 4.8 m. This is a width at which the Council accept a car can pass another car or indeed a van.
- 4.35 All of these areas provide tarmacked and useable road surfaces that will be measurably better than the muddy and potholed margins that exist now. The tapers, tracking and ability of any space to accommodate several vehicles are all questions that have to be seen in that context. The improvements could not be seen as remotely retrograde even if not to modern standards.
- 4.36 The only areas where there is any credible doubt raised as to deliverability because of the extent of highway available or consequence for a stone wall⁵⁴ relates to Optima spaces 4 and 7. These are however capable of being addressed without detriment to effectiveness by marginally different detailed designs. Indeed, one for place 4 is in Mr Owens rebuttal Appendix E and he explained that a minor variation for place 7 could simply use a little space on the opposite side of the road if needed. These are matters capable of being addressed by condition with any areas of doubt addressed by further

⁵² So on the cusp of whether a TA is even needed, and within daily variations

⁵³ A Darwin proof 5.59 and 3.31

⁵⁴ Though noting Mr Darwins position in chief that there are Highways Act powers to allow walls to be rebuilt in the same place to accommodate improvements – S41 and 167 are relevant

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details being submitted for works within the highway, in broad accordance with what has been drawn to date⁵⁵. Whilst other areas of passing place improvements were suggested by Mr Darwin to have questions as to delivery⁵⁶ Mr Owen is clear that these concerns are unfounded by references to his Rebuttal Appendix F and the sections shown therein. He also has an analysis of the effects on trees as a consequence of improvement works in his Rebuttal Appendix G and no counter evidence to this has been offered from the Council.

4.37 The one section of road with no ability to mitigate is the section through the woods. The Council has however confirmed that this is not a question of the Appellant failing to try, it is an inevitable consequence of the nature of the road. It is not a new matter since the Council's decision to allocate land for over 40 dwellings in Stocksmoor and identify land for at least another 70 for future development.

Active User Amenity

4.38 There is no precise estimate of the number of active travel users likely to use Stone Wood Lane from the appeal development from either side. What we do know however, from surveys, is that current flows are relatively low (some 4-5 an hour- from the busiest days of the survey) and it can be fairly surmised that the additionality resulting from the development is likely to be extremely modest in that context.

4.39 The Council produces no evidence to suggest that people will be dissuaded from using Stone Wood Lane for active travel to back up its refusal reason on this topic, it is a matter of assertion only. The policy basis for it seems to be NPPF paragraphs 117 and 115, both have which have to be seen in the context of 116 which tells us clearly **only** to refuse on the basis of safety or severity of impacts. In any event the analysis in Mr Darwin's proof, when properly understood against the base line of current use, indicates that on the Appellant's distribution of traffic to Stone Wood Lane, the incidence of traffic passing a pedestrian is in the order of 1 extra event on the section he expresses concern about.

⁵⁵ All within the context of NPPF 39 looking for solutions, 56 – making development acceptable - and NPPG at 049 – refusal on grounds capable of being dealt with by conditions

⁵⁶ Places 5,6 7

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4.40 This topic is one that has to be seen through the lens of the NPPF tilted balance and it is common ground that it is a matter that even if found in the Council's favour is capable of being overcome through the application of the tilted balance.

4.41 analysis is novel, but in truth adds very little to any of the rest of the evidence before the Inquiry. It is statistical analysis that takes no account of the operational consequences of how or where vehicles meet or the effects of Mr Owen's improvements. It shows us simply, that for what he describes as the single way section of Stone Wood Lane, an additional 7 vehicles from the appeal site will mean an additional 5 or 6 instances of a vehicle meeting another coming the other way, in the AM peak hour. It is meaningless to look at this as a percentage and no guidance suggests that it is relevant to do so. For his multiple vehicle events the increase for 2 vehicle events is claimed to be + 0.58 and for 5 vehicle events it is +0.07 events. The numerical increase is very small indeed and not remotely out of the ordinary, especially when the current range of daily variation in traffic is taken into account.

Highways Summary

4.42 The Council fairly accepts that the nature of Stone Wood Lane should not prevent material amounts of new development in Stocksmoor, that it is currently safe and suitable for two way traffic, the existing 60 mph is a safe operational speed limit, that its own view of distribution of traffic from the appeal site to Stone Wood Lane was based on nothing more than a guess, and that the Appellant's improvements would be just that, and be beneficial for all.

4.43 In the circumstances of an existing lane with a remarkably safe operational record the Council's first reason for refusal is not made out.

5 Other Matters

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- 5.1 The Rule 6 Party has raised a series of other matters. Whilst it is important to understand them and explore them, the Appellant notes that none are supported by the Local Planning Authority⁵⁷, none by statutory consultees and none are supported by technical or expert evidence.
- 5.2 The question over the date of surveys goes nowhere and does not undermine their reliability⁵⁸. The ancient woodlands have been carefully considered, given the correct level of protection and assessed through the right policy approach of NPPF paragraph 193 (c). Deterioration of a woodland is not the same issue as avoiding all change, even changes that results in some degree of harm to some element of ecology. It requires expert analysis⁵⁹. That is what the Appellant has provided, and this has been endorsed by all other experts. There would have to be a consequence from any change that would in turn have to result in deterioration of the *woodland* as a *habitat* for the NPPF to suggest refusal⁶⁰.
- 5.3 The separation distances of all development from the nearby ancient woodland⁶¹ fundamentally underscore the protection of that woodland. That is the purpose of the buffer. The distances are in excess of guidance and recommendations, accord with those found acceptable in other appeals, and result in all development of any kind being outside a 15 m buffer, and outside the RPA of any of the woodland itself. The surface water outfall is a very low impact item at 16.7 m away, a retaining wall is 23.5 m away, the pumping station is 34.5 m away and all the roads and houses are at a materially greater distance than that⁶².
- 5.4 The buffer zone will also significantly protect the woodland against any concerns associated with noise, lighting, construction effects, recreation effects and any other relevant effects from the development site's construction and operation⁶³. Recreational impacts will be insignificant, due to distance, accessibility, boundary treatment and the presence of existing routes that would be able to accommodate extra footfall without harmful effects. Concerns over domestic pet predation are unfounded. As explained by Mr Edmonds, the modest addition to the cat population and any predation

⁵⁷ In particular see 6.35 and 6.37 of the SoCG in relation to ancient woodland matters

⁵⁸ Bob Edmonds at RTS and SoCG 6.24

⁵⁹ See Bob Edmonds qualifications in his proof at 1.3 and his work in this area

⁶⁰ Bob Edmonds at RTS

⁶¹ As shown clearly in Helen Kirk's Fig 1

⁶² Bob Edmonds at RTS – 45m +

⁶³ See also the conditions regarding the CEMP and AMS

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that comes with it, in the context of 35 ha of woodland, distance, the low value of bird species and low susceptibility to such predation will not deteriorate the habitat of the woodland. The bird and mammal population will be much more affected by native predation, food and nesting availability than the effect of cats. Once again case improperly conflates change and minor harmful effects with deterioration of the overall habitat of the woodland. Dog walking effects are similarly overstated by SV. There is no evidence of nutrient effects now, and no likelihood of them being created by the development.

- 5.5 Through the construction stage, well tried and tested approaches to construction management can be secured through conditions, to avoid harm to the woodland.
- 5.6 In the operational phase, again well tried and tested means of addressing pollution, including permeable paving, highways traps and downstream defenders will sufficiently clean surface water from the part of the site that is to become impermeable so that the outfall to a stream that connects into a dyke (along with the existing railway run off water) will have no deteriorating effect on the woodland, given the nature of the water in question, the nature of the woodland and the pass through nature of the watercourses⁶⁴.
- 5.7 The on-site drainage infrastructure will be adopted or otherwise maintained in perpetuity and will result in the impermeable area of the site (only some 32% of the site overall) having its surface water drain, at current greenfield run off rates (with storage designed to account for 1:100 years, climate change and urban creep). Surface water from all the areas which are not to become impermeable (68% of the site area) will drain broadly as now.
- 5.8 None of the proposals will impact on groundwater. That is at considerable depth under the site⁶⁵ and the surface water catchment of the woodland is extensive such that in combination with the woodland not being of a type that depends on being wet, there will be no deterioration to it as a consequence of any change in hydrology. Further, not only is the site in the lowest flood risk zone but it is at a low risk from all forms of flooding and there can be no question that a sequential test would be needed.

⁶⁴ Bob Edmonds at RTS

⁶⁵ See ID 6 and the Councils response

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5.9 The Rule 6 Party's concerns about the capacity of the sewage water network are drainage and not flooding matters. The correct part of the NPPF should be applied. The site will address foul drainage via a pumped rising main (to be adopted for maintenance) to a combined network, that the sewage undertaker is clear has capacity for that flow. Old combined systems can and do overflow in the event of major rainfall events. It is the rainfall/surface water and not the foul flows that determine this. There is in the order of 1.9 l/s of foul flow from the development into a pipe that can take at least 40l/s⁶⁶. That pipe is likely to operate at less than ¼ of its capacity even with the other foul flows that it accommodates. It operates well within capacity unless surface water surcharges it and it is that that causes it to overflow. There is no evidence of increased overflow events or duration of events being likely should the appeal be allowed. There is only speculation from non-experts on this topic. The appeal scheme adds no surface water to any sewer. The sewer in question has a permitted and expected level of overflow (permitted by the EA- who are responsible for ecological matters as well as water management matters) which is triggered by rainfall events⁶⁷. This is typical of many sewers across the country. To refuse permission on this point would likely set a precedent for elsewhere and could well have a massive effect on national housing delivery. In this instance the overflow is either directly to Thunderbridge Dike, several kilometres away from the appeal site, or to a sewer on land to the west of that dike. Either way, it is important to note that the Dike doesn't run through any ancient woodland. The woodland is to the east of that watercourse and is shown typically in the picture in Mr Edmond's evidence at figure 3.2⁶⁸. Mr Edmond's evidence is clear; that any sewage in that watercourse will not be likely to deteriorate the woodland at Hartley Bank Wood, even if the appeal proposal was to result in additional sewage in terms of events, duration or concentration (for which there is no evidence).

5.10 The issue about the sustainability of the location has been raised. However, this is not an issue of concern for the Council⁶⁹ and the sites identification alongside other sites in Stocksmoor was fully justified in the Local Plan, which fairly acknowledges the challenges to growth in the rural areas of the district, whilst setting out the need for growth. The case for such growth being powerful enough to amount to the exceptional circumstances, to remove sites such as this from the Green Belt. Access to

⁶⁶ RTS Mr Shepherd

⁶⁷ G Shepherd RTS

⁶⁸ Edmonds page 13

⁶⁹ See SoCG at 6.4 and 6.14

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centres is well provided for by public transport and where driving is needed, relevant facilities are close by.

6 Overall Conclusion and Balance

6.1 Because of both the lack of 5-year land supply and the lack of delivery there is no doubt the tilted balance is engaged. It is not disengaged by the terms of NPPF 11d (i) and footnote 7. The application of 193 c in relation to ancient woodlands doesn't provide a basis for refusal at all, let alone a strong reason for refusal. The approach to decision making is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole⁷⁰.

6.2 The only real issue is highway safety, but in that regard paragraph 116 is important as it frames the basis for any highway safety refusal. It makes clear that development should *only* be prevented on highways grounds if there would be *unacceptable* impact on safety. This doesn't extend to for example the Council's concerns about pedestrian amenity. An unacceptable safety impact *could* overturn the tilted balance, even with benefits of the nature of the appeal proposal, but an amenity concern is unlikely to do so. The Appellant is clear however that neither issue should lead to refusal in this case. An unacceptable highway safety impact has not been made out and the amenity case is clearly make-weight and far outweighed by the benefits.

6.3 The benefits in this case are extensive and set out in Mr Johnson's evidence⁷¹, by far the most powerful are the provision of market housing and affordable housing as there is a desperate need for both. Of significant weight however are the improvements to Stone Wood Lane as they improve it for all, as a by-product of addressing mitigation for the development.

6.4 Overall, the Appellant would encourage you to conclude that there are no unacceptable highways safety effects and the permission should be approved when all other matters are weighed in the tilted balance, and with the benefits of the scheme.

⁷⁰ There is common ground that there is no conflict at all with the policies of the Framework relating to sustainable locations, effective use of land, design and affordable homes

⁷¹ Mr Johnson 7.54 onwards -housing, affordable housing, ecological improvements, highways improvements, economic benefits

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Richard Sagar

4.03.26
