THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOMENT AND FIVE YEAR HOUSING LAND SUPPLY

LAND WEST OF THAXTED ROAD, SAFFRON WALDEN

OUTLINE PLANNING APPLICATION

FOR

THE ERECTION OF UP TO 170 DWELLINGS, ASSOCIATED LANDSCAPING AND OPEN SPACE, WITH ACCESS FROM THAXTED ROAD

Prepared by:

Woolf Bond Planning

On behalf of

Kier Ventures Ltd

PINS Ref: S62A/2022/0014

WBP REF: 8365

FEBRUARY 2023

Woolf Bond Planning
Chartered Town Planning Consultants

CONTENTS

		Page
	DOCUMENTS	2
1.	INTRODUCTION	4
2.	THE PLANNING POLICY CONTEXT	9
3.	ASSESSING THE FIVE YEAR HOUSING LAND SUPPLY POSITION	17
4.	SUMMARY AND CONCLUSION	38

DOCUMENTS

WB1 Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes [2017] UKSC 37

WB2 Uttlesford District Council planning committee report of 11th January 2023 on Section 62A application (PINS ref S62A/2022/0014)

WB3 Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808

WB4 Appeal decision for land south of (east of Griffin Place) Radwinter Road, Sewards End, Saffron Walden, 5th October 2022 ref 3296426

WB5 Section 62A application decision for Friends School, Mount Pleasant Road, Saffron Walden, 11th October 2022 ref 0000002

WB6 Eastleigh Borough Council v Secretary of State for Housing Communities and Local Government [2019] EWHC 1862 (Admin)

WB7 Wokingham BC v SSCLG [2019] EWHC 3158 (Admin)

WB8 Appeal decision land north of Netherhouse Copse, Fleet, 6th October 2017 ref 3167135

WB9 Appeal decision for land east of Finchampstead Road, Wokingham, 25th August 2020 ref 3235572

WB10 Appeal decision for land north of Nine Mile Ride, Finchampstead, 9th April 2020 ref 3238048.

WB11 Appeal decision for land off Satchel Lane, Hamble -le-Rice.20th December 2018 ref 3194846

WB12 Appeal decision for land west of Park Farm, Thornbury, South Gloucestershire 13th February 2023, ref 3288019

WB13 East Northants Consent Order CO/917/2020) (7th May 2020)

WB14 Bedford Borough Consent Order (CO/164/2020) (2nd July 2020)

WB15 Appeal decision Little Sparrows, Sonning Common, 25th June 2021, ref 3265861

WB16 Appeal decision off Audlem Road/Broad Lane, Stapeley, Nantwich, 15th July 2020, ref 2197532 & 2197529

WB17 Appeal decision for land within the Westhampnett / North East Chichester Strategic Development Location, north of Madgwick Lane, Chichester, 27th May 2022 ref 3270721

WB18 Appeal decision east side of Green Road, Woolpit, Suffolk, 28th September 2018 ref 3194926

WB19 Appeal decision Longdene House, Hedgehog Lane, Haslemere, 10th January 2019 ref 3165974

WB20 Appeal decision west of Cody Road, Waterbeach, Cambridge, 25th June 2014, ref 2207961

1. INTRODUCTION

1.1. This Statement has been prepared by Woolf Bond Planning on behalf of Kier Ventures Ltd (the "Applicant") in relation to their pending application submitted to the Planning Inspectorate pursuant to Section 62A of the Town and Country Planning Act 1990 concerning the outline application for the erection of up to 170 dwellings with access from Thaxted Road with all other matters reserved at land west of Thaxted Road, Saffron Walden (PINS Ref: S62A/2022/0014).

1.2. Supporting documents are included at **WB1** to **WB20**.

1.3. As to the planning policy context, the Application Site is located adjoining, but immediately beyond the settlement policy boundary as defined on the Local Plan Proposals Map. Accordingly, it is located in the countryside.

1.4. In addition, the Site is not allocated for housing development. As such, the Application Scheme is contrary to the Development Plan. However, and having regard to the 38(6) balance, there are a number of material considerations that justify the grant of planning permission.

1.5. The development plan is out of date in terms of the spatial application of its housing policies by virtue of it being predicated on an out-of-date assessment of development needs[1], whilst, in addition, the Council is <u>not</u> able to demonstrate a five year supply of deliverable housing land.

1.6. In the circumstances, the presumption in favour of sustainable development (the titled balance) at paragraph 11(d) of the NPPF is clearly engaged. This requires planning applications to be approved unless footnote 7 considerations provide a clear reason for refusing development (which they do not in this case); or any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Again, they do not.

1.7. As such, the development plan policies for the supply of housing are out of date for two reasons (either one triggers the tilted balance at paragraph 11(d) of the NPPF):

[1] See Hopkins Homes paragraph 63 (**WB1**)

(i) the spatial application of settlement boundaries (which have been breached in order to meet current housing need); and

(ii) the lack of a five year supply of deliverable housing land.

1.8. This is demonstrably a case where the weight to be attached to conflict with the development plan (on account of the location of the site beyond the defined settlement boundary for Saffron Walden) can be reduced given the need to breach the settlement boundaries identified in the development plan to meet development needs.

1.9. The Council's Committee Report[2] recognise that the presumption in favour of sustainable development applies as a result of the out-of-date nature of the development plan policies irrespective of the lack of a five year supply.

1.10. The particularly weighty material considerations in favour of this Application are clearly sufficient to outweigh the limited conflict with the out-of-date development plan.

1.11. Sets out consideration of the five-year housing land supply position in Uttlesford District for the period 1st April 2022 to 31st March 2027.

1.12. At the outset, whilst it is agreed between the Council and the Applicant that the Council is unable to demonstrate a five-year supply of deliverable housing land at 1st April 2022, the is a dispute between the extent of the shortfall.

1.13. The Council contends that it has a 4.89 years supply, representing a shortfall of 78 dwellings (against a minimum requirement). This is disputed by the Applicant.

1.14. The Applicant's view is that the Council has a maximum supply 4.58 years, representing a greater deficit of 318 dwellings.

1.15. The Council's position is set out in their Report titled "5-Year Land Supply Statement and Housing trajectory Status at 1 April 2022".

[2] See paragraphs 13.12.1 and 13.12.2 in Document **WB2**.

1.16. The acknowledged lack of a five year supply engages the presumption in favour of sustainable development. The Council's lack of a five year supply has been ongoing for several years as recognised in earlier appeal decisions[3].

1.17. It is essential to consider the extent of the shortfall (the difference between the Council and the Applicant) as this is an important factor as acknowledged in Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808 (Document **WB3**).

1.18. The reasons for the difference between the Council and the Applicant as to the extent of shortfall, is the extent that sites relied upon by the authority can be truly regarded as deliverable, as outlined in the glossary definition in the NPPF. It is a result of these differences that the Council's contended housing land supply position is disputed.

1.19. This Statement addresses the five year housing land supply position as well as the weight to be attached to the delivery of housing from the Application proposal on land west of Thaxted Road, Saffron Walden.

1.20. In considering the five-year housing land supply position, the analysis sets out the position in relation to the Development Plan, which policies most important for determining the Application are out of date on account of the Council not being able to demonstrate five years supply of deliverable housing land. It also sets out and addresses the content of relevant material considerations, including the National Planning Policy Framework ("NPPF" or the "Framework"), National Planning Policy Guidance ("NPPG"), relevant case law and associated appeal decisions.

1.21. Informed by that background, the housing requirement and deliverability of the Council's identified components of supply is assessed and thereafter we set out our conclusion in relation to the five-year housing land supply position; where we concur with the Council that it is unable to demonstrate a five year supply of deliverable sites, although as outlined our position is that the extent of the shortfall is significantly greater.

[3] 3.52 years supply at April 2021 as confirmed in paragraph 9 of the appeal decision for land south of Radwinter Road (Document WB4) and paragraph 50 of the decision on the Section 62A application for Friends School (Document WB5)

Summary of Findings

1.22. Although the Council accepts that it cannot demonstrate a five year supply of deliverable housing land for the period 1st April 2022 to 31st March 2027 with a purported supply of 4.89 years and a shortfall of 78 dwellings, it is the Applicant's opinion that the extent of the deficit is significantly greater with a supply of only **4.58 years**. This amounts to a **deficit of 318 dwellings**.

1.23. As noted, our assessment of the five year housing land supply position differs from the Council's, primarily due to the application of the definition of what constitutes a deliverable site from the 2021 NPPF, taking account the clarification provided by numerous appeal decisions. This is explained further in this statement.

1.24. The Council's case on housing land supply is set out in their "5-Year Land Supply Statement and Housing Trajectory Status at 1 April 2022" published in December 2022. It includes reliance upon delivery from sites which were neither allocated nor had a planning permission at the base date for the assessment (31st March 2022) or are unsupported as a result of optimistic assumptions on delivery rates which are not supported by the necessary clear evidence (which also had to be available at 31st March 2022).

1.25. The respective positions are shown in the table 1 below.

Table 1 – The Respective Five Year Housing Land Supply Positions

	Council	Applicant
Requirement 1/4/2022 to 31/3/2027	3,638	3,638
Assessed deliverable supply	3,560	3,330
Extent of shortfall	**-78**	**-318**
No. of years supply	**4.89yrs**	**4.58yrs**

1.26. Having assessed the housing land supply based upon the requirements set out in the NPPF, PPG and the approach adopted in numerous appeal decisions, the applicant concurs that the Council is unable to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.

1.27. Consequently, the presumption in favour of sustainable development is engaged as a result of the significant shortfall in supply.

1.28. Separately, the Local Plan policies are 'out of date', which matters are addressed in the overarching Planning Statement prepared by Woolf Bond Planning which accompanied the application (Nov 2022).

2. THE PLANNING POLICY CONTEXT

Development Plan Context and Section 38(6)

2.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.

2.2. In the context of considering the Application proposal, The Development Plan for Uttlesford District comprises the following:

- Uttlesford Local Plan Saved Policies (2005) (Saved 2007); and
- Saffron Walden Neighbourhood Plan (made October 2022)

2.3. As explained in the Planning Statement submitted with the application[4], the settlement boundaries as set out within the Proposals Map for the Uttlesford District were identified to meet the housing needs from saved Policies H1 and S1 of the Uttlesford District Local Plan.

2.4. The boundaries were drawn at that time to meet a need for some 5,052 dwellings within the District from 2000 to 2011 to address the residual need arising from the former Structure Plan which had required 5,600 dwellings from 1996 to 2011 after deducting completions of 980 dwellings built between 1996 and 2000.

2.5. In so far as the saved policies of the Local Plan are more than five years old, and in accordance with the requirements in paragraph 74 and footnote 39 of the NPPF, the housing requirement falls to be determined by the local housing need derived from the application of the standard method.

2.6. The Council's Five-Year Housing Land Supply Statement for April 2022 identifies that the District's local housing need figure is 693dpa. This represents a significant uplift on the equivalent 459.3dpa[5] figure in through the saved policies of the Local Plan.

[4] Paragraph 1.10
[5] 5,052 dwellings divided by 11 (for the period 2000-2011)

2.7. In so far as the settlement boundaries were not identified in relation to the current housing need, they operate as a constraint to development. Moreover, and in so far as the housing requirement on which the settlement boundaries were defined cannot be said to be consistent with the NPPF, the weight to be attached to any conflict with them can and should be reduced. Indeed, as Lord Gill observed in ***Hopkins Homes Ltd v SSCLG*** [2017] UKSC 37 (**WB1**) at [83].

> **"If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated"**

2.8. Furthermore, as Garnham J held in ***Eastleigh BC v SSCLG*** [2019] EWHC 1862 (Admin) at [62] (**WB6**), the NPPF adopts a more nuanced approach to the countryside than such policies.

2.9. Where a local plan policy which pre-dates the NPPF does not reflect that more nuanced approach, the inspector is **"fully entitled to conclude that … reduced weight [should be] attributed to the retained policies".**

2.10. It is therefore highly material that the housing provision figures within saved Policies H1 and S1 do not represent full objectively assessed need when assessed against the annual requirement set by the standard methodology of 693 dwellings a year as confirmed in the Council's assessment of housing land supply for April 2022.

2.11. It is evident therefore that saved Policies H1 and S1 are out of date and that significant additional housing is required on greenfield sites.

2.12. In ***Hopkins Homes Ltd v SSCLG*** [2017] UKSC 37 Lord Carnwath said [63] (**WB1**) the inspector was "clearly entitled" to reduce the weight to be attached to restrictive policies, such as countryside and landscape policies, can be reduced where they are derived from settlement boundaries that in turn reflect out of date housing requirements. There are obvious parallels with Uttlesford District.

2.13. In addition, the Council cannot demonstrate an up-to-date five year supply of deliverable sites for housing. As such, and in accordance with paragraph 11(d) and footnote 8 of the NPPF, the most important policies (including those relating to settlement boundaries) are to be regarded as out of date.

2.14. In ***Wokingham BC v SSCLG*** [2019] EWHC 3158 (Admin) (**WB7**) Lang J held at [60] that the fact that a settlement boundary had been set to an out of date housing requirement figure was a relevant consideration when determining the weight to attach to a conflict with it, even if there were a temporary five-year land supply by virtue of breaching those boundaries.

2.15. Applicable policy considerations are set out in the Planning Statement which accompanied the application and we do not seek to expand upon that here, save to reiterate that as the Plan which sets the district's housing requirement (the Uttlesford Local Plan (saved policies)) was adopted more than 5 years ago, and no review has been undertaken pursuant to NPPF (paragraph 74), the housing requirement is set through the derivation of Local Housing Need (LHN).

2.16. The Council's 5-Year Land Statement details the derivation of the district's LHN and this confirms that the minimum requirement is 693dpa. This is agreed by the Applicant.

2.17. The 5-Year Land Supply Statement also summarises the sources of supply which the Council contends are deliverable, pursuant to the Glossary definition in the NPPF. These sources for the five year period April 2022 to March 2027 are listed in Table 2, and indicate how their contended supply of 3,560 dwellings over this period is derived. As noted, the supply of 3,560 dwellings is insufficient to demonstrate a five year supply given the minimum requirement (including a 5% buffer) is 3,638 dwellings.

Table 2 – Expected sources of Supply (April 2022 – March 2027)

Source	Dwellings
Sites with permission (6 or more dwellings)	2,832
Planning permission small sites (assume 63% delivered) (<6 dwellings)	408
Windfall allowance	228
Communal establishments	92
Total	3,560

2.18. Table 2 indicates that a significant proportion[6] of the expected supply is from sites with planning permission for at least 6 dwellings. The sites for this category are listed in the schedules which accompany the statement. A review of the sites listed within the category of sites with permission for 6 or more dwellings indicates that several relate to major development with outline planning permission. These therefore need to be

[6] 2,129 / 5,693 which is over 37%

thoroughly assessed for their deliverability credentials having regard to the definition in the NPPF's Glossary, and the supporting advice in the PPG.

National Planning Policy Framework

2.19. The National Planning Policy Framework (NPPF) was published in July 2018; refined in February 2019 with further amendments in July 2021. It is a material consideration of particular standing in the determination of planning applications.

2.20. The content of the NPPF as it relates to the consideration of five year housing land supply matters is set out below.

Decision Taking

2.21. In setting out the presumption in favour of sustainable development, paragraph 11 of the NPPF adds, in relation to decision-making at 11(c), that this means approving development proposals that accord with the development plan.

2.22. It adds at paragraph 11(d) that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date (including where the LPA cannot demonstrate a five year supply of deliverable housing as is agreed for Uttlesford District as outlined in this statement), permission should be granted unless (i) policies in the NPPF provide a clear reason for refusing the development; or (ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits.

Delivering a Sufficient Supply of Homes

2.23. Paragraph 60 sets out the Government's objective of significantly boosting the supply of homes.

2.24. Paragraph 68 sets out the need to provide a five year supply of deliverable sites for housing. It also requires sites for years 6-10 and beyond. The definition of what constitutes a 'deliverable' site is set out in the glossary in Annex 2 on page 66 of the

NPPF and this definition has been used, alongside that set out in the PPG[7], to inform the assessment of the Council's five year housing land supply position.

2.25. Paragraph 74 states that LPAs should maintain a minimum of five years' worth of housing, including an appropriate buffer of 5, 10 or 20% depending on the specific circumstances.

2.26. Based upon the Housing Delivery Test published on 14th January 2022 (see footnote 41 of the NPPF), the Council is a 5% Authority.

2.27. Whilst the acknowledged lack of a five year supply engages the presumption in favour of sustainable development, it is also noted that the Council's limited housing land supply is reliant on contributions for sites outside of defined settlement boundaries. This is a further illustration of the out-of-date nature of these policies, irrespective of the lack of a five year supply.

2.28. In an appeal for land north of Netherhouse Copse, Fleet[8] allowed on 6th October 2017, this matter was considered by the Inspector. Paragraph 63 of the appeal decision states:

> **Nevertheless, as the Supreme Court held in the case of Suffolk Coastal[9], the weight to be given to restrictive policies can be reduced where they are derived from settlement boundaries that in turn reflect out-of-date housing requirements. In that case the Inspector's finding was consequential upon there being no five year housing land supply and on the basis that the Council could not deliver the housing to meet current needs. In the current appeal the Council argued that it can provide five years supply of housing land. However, this is a reflection of the Council granting a number of permissions for housing development outside of settlement boundaries identified in the LP in breach of Policies RUR2 and RUR3 in order to meet market and affordable housing needs and maintain a rolling five year land supply. Consequently it is not meeting current housing needs on the basis of the settlement boundaries in the development plan. I therefore find that Policy RUR1 is out-of-date and carries only moderate weight.**

2.29. This acknowledgement that sites outside of settlements had artificially boosted the supply was also recognised in two appeal decisions in Wokingham Borough. This was

[7] See Housing Supply and Delivery section (ID 68-007-20190722)
[8] PINS ref APP/N170/W/17/3167135 (Document **WB8**)
[9] Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes [2017] UKSC 37 (Document **WB1**)

that for land east of Finchampstead Road, Wokingham[10] and for land north of Nine Mile Ride, Finchampstead[11].

2.30. In paragraph 29 of the east of Finchampstead Road appeal, the Inspector concluded:

> **I have found later in my decision that the Council can demonstrate a five-year housing land supply. However, despite the views of the Council, it does rely on supply that falls outside of the currently set settlement boundaries. It is therefore clear to me that delivering a sufficient supply of housing cannot be done, whilst also meeting the requirements set out in Policies CP9, CP11 of the CS and CC02 of the MDD LP. They are therefore out-of-date.**

2.31. This view is repeated in paragraph 26 of the north of Nine Mile Ride appeal where the Inspector states:

> **The scale and location of housing and the associated development limits were established to accommodate this lower housing requirement. However, as the Hurst Inspector observed, policy CP17 does not cap housing numbers and includes flexibility to bring land forward in identifying future land supply. Housing land supply is considered later in the decision, but the evidence is clear that this depends on some sites that are outside the development limits. The delivery of a sufficient supply of homes is a fundamental objective of the Framework but cannot be achieved through adherence to policies CP9, CP11 and CC02, which are all dependent on the development limits. These policies are therefore out-of-date. In this respect I disagree with the Hurst Inspector, but I note that there was no dispute about housing land supply in that case and therefore the evidence on which his conclusions were based was materially different.**

2.32. The role of development contrary to the Plan in boosting supply is also highlighted in the appeal decision for land off Satchel Lane, Hamble -le-Rice[12]. In paragraph 18, the Inspector concluded:

> **As stated above the fact that the authority can clearly demonstrate a five year housing land supply is not relevant to the weight which should be accorded to development plan policies. However when considering the currency of a policy, it is relevant to have regard to the record of how it has been applied. In this case the Council has achieved the current supply position in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic**

[10] Appeal dismissed on 25th August 2020 – PINS ref APP/X0360/W/19/3235572 (Document **WB9**)
[11] Appeal dismissed on 9th April 2020- PINS ref APP/X0360/W/19/3238048 (Document **WB10**)
[12] Appeal allowed 20th December 2018 – PINS ref APP/W1715/W/18/3194846 (Document **WB11**)

> **Gaps (an additional policy objection which does not apply in this case). I do not criticise the authority for any of these decisions but it is reasonable to infer that, in those cases, the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations.**

2.33. These appeal decisions illustrate that the extent that an authority is reliant upon the inclusion of development sites contrary to demonstrate a five year supply is an clear indication that the policies are out-of-date. Whilst Uttlesford District is unable to demonstrate a five year supply, even to show a shortfall, it is still reliant on such sites which is an indication of the limited weight that should be applied to any conflict with the Development Plan.

2.34. The role that greenfield sites contrary to Development Plan have boosted housing supply and the out-of-date nature of its policies is further considered in an appeal for land at Thornbury in South Gloucester (Document **WB12**). This is emphasised in paragraph 12 which states:

> **In the circumstances, the housing requirement in the CS and the settlement boundaries that depend on it, is not compliant with the Framework and is out-of-date. This is regardless of the five year housing land supply position, which I consider later. This means that the fact that the proposed development would be within the countryside and outwith the settlement of Thornbury is a matter of limited weight. It is noted that the Council has itself granted planning permission for several housing developments on greenfield sites adjoining the built-up area of Thornbury. That does not have any effect on the statutory nature of the relevant policies, but it does mean that the conflict with those policies is a matter of reduced importance.**

2.35. This limited weight its reinforced by the judgement in Eastleigh Borough Council v Secretary of State for Housing Communities and Local Government [2019] EWHC 1862 (Admin)[13] which followed the Satchell Lane appeal decision. In paragraph 54 of the judgement, it concludes:

> **As to the rationality of the Inspector's reasons, in my judgment, Mr Glenister has a complete answer. He submits that the Inspector's "consideration of the past application of the policy … revealed that the current compliance with the 5YHLS was achieved "in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps". This indicates that the development plan**

[13] Document **WB6**

policies were not consistent with the NPPF, which goes to their "currency". Consideration of this was clearly rational". I agree.

2.36. This therefore reflects the applicants concerns over the Council's approach, including the allowances for sites in the countryside to boost the land supply, notwithstanding that a deficit is shown.

3. ASSESSING THE FIVE YEAR HOUSING LAND SUPPLY POSITION IN UTTLESFORD DISTRICT

General

3.1. The assessment of the five year housing land supply position has been informed by the following tasks:

(i) **identifying the requirement** to be met in the five year period (including in relation to the method to be applied in addressing any shortfall as well as the appropriate buffer to be applied),

(ii) **assessing the deliverability** of the identified components of supply; and

(iii) **concluding** on matters by subtracting (ii) from (i) to identify whether there is or is not a five year supply of deliverable housing land.

3.2. The Council's Five Year Housing Land Supply position as at 1st April 2022 was published by the Council in December 2022 and covers the five year period 1st April 2022 to 31st March 2027.

NPPF and PPG

3.3. Paragraph 74 of the NPPF requires LPAs to demonstrate a <u>minimum</u> of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old. The requirement should also allow for the application of a 5, 10 or 20% buffer associated with the Housing Delivery Test ("HDT").

3.4. For the purpose of this Appeal, the HDT results state that Uttlesford District is a 5% buffer Authority.

3.5. The PPG expands upon the definition of a deliverable site[14], which references the definition at Annex 2 of the NPPF.

[14] See Housing Supply and Delivery section (ID 68-007-20190722)

(i) Identifying the Housing Requirement

General

3.6. The agreed minimum requirement for the current five year period is 3,638 dwellings.

3.7. The starting point to calculating the five year requirement is the minimum **693 dwelling annual requirement** derived from the derivation of the district's LHN. This results in a 3,465 dwellings requirement.

3.8. As a result of the Housing Delivery Test ("HDT") results published in January 2022, it is agreed that it is appropriate to apply a 5% buffer to the requirement.

3.9. This results in an agreed minimum five year requirement of **3,638 dwellings for the five year period 1st April 2022 to 31st March 2027**. This equates to 727.6 dwellings per annum.

(ii) Assessing the Deliverability of the Identified Components of Supply

General

3.10. The NPPF Glossary definition of deliverable sites indicates that these are those that:

> **Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:**
>
> **a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).**
>
> **b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.**

3.11. Alongside the NPPF definition the applicant refers to the Secretary of State's consent to judgement (CO/917/2020) in a case relating to an appeal within East Northamptonshire and the implications of this for determining whether a site is deliverable. The East Northamptonshire consent order was issued on 7th May 2020[15].

3.12. Paragraph B of the East Northamptonshire consent order states:

> **He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available**

3.13. Since the East Northants consent to judgement, a further consent order by the Secretary of State has been issued with respect of an appeal decision within Bedford Borough (CO/164/2020)[16] issued on 2nd July 2020.

3.14. Paragraph 5 states as follows:

> **"The First Defendant also accepts that Ground 2 is arguable, and the Inspector misinterpreted paragraph 74 of the NPPF 2019, because he has made no comment on the differences between the 2019 and 2012 test, the 'appropriate buffer', and any effect of the 5YHLS."**

3.15. There has been a clear change in the definition of deliverable sites between the 2012 and 2019 editions of the NPPF[17] which was acknowledged in the Bedford Borough Consent Order.

3.16. The refined definition of a deliverable site within the current NPPF, together with the advice in the accompanying PPG on the quality and robustness of evidence[18] indicates that the approach of the authority and its expectations of deliverability are not justified.

---

[15] Document **WB13**
[16] Document **WB14**
[17] There is no change between 2019 and 2021 version of NPPF
[18] See Housing Supply and Delivery section (ID 68-007-20190722)

3.17. Inspectors through other appeals have considered the implications of the additional guidance on how deliverability of sources/sites is to be appraised, including the nature and depth of evidence required pursuant to the versions of the NPPF issued since 2018.

3.18. One example is the appeal decision relating to land at Little Sparrows, Sonning Common allowed on 25th June 2021[19]. The nature and depth of evidence was assessed in paragraphs 20 and 21 of the decision which state:

> **20 I have also had regard to the PPG advice published on 22 July 2019 on `Housing supply and delivery' including the section that provides guidance on `What constitutes a `deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:**
>
> ***"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."***
>
> **This advice indicates to me the expectation that `clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.**
>
> **21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute `clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.**

3.19. Taking account of the guidance in the 2021 NPPF and the conclusions of appeal Inspectors (including that at Sonning Common), the specific sites and sources where the contended delivery is not justified must be omitted especially as 'clear evidence' must be something cogent, as opposed to simply mere assertions.

[19] PINS ref APP/Q3115/W/20/3265861. Document **WB15**

3.20. Furthermore, in considering the detailed evidence with respect of the contended inclusion of sites, the Secretary of State in paragraphs 20 to 23 of his decision of 15th July 2020 allowing residential development off Audlem Road/Broad Lane, Nantwich (APP/R0660/A/13/2197532). They state:

> **20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.**
>
> **21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.**
>
> **22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.**
>
> **23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.**

3.21. This reinforces the importance of clear evidence to support the contended deliverability of sites/sources within the supply. This is also noted that this appeal decision post-dates the two consent orders referred to above.

3.22. Therefore, having regard to the contents of the two consent orders together with the subsequent decision of the Secretary of State in the Nantwich appeal, for any site not included within the first category of sources detailed in the NPPF Glossary, it is essential that this is substantiated by the necessary evidence as outlined in the PPG[20].

3.23. This emphasises the importance of evidence to justify any assumptions on the deliverability of sites within the supply. This section of the PPG in considering "What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking?" states:

> **In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:**
>
> - **have outline planning permission for major development;**
> - **are allocated in a development plan;**
> - **have a grant of permission in principle; or**
> - **are identified on a brownfield register.**
>
> **Such evidence, to demonstrate deliverability, may include:**
>
> - **current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;**
> - **firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;**
> - **firm progress with site assessment work; or**
> - **clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.**

[20] See Housing Supply and Delivery section (ID 68-007-20190722)

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.

3.24. Furthermore, it is essential that in including any sites/sources within the supply, it is essential to assess whether there is a realistic prospect that housing will be delivered on the site within 5 years.

3.25. It is clear from the PPG that for any site not included in the first category (A) of the NPPF Glossary for deliverable sites must be accompanied by clear and robust evidence to show deliverability.

3.26. This approach is the clear conclusion from the two consent orders together with the subsequent Nantwich appeal decision determined by the Secretary of State.

3.27. As explained, the need for robust evidence is reflected in the conclusions of Inspectors in other appeals including that at Sonning Common. It is within this context that the Council's housing land supply position is to be appraised.

Overview of sources

3.28. The Council's assessment of housing land supply for the period 2022-27 is set out in Housing Land Supply Paper. This suggests a deliverable supply of 3,560 dwellings.

Table 3 - Sources of supply relied upon by the Council for period Apr 2022-Mar 2027

Source	Dwellings
Sites with permission (6 or more dwellings)	2,832
Planning permission small sites (assume 63% delivered) (<6 dwellings)	408
Windfall allowance	228
Communal establishments	92
Total	3,560

Analysis of Deliverability

3.29. We have reviewed the various components of supply relied upon by the Council in their Housing Land Supply Paper. The Applicant disagrees with their analysis of deliverability.

3.30. The Applicants' site assessment is set out below.

Sites with permission (6 or more dwellings)

3.31. The Council expects 2,832 dwellings to be delivered within the five years from this source.

3.32. For the reasons explained below, we dispute the contended delivery from several of the sites specified. The applicant therefore discounts the supply by 230 dwellings.

3.33. The respective positions in relation to this component of supply are as follows:

UDC: 2,832 dwellings
WBP: 2,602 dwellings
Difference: 230 dwellings

3.34. Our site analysis is set out below with the reasons for discounting specific sites from this supply specified. Consistent with the conclusions of the Consent Orders and appeal decisions, where a site had any of the following, it is taken as deliverable:

a) Planning permission for between 6 and 9 dwellings and the site area is less than 0.5ha (therefore not a major development as defined in the NPPF Glossary)
b) Site has detailed planning permission at 1st April 2022 and either site area exceeds 0.5ha and/or permission is for at least 10 dwellings.
c) Site had outline planning permission at 1st April 2022 and either site area exceeds 0.5ha and/or permission is for at least 10 dwellings and a reserved matters application has subsequently been submitted (including after the base date of 1st April 2022)[21]

3.35. The Applicant's review of the sites listed in the Council's schedule has identified six which are not considered to be deliverable, to the extent contended by the authority. The reasons for discounting each of the six sites are set out below.

Land south of Rush Lane, Elsenham

3.36. Outline planning permission was granted for up to 40 dwellings on 4th September 2020 on appeal[22] following the Council's refusal of application (LPA ref UTT/19/0437/OP) on

[21] This reflects the conclusions of the Secretary of State in the Nantwich appeal (**WB16**)
[22] PINS ref APP/C570/W/19/3242550

14th November 2019. The site therefore falls within the second category of potentially deliverable sites.

3.37. The second condition on the permission granted on appeal requires the submission of reserved matters to be within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

3.38. The applicant therefore discounts the 40 dwellings which the Council contends will be delivered on the site within the five years.

3.39. The respective positions in relation to supply within 5 years from land south of Rush Lane, Elsenham are as follows:

UDC:40 dwellings
WBP: 0 dwellings
Difference: 40 dwellings

Land to the west of Buttleys Lane, Great Dunmow

3.40. Outline planning permission was granted for up to 60 dwellings on 19th January 2022 on appeal[23] following the Council refusal of the application (LPA ref UTT/19/2354/OP) on 11th September 2020. The site therefore falls within the second category of potentially deliverable sites.

3.41. The second condition on the permission granted on appeal requires the submission of reserved matters to be within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

3.42. The Applicant therefore discounts the 60 dwellings which the Council contends will be delivered on the site within the five years.

[23] PINS ref APP/C1570/W/21/3270615

3.43. The respective positions in relation to supply within 5 years from land to the west of Buttleys Lane, Great Dunmow are as follows:

UDC:60 dwellings
WBP: 0 dwellings
Difference: 60 dwellings

Land south of Stortford Road, Dunmow

3.44. A hybrid application was approved on 21st January 2022 (LPA ref UTT/18/2574/OP). The description of development was:

> **Hybrid planning application with: Outline planning permission (all matters reserved except for points of access) sought for demolition of existing buildings (excluding Folly Farm) and development of up to 332 dwellings, including affordable housing, 1,800 sqm Health Centre (Class D1) and new access from roundabout on B1256 Stortford Road together with provision of open space incorporating SuDS and other associated works. Full planning permission sought for demolition of existing buildings (including Staggs Farm) and development of Phase 1 to comprise 108 dwellings, including affordable housing, a new access from roundabout on B1256 Stortford Road, internal circulation roads and car parking, open space incorporating SuDS and play space and associated landscaping, infrastructure and other works. 14ha of land to be safeguarded for education use via a S.106 Agreement**

3.45. Therefore, there are two elements of this site with permission. There is a detailed permission for the erection of 108 dwellings (107 dwellings net) which pursuant to the NPPF definition of deliverable is included in the first category. There is then the further outline permission for up to 332 dwellings which is within the second category of potentially deliverable sites as defined in the NPPF.

3.46. The Council contends that 169 dwellings are deliverable on the site within 5 years. This is therefore likely to be derived from 107 dwellings (net) with detailed permission together with a contribution of 62 dwellings from the part of the site with outline permission.

3.47. The twenty seventh condition on the permission requires the submission of reserved matters to be within 5 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the

guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

3.48. The Applicant's appraisal of the deliverability of the land south of Stortford Road, Dunmow having regard to the differentiation within the NPPF's glossary with respect to both detailed and outline major applications is reflected in the appeal decision for land within the Westhampnett/ North East Chichester Strategic Development Location, north of Madgwick Lane, Chichester allowed on 27th May 2022[24]. This is reflected in the first bullet of paragraph 82. This states:

> **The definition of 'deliverable' in the Framework is clear that sites with outline permission can only be considered where there is clear evidence that housing completions will begin on-site within the five-year period. The agreed base date is 31 March 2021. My approach is to use this date as the 'cut-off' point at which a site can be included in the potential supply, but to have regard to evidence up to the present day for those sites which make it through the 'cut-off'. This ensures that there is consistency in using the same deadline for both supply and need sides of the equation, whilst not ignoring relevant information which may contribute to 'clear evidence' on the progress of the sites. There are four disputed sites, which I take in turn below:**
>
> - **Manor Road, Selsey – the 74 dwellings in Phase 2 only have outline permission and the reserved matters application has not yet been submitted. I acknowledge that the applicant is a major housebuilder and is progressing with Phase 1 of the development. However, this does not constitute clear evidence that Phase 2 will proceed in a timely manner and will contribute to the five year supply. The 74 dwellings from this scheme should therefore be removed from the supply;**

3.49. The Applicant therefore discounts the 62 dwellings which the Council contends will be delivered on the site within the five years, from that part of the site with only an outline and not detailed permission.

3.50. The respective positions in relation to supply within 5 years from land south of Stortford Road, Dunmow are as follows:

UDC:169 dwellings
WBP: 107 dwellings
Difference: 62 dwellings

[24] PINS ref APP/L3815/W/21/3270721 (Document **WB17**)

Land south of Vernons Close, Mill Road, Henham, Hertfordshire

3.51. Outline planning permission was granted on appeal[25] for 45 dwellings on 30th November 2021 following the Council's refusal of the application on 24th February 2021 (LPA ref UTT/20/0604/OP). The site therefore falls within the second category of potentially deliverable sites.

3.52. The second condition on the permission granted on appeal requires the submission of reserved matters to be within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

3.53. The Applicant therefore discounts the 45 dwellings which the Council contends will be delivered on the site within the five years.

3.54. The respective positions in relation to supply within 5 years from land south of Vernons Close, Mill Road, Henham are as follows:

WDC:45 dwellings
WBP: 0 dwellings
Difference: 45 dwellings

Land west of Parsonage Road, Takeley

3.55. Outline planning permission was granted on appeal[26] for up to 119 dwellings on 31st January 2020 following the Council's refusal of the application on 29th July 2019 (LPA ref UTT/19/0393/OP). The sixth condition from the appeal permission requires the submission of reserved matters within two years of the approval i.e. by 29th July 2021.

3.56. A reserved matters application for 110 dwellings (LPA ref UTT/22/0152/DFO) was validated by the Council on 25th January 2022 and was awaiting a decision on 31st March 2022 (the base date for the assessment). The Council granted permission for the reserved matters application on 4th May 2022.

[25] PINS ref APP/C1570/W/21/3272403
[26] PINS ref APP/C1570/W/19/3234530. This was a co-joined appeal with a scheme for a 66 bed care home (Use Class C2) which was also allowed (LPA ref UTT/19/0394/OP & PINS ref APP/C1570/W/19/3234532).

3.57. The submission of the reserved matters application provides an element of evidence of deliverability for the site west of Parsonage Road. However, as the reserved matters application was for 110 dwellings and not 119 dwellings as permitted through the appeal approval, this is the maximum considered to be deliverable by the Applicant.

3.58. The Applicant therefore discounts the difference of 9 dwellings from that which the Council contends will be delivered on the site within the five years.

3.59. The respective positions in relation to supply within 5 years from land west of Parsonage Road, Takeley are as follows:

UDC:119 dwellings
WBP: 110 dwellings
Difference: 9 dwellings

Land at Claypits Farm, Bardfield Road, Thaxted

3.60. Outline planning permission was granted on 28th October 2021 for the erection of 14 dwellings on appeal[27] following the Council's refusal of application UTT/20/0614/OP on 14th January 2021.

3.61. The approval of application UTT/20/0614/OP was for an alternative to the outline permission for the erection of 15 dwellings approved on 14th March 2019 (LPA ref UTT/18/0750/OP). As no reserved matters for outline permission UTT/18/0750/OP was submitted within the required 3 years, this permission has expired, which occurred prior to the 31st March 2022 base date for the assessment.

3.62. The second condition on the extant appeal approval requires the submission of reserved matters to be submitted within 3 years of the decision i.e. by 14th January 2024. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

[27] PINS ref APP/C1570/W/21/3269464

3.63. The Applicant therefore discounts the 14 dwellings which the Council contends will be delivered on the site within the five years.

3.64. The respective positions in relation to supply within 5 years from land at Claypits Farm, Bardfield Road, Thaxted are as follows:

UDC:14 dwellings
WBP: 0 dwellings
Difference: 14 dwellings

3.65. Table 4 below therefore provides a summary of the differences for the six sites which the applicant disputes the Council's contended deliverability of.

Table 4: Summary of the review of deliverability (April 2022-March 2027) from the site listed in the Council's trajectory where the applicant disputes contended supply

PLANNING APPLICATION REFERENCE	Site Address	LPA	WBP	Difference
UTT/19/0437/OP	Land south of, Rush Lane, Elsenham	40	0	40
UTT/19/2354/OP	Land to the west of Buttleys Lane, Dunmow	60	0	60
UTT/18/2574/OP	Land south of Stortford Road, Dunmow	169	107	62
UTT/20/0604/OP	Land south of Vernons Close, Mill Road, Henham, Hertfordshire	45	0	45
UTT/19/0393/OP	Land west of Parsonage Road, Takeley	119	110	9
UTT/18/0750/OP UTT/20/0614/OP	Land at Claypits Farm, Bardfield Road, Thaxted, CM6 3PU	14	0	14
		447	**217**	**230**

3.66. This indicates that in contrast to 2,832 dwellings contended to be deliverable by the Council for sites with permission for at least 6 dwellings, the Applicants position is that this should be reduced by 230 dwellings to 2,602 dwellings.

Planning permission small sites (assume 63% delivered) (< 6 dwellings)

3.67. The Council expects 408 dwellings to be delivered within the five years from this source. We accept this position.

3.68. The respective positions in relation to this component of supply are as follows:

UDC: 408 dwellings
WBP: 408 dwellings
Difference: 0 dwellings

Windfall allowance

3.69. The Council expects 228 dwellings to be delivered within the five years from this source. We accept this position.

3.70. The respective positions in relation to this component of supply are as follows:

UDC: 228 dwellings
WBP: 228 dwellings
Difference: 0 dwellings

Communal Establishments

3.71. The Council expects 92 dwellings to be delivered within the five years from this source. We accept this position.

3.72. The respective positions in relation to this component of supply are as follows:

UDC: 92 dwellings
WBP: 92 dwellings
Difference: 0 dwellings

Summary of Site Assessment

3.144. Based on our analysis of deliverability, we have deducted a total of 828 dwellings from the Council's assessment of supply.

3.145. The respective positions are summarised by source in Table 5 below.

Table 5: Summary of Site Assessment

Source	Council	WBP	Difference
Sites with permission (6 or more dwellings)	2,832	2,602	230
Planning permission small sites (assume 63% delivered) (<6 dwellings)	408	408	0
Windfall allowance	228	228	0
Communal establishments	92	92	0
Total	3,560	3,330	230

3.146. Having assessed the deliverability of the components of supply in the context of the approach set out above, we arrive at the conclusion that the Council's delivery assumptions are overly optimistic and do not satisfy the deliverability test set out in the NPPF (as amplified in the PPG and the consideration of the term 'deliverable' in a number of appeal decisions and the clarity provided in the Consents to Judgements).

Analysis

3.147. In setting out our analysis of housing site delivery, we wish to highlight two related points as follows:

i. Firstly, and as confirmed in paragraph 74 of the NPPF, the maintenance of a 5 year supply is only a ***minimum*** requirement and provision above this reflects the Government's objectives in paragraph 60 of significantly boosting the supply of housing.

ii. Secondly, is recognition that the Council's housing land supply must only include deliverable sites, as now defined in the NPPF (2021) taking account of the confirmation in the Consent Orders and the Nantwich appeal decision.

3.148. As confirmed in the appeal decision for land on the east side of Green Road, Woolpit[28], the conclusions emphasise the importance of considering the evidence of deliverability of sites known (published) at the base date for assessing the robustness of housing land supply.

3.149. The base date for the current land supply assessment and consequently this application is 1st April 2022.

3.150. The importance of the base date for evidence also reflects the requirements of the NPPF (paragraph 74) to "update annually a supply of specific deliverable sites".

3.151. As highlighted in the Woolpit decision, the reliance on inferences of developer's intentions for delivery after the base date, without confirmatory evidence published by the Authority is inconsistent with this requirement. Paragraph 70 states as follows:

[28] PINS ref APP/W3520/W/18/3194926 (Document **WB18**)

> **"Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018[14] it does not alter the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years."** (Our emphasis underlined)

3.152. This position reflects that taken by the Inspector in the appeal at Longdene House, Hedgehog Lane, Haslemere[29] dismissed on 10th January 2019. In paragraph 39 of the decision, the Inspector states:

> **"I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work."** (Our emphasis underlined)

3.153. As referenced above, we do not consider that the Council has adequately justified the inclusion of a number of sites/sources. The failure to provide the evidence of deliverability, rather than just developability as defined in the NPPF results in the applicant discounting a significant element of the Council's contended supply.

3.154. Our discounting of sites/sources without the requisite supporting evidence is reflective of the decision of the Secretary of State in the Nantwich appeal referred to above.

3.155. We have reviewed progress on sites relied upon by the Council in their Five Year Supply Report after the 1st April 2022 cut-off date. This is to consider the signing of the

[29] PINS ref APP/R3650/W/16/3165974 (Document **WB19**)

necessary S106 agreements to allow the inclusion of planning permissions, alongside updates for the other sources of supply could change the extent of any supply (nevertheless still a shortfall in my view). However, and without corresponding updates on the other elements of the calculations i.e. extent of any permissions that have lapsed or have been fully or partially implemented in the intervening period[30], results in an incomplete review.

3.156. The importance of ensuring any appraisal of land supply (alongside the requirement) includes ALL relevant factors has been acknowledged in appeal decisions.

3.157. The appeal for land to the west of Cody Road, Waterbeach[31] allowed on 25th June 2014 is a long established decision that clearly establishes this fundamental principle, as confirmed in paragraphs 20-22 of the decision:

> **20. The issue between the parties is whether the 5-year supply requirement should use a base date of 1 April 2013 or 1 April 2014. As a general rule I accept the Council's submission that a more recent base date is to be preferred but only where I can be confident that it captures information on actual progress over the previous year[6]. In this case I am concerned that I only have a partial data set rather than a full set of the figures for the full year, April 2013-March 2014. Amongst other things the "*March AMR update*" [Document 13] says the figure for housing completions records "…*predicted completions to 31/3/2014. These predicted completions are based on the housing trajectory in the plan where there is no better information and otherwise on what developers have told us are their actual completions and planned completions to 31/3/2014. This information was gathered between October 2013 and January 2014 for major sites and others down to sites of 9 homes*" [*my emphasis*]. In other words it is only for part of the accounting year and otherwise based on a prediction.**
>
> **21. In cross-examination Mr Hyde referred to other ways in which the data set was incomplete by reference to Figure 4.7 of the February 2014 AMR. In particular the table records planning permissions granted for windfall sites between 1 April and 31 December 2013 rather than for the full year. These commitments have the effect of increasing the supply side but the flip side is that no account has been taken of any planning permissions that lapsed after 31 March 2013.**
>
> **22. The base date of 1 April 2013 ensures the housing land supply requirement figure is based on known completions because**

[30] i.e. to omit any completions since 1st April 2022 as per paragraph 67 of the Woolpit appeal decision (**WB18**)
[31] PINS ref APP/W0530/A/13/2207961 (Document **WB20**)

the actual level of historic completions is published in the 2012-13 AMR. This is the most up-to-date figure of known completions and anything else is conjecture. Moreover the Appellant refers to Mr Roberts's Appendix DR44 to show the principle that the further ahead the projection, the less accurate it becomes. The Council's approach is therefore less robust since it projects further into the future. For these reasons I find the Appellant's approach is the most robust and reliable. (Our emphasis underlined)

3.158. This supports our view that any assessment of supply can only be made having regard to the clear evidence of delivery (including developer's intentions) known at the base date i.e. 1st April 2022. This reflects the correct approach taken by the Longdene Inspector (see last sentence of paragraph 39 quote above).

3.159. We apply the above approach to my assessment of deliverability.

(iii) The Respective Five Year Housing Land Supply Positions

3.160. Informed by the above, our view of the Council's supply position, when assessed against the obligations arising from the NPPF and associated guidance with respect of clear and robust evidence (acknowledged in the appeal decisions referenced above[32]), contends that the supply of deliverable housing land should be reduced by 230 dwellings in the five year period from April 2022 to March 2027.

3.161. Based upon the analysis undertaken for the Applicant, it is our position that the deliverable supply figure for the five year period is 3,330 dwellings.

3.162. The derivation of this compared to the assessment of the authority is illustrated in Table 6 below.

Table 6 – Comparison of deliverable land supply sources (1st Apr 2022-31st Mar 2027)

Source	Council	WBP	Difference
Sites with permission (6 or more dwellings)	2,832	2,602	230
Planning permission small sites (assume 63% delivered) (<6 dwellings)	408	408	0
Windfall allowance	228	228	0
Communal establishments	92	92	0
Total	3,560	3,330	230

[32] Includes Woolpit (WB18), Longdene (WB19) and Sonning Common (WB15)

3.163. Table 7 provides a breakdown of the components of supply where delivery is disputed between the parties.

Table 7 – Disputed Components of Supply within sites with permission for at least 6 dwellings (1st Apr 2022-31st Mar 2027)

PLANNING APPLICATION REFERENCE	Site Address	LPA	WBP	Difference
UTT/19/0437/OP	Land south of, Rush Lane, Elsenham	40	0	40
UTT/19/2354/OP	Land to the west of Buttleys Lane, Dunmow	60	0	60
UTT/18/2574/OP	Land south of Stortford Road, Dunmow	169	107	62
UTT/20/0604/OP	Land south of Vernons Close, Mill Road, Henham, Hertfordshire	45	0	45
UTT/19/0393/OP	Land west of Parsonage Road, Takeley	119	110	9
UTT/18/0750/OP UTT/20/0614/OP	Land at Claypits Farm, Bardfield Road, Thaxted, CM6 3PU	14	0	14
		447	**217**	**230**

3.164. On the basis of the foregoing, Table 8 below provides a comparison between the housing land supply positions adopted by the Council and the Applicant covering the five year period 1st April 2022 to 31st March 2027.

3.165. As set out in Table 8 below, we identify a total supply of 3,330 dwellings which represents a supply of 3.35 years. This is also a shortfall of 2,407 dwellings.

Table 8 – The Respective Five Year Housing Land Supply Positions

	Council	Applicant
Requirement 1/7/2022 to 30/6/2027	3,638	3,638
Assessed deliverable supply	3,560	3,330
Extent of shortfall/surplus	**-78**	**-318**
No. of years supply	**4.89yrs**	**4.58yrs**

3.166. Based on the foregoing, the housing shortfall identified should be afforded significant weight in the determination of this Application.

3.167. In addition to the conclusion that the Council is not able to demonstrate five years supply of housing land at 1st April 2022, the extent of the shortfall is significantly greater than that acknowledged by the authority.

3.168. The Application Site is controlled by Kier Ventures and they are committed to the early delivery of dwellings from the Site.

3.169. In the circumstances, we are of the view that the benefits of providing additional housing should be given significant weight.

4. SUMMARY AND CONCLUSION

4.1. Whilst it is accepted that the Council is unable to demonstrate five years supply of deliverable housing land, there is disagreement with the extent of the shortfall.

4.2. Based the analysis we have undertaken; we are able to conclude that there is a clear lack of a five year supply of deliverable housing land and therefore the presumption in favour of sustainable development at paragraph 11(d) of the NPPF is engaged.

4.3. Paragraph 11(d) is engaged both by virtue of the lack of a five years supply alongside the out-of-date status of development plan policies.

4.4. The Council's case on housing land supply relies upon sites which whilst had outline permission at the base date for the assessment (1st April 2022), are not supported by the necessary evidence to demonstrate deliverability to the extent they envisage.

4.5. Having assessed the housing land supply based upon the requirements set out in the NPPF, PPG and the approach adopted in numerous appeal decisions, the Applicant concurs that the Council is <u>not</u> able to demonstrate five years supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF. This engagement of the tilted balance by virtue of a lack of five years supply is separate to its application as the policies of the development plan are out-of-date.

4.6. However, as outlined, the extent of the shortfall is significantly greater than that acknowledged by the Council.

4.7. The application is to therefore be determined on this basis with the application of the tilted balance.

****

Easter Term
[2017] UKSC 37
On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

JUDGMENT

Suffolk Coastal District Council (Appellant) *v* Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) *v* Cheshire East Borough Council (Appellant)

before

Lord Neuberger, President
Lord Clarke
Lord Carnwath
Lord Hodge
Lord Gill

JUDGMENT GIVEN ON

10 May 2017

Heard on 22 and 23 February 2017

Appellants (Cheshire and Suffolk)
Martin Kingston QC
Hugh Richards
Jonathan Clay
Dr Ashley Bowes
(Instructed by Sharpe Pritchard LLP)

Respondent (Hopkins)

Christopher Lockhart-Mummery QC
Zack Simons

(Instructed by DLA Piper UK LLP (Birmingham))

Respondent (Richborough)
Christopher Young
James Corbet Burcher
(Instructed by Town Legal LLP)

Respondent (SSCLG)
Hereward Phillpot QC
Richard Honey
(Instructed by The Government Legal Department)

LORD CARNWATH: (with whom Lord Neuberger, Lord Clarke, Lord Hodge and Lord Gill agree)

Introduction

1. The appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework ("NPPF"), which is in these terms:

> "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

2. The Court of Appeal observed that the interpretation of this paragraph had been considered by the Administrative Court on seven separate occasions between October 2013 and April 2015 with varying results. The court had been urged by all counsel "to bring much needed clarity to the meaning of the policy". Notwithstanding the clarification provided by the impressive judgment of the court (given by Lindblom LJ), controversy remains. The appeals provide the opportunity for this court not only to consider the narrow issues of interpretation of para 49, but to look more broadly at issues concerning the legal status of the NPPF and its relationship with the statutory development plan.

3. Both appeals relate to applications for housing development, one at Yoxford in the administrative area of the Suffolk Coastal District Council ("the Yoxford site"), and the other near Willaston in the area of Cheshire East Borough Council ("the Willaston site"). In the first the council's refusal of permission was upheld by the inspector on appeal, but his refusal was quashed in the High Court (Supperstone J), and that decision was confirmed by the Court of Appeal. In the second, the council failed to determine the application, and the appeal was allowed by the inspector. The council's challenge succeeded in the High Court (Lang J), but that decision was reversed by the Court of Appeal, the judgment of the court being given by Lindblom LJ. Both councils appeal to this court.

The statutory provisions

4. The relevant statutory provisions are found in the Town and Country Planning Act 1990 ("the 1990 Act") and the Planning and Compulsory Purchase Act 2004 ("the 2004 Act").

Plan-making

5. Part 2 of the 2004 Act deals with "local development". Each local planning authority in England is required to "keep under review the matters which may be expected to affect the development of their area or the planning of its development" (2004 Act section 13), and to prepare a "local development scheme", which (inter alia) specifies the local development documents which are to be "development plan documents" (section 15). The authority's local development documents "must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area" (section 17). "Local development documents" are defined by regulations made under section 17(7). In short they are documents which contain statements as to the development and use of land which the authority wishes to encourage, the allocation of sites for particular types of development, and development management and site allocations policies intended to guide determination of planning applications. Together they comprise the "development plan" or "local plan" for the area (Town and Country Planning (Local Planning) (England) Regulations (SI 2012/767) regulations 5 and 6).

6. In preparing such documents, the authority must have regard (inter alia) to "national policies and advice contained in guidance issued by the Secretary of State" (section 19(2)). Every development plan document must be submitted to the Secretary of State for "independent examination", one of the purposes being to determine whether it complies with the relevant statutory requirements, including section 19 (section 20(1)(5)(a)). The Secretary of State may, if he thinks that a local development document is "unsatisfactory", direct the local planning authority to modify the document (section 21). Section 39 gives statutory force to the concept of "sustainable development" (undefined). Any person or body exercising any function under Part 2 in relation to local development documents must exercise it "with the objective of contributing to the achievement of sustainable development", and for that purpose must have regard to "national policies and advice contained in guidance issued by the Secretary of State …" An adopted plan may be challenged on legal grounds by application to the High Court made within six weeks of the date of adoption, but not otherwise (section 113). Schedule 8 contained transitional provisions providing generally for a transitional period of three years, after which the plans produced under the previous system ceased to have effect subject to the power of the Secretary of State to "save" specified policies by direction.

Planning applications

7. Provision is made in the 1990 and 2004 Acts for the development plan to be taken into account in the handling of planning applications:

> *1990 Act section 70(2)*
>
> "In dealing with such an application the authority shall have regard to -
>
> > (a) the provisions of the development plan, so far as material to the application,
> >
> > (b) any local finance considerations, so far as material to the application, and
> >
> > (c) any other material considerations."
>
> *2004 Act section 38(6)*
>
> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Unlike the development plan provisions, these sections contain no specific requirement to have regard to national policy statements issued by the Secretary of State, although it is common ground that such policy statements may where relevant amount to "material considerations".

8. The principle that the decision-maker should have regard to the development plan so far as material and "any other material considerations" has been part of the planning law since the Town and Country Planning Act 1947. The additional weight given to the development plan by section 38(6) reproduces the effect of a provision first seen in the Planning and Compensation Act 1991 section 54A. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the equivalent provision (section 18A of the Town and Country Planning (Scotland) Act 1972) was described by Lord Hope (p 1450B) as designed to "enhance the status"

of the development plan in the exercise of the planning authority's judgment. Lord Clyde spoke of it as creating "a presumption" that the development plan is to govern the decision, subject to "material considerations", as for example where "a particular policy in the plan can be seen to be outdated and superseded by more recent guidance". However, the section had not touched the well-established distinction between the respective roles of the decision-maker and the court:

> "It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker …" (p 1458)

9. An appeal against a refusal of planning permission lies to the Secretary of State, who is subject to the same duty in respect of the development plan (1990 Act sections 78, 79(4)). Regulations under section 79(6) and Schedule 6 now provide for most categories of appeals, including those here in issue, to be determined, not by the Secretary of State, but by an "appointed person" (normally referred to as a planning inspector). The decision on appeal may be challenged on legal grounds in the High Court (section 288).

The National Planning Policy Framework

10. The Framework (or "NPPF") was published on 27 March 2012. One purpose, in the words of the foreword, was to "(replace) over a thousand pages of national policy with around 50, written simply and clearly", thus "allowing people and communities back into planning". The "Introduction" explains its status under the planning law:

> "Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. …"

11. NPPF is divided into three main parts: "Achieving sustainable development" (paragraphs 6 to 149), "Plan-making" (paragraphs 150 to 185) and "Decision-taking" (paragraphs 186 to 207). Paragraph 7 refers to the "three dimensions to sustainable development: economic, social and environmental". Paragraph 11 begins a group of paragraphs under the heading "the presumption in favour of sustainable development". Paragraph 12 makes clear that the NPPF "does not change the statutory status of the development plan as the starting point for decision making". Paragraph 13 describes the NPPF as "guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications".

12. Paragraph 14, which is important in the present appeals, deals with the "presumption in favour of sustainable development", which is said to be "at the heart of" the NPPF and which should be seen as "a golden thread running through both plan-making and decision-taking". It continues:

> "**For plan-making** this means that:
>
> - local planning authorities should positively seek opportunities to meet the development needs of their area;
> - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>   - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>   - specific policies in this Framework indicate development should be restricted.
>
> For **decision-taking** this means:
>
> - approving development proposals that accord with the development plan without delay; and
> - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted."

We were told that the penultimate point ("any adverse impacts …") is referred to by practitioners as "the tilted balance". I am content for convenience to adopt that rubric.

13. Footnote 9 (in the same terms for both parts) gives examples of the "specific policies" referred to:

> "For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."

14. These are said to be examples. Thus the list is not exhaustive. Further, although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies. Paragraph 14 cannot, and is clearly not intended to, detract from the priority given by statute to the development plan, as emphasised in the preceding paragraphs. Indeed, some of the references only make sense on that basis. For example, the reference to "Local Green Space" needs to be read with paragraph 76 dealing with that subject, which envisages local communities being able "through local and neighbourhood plans" to identify for "special protection green areas of particular importance to them", and so "rule out new development other than in very special circumstances …"

15. Section 6 (paragraphs 47 to 55) is entitled "Delivering a wide choice of high quality homes". Paragraph 47 states the primary objective of the section:

> "To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;

- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% … to ensure choice and competition in the market for land. …;

- identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15;

- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and

- set out their own approach to housing density to reflect local circumstances."

16. This group of provisions provides the context for paragraph 49, central to these appeals and quoted at the beginning of this judgment; and in particular for the advice that "relevant policies for the supply of housing" should not be considered "up-to-date", unless the authority can demonstrate a five-year supply of deliverable housing sites.

17. Section 12 is headed "Conserving and enhancing the historic environment" (paragraphs 126 to 141). It includes policies for "designated" and "non-designated" heritage assets, as defined in the glossary. The former cover such assets as World Heritage Sites, Scheduled Monuments and others designated under relevant legislation. A non-designated asset is one "identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest". Paragraph 135 states:

> "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

"Significance" in this context is defined by the glossary in Annex 2 as meaning "the value of a heritage asset to this and future generations because of its heritage interest", which may be derived "not only from a heritage asset's physical presence, but also from its setting".

18. Annex 1 ("Implementation") states that policies in the Framework "are material considerations which local planning authorities should take into account from the day of its publication" (paragraph 212); and that, where necessary, plans, should be revised as quickly as possible to take account of the policies "through a partial review or by preparing a new plan" (paragraph 213). However, it also provides that for a transitional period of a year decision-takers "may continue to give full weight to relevant policies adopted since 2004, even if there is a limited degree of conflict with this Framework" (paragraph 214); but that thereafter

> "… due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in [the NPPF], the greater the weight that may be given)." (paragraph 215)

NPPF - Legal status and Interpretation

19. The court heard some discussion about the source of the Secretary of State's power to issue national policy guidance of this kind. The agreed Statement of Facts quoted without comment a statement by Laws LJ (*R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441; [2016] 1 WLR 3923, para 12) that the Secretary of State's power to formulate and adopt national planning policy is not given by statute, but is "an exercise of the Crown's common law powers conferred by the royal prerogative." In the event, following a query from the court, this explanation was not supported by any of the parties at the hearing. Instead it was suggested that his powers derived, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the planning system (see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, paras 140-143 per Lord Clyde). This is reflected both in specific

requirements (such as in section 19(2) of the 2004 Act relating to plan-preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute (see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140-141). Even if there had been a pre-existing prerogative power relating to the same subject-matter, it would have been superseded (see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583, para 48). (It may be of interest to note that the great *Case of Proclamations* (1610) 12 Co Rep 74, which was one of the earliest judicial affirmations of the limits of the prerogative (see *Miller* para 44) was in one sense a planning case; the court rejected the proposition that "the King by his proclamation may prohibit new buildings in and about London …".)

21. Although planning inspectors, as persons appointed by the Secretary of State to determine appeals, are not acting as his delegates in any legal sense, but are required to exercise their own independent judgement, they are doing so within the framework of national policy as set by government. It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than "guidance" and as such a "material consideration" for the purposes of section 70(2) of the 1990 Act (see *R* (*Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

Law and policy

22. The correct approach to the interpretation of a statutory development plan was discussed by this court in *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said:

> "The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it.

> It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others … policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." (para 18)

He added, however, that such statements should not be construed as if they were statutory or contractual provisions:

> "Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann) …" (para 19)

23. In the present appeal these statements were rightly taken as the starting point for consideration of the issues in the case. It was also common ground that policies in the Framework should be approached in the same way as those in a development plan. However, some concerns were expressed by the experienced counsel before us about the over-legalisation of the planning process, as illustrated by the proliferation of case law on paragraph 49 itself (see paras 27ff below). This is particularly unfortunate for what was intended as a simplification of national policy guidance, designed for the lay-reader. Some further comment from this court may therefore be appropriate.

24. In the first place, it is important that the role of the court is not overstated. Lord Reed's application of the principles in the particular case (para 18) needs to be

read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any "suitable site" within or linked to the existing centres (para 5). The short point was the meaning of the word "suitable" (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, "logically prior" to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692; [2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678, para 30 per Lady Hale.)

26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy; and not to elide the two.

The two appeals

Evolving judicial guidance

27. To understand the reasoning of the two inspectors in the instant cases, it is necessary to set it in the context of the evolving High Court jurisprudence. The decisions in the two appeals were given in July and August 2014 respectively, after inquiries which ended in both cases in June. It is not entirely clear what information was available to the inspectors as to the current state of the High Court jurisprudence on this topic. The Yoxford inspector referred only to *William Davis v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (Lang J, 11 October 2013). This seems to have been the first case in which this issue had arisen. One of the grounds of refusal was based on a policy E20 the effect of which was generally to exclude development in a so-called "green wedge" area defined on the proposals map. Lang J recorded an argument for the developer that the policy should have been regarded as a "relevant policy for the supply of housing" under paragraph 49 because "the restriction on development potentially affects housing development". The judge rejected this argument summarily, saying "policy E20 does not relate to the *supply* of housing and therefore is not covered by paragraph 49" (her emphasis).

28. By the time the two inquiries in the present case ended (June 2014), and at the time of the decisions, it seems that the most recent judicial guidance then available on the interpretation of paragraph 49 was that of Ouseley J in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin) (10 March 2014) ("the *Barwood Land* case"). Ouseley J favoured a wider reading which "examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner". He thought that the language could not sensibly be given a very narrow meaning because

> "This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go …"

He contrasted general policies, such as those protecting "the countryside", with policies designed to protect specific areas or features "such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development."

29. At that time, it seems to have been assumed that if a policy were deemed to be “out-of-date” under paragraph 49, it was in practice to be given minimal weight, in effect “disapplied” (see eg *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), para 72 per Lewis J). In other words, it was treated for the purposes of paragraph 14 as non-policy, in the same way as if the development plan were “absent” or “silent”. On that view, it was clearly important to establish which policies were or were not to be treated as out-of-date in that sense. Later cases (after the date of the present decisions) introduced a greater degree of flexibility, by suggesting that paragraph 14 did not take away the ordinary discretion of the decision-maker to determine the weight to be given even to an “out-of-date” policy; depending, for example, on the extent of the shortfall and the prospect of development coming forward to make it up (see eg *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), para 71 per Lindblom J). As will be seen, this idea was further developed in Lindblom LJ’s judgment in the present case.

The Yoxford site

30. In September 2013 Suffolk Coastal District Council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant, Hopkins Homes Ltd (“Hopkins”), appealed to an inspector appointed by the Secretary of State. He dismissed the appeal in a decision letter dated 15 July 2014, following an inquiry which began in February and ended in June 2014.

31. The statutory development plan for the area comprised the Suffolk Coastal District Local Plan (“SCDLP”) adopted in July 2013, and certain “saved” policies from the previous local plan (“the old Local Plan”) adopted in December 1994. Chapter 3 SCDLP set out a number of “strategic policies”, including:

i) Under the heading “Housing”, Policy SP2 (“Housing numbers and Distribution”) proposed as its “core strategy” to make provision for 7,900 new homes across the district in the period 2010-2027. In addition, “an early review” to be commenced by 2015 was to identify “the full, objectively assessed housing needs” for the district, with proposals to ensure that these were met so far as consistent with the NPPF. A table showed the proposed locations across the district to make up the total of 7,900 homes.

ii) Under the heading “The Spatial Strategy”, Policy SP19 (“Settlement Policy”) identified Yoxford as one of a number of Key Service Centres, which provide “an extensive range of specified facilities”, and where “modest estate-scale development” may be appropriate “within the defined physical limits” (under policy SP27 - “Key and Local Service Centres”). Outside these

settlements (under policy SP 29 - "The Countryside") there was to be "no development other than in special circumstances".

iii) The commentary to SP19 (para 4.05) explained that "physical limits boundaries" or "village envelopes" would be drawn up for the larger settlements, but that these limits are "a policy tool" and that where allocations are proposed outside the envelopes, the envelopes would be redrawn to include them.

32. In his report on the examination of the draft SCDLP, the inspector had commented on the adequacy of the housing provision (paras 31-51). He had noted how the proposed figure of 7,590 homes fell short of what was later agreed to be the requirement for the plan period of 11,000 extra homes. He had considered whether to suspend the examination to enable the council to assess the options. He decided not to do so, recognising that there were other sites which might come forward to boost supply, and the advantages of enabling these to be considered "in the context of an up-to-date suite of local development management policies that are consistent with the Framework …"

33. The "saved" policies from the old plan included:

AP4 ("Parks and gardens of historic or landscape interest")

"The District Council will encourage the preservation and/or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting."

AP13 ("Special Landscape Areas")

"The valleys and tributaries of (named rivers) and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas and shown on the Proposals Map. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality."

The appeal site formed part of an area of Historic Parkland (related to an 18th century house known as "Grove Park") identified by the council in its Supplementary Planning Guidance 6 "Historic Parks and Gardens" (SPG) dated December 1995.

34. In his decision-letter on the planning appeal, the inspector identified the main issues as including: consideration of a five years' supply of housing land, the principle of development outside the defined village, and the effects of the proposal on the local historic parkland and landscape (para 4). He referred to paragraphs 14 and 49 of the NPPF, which he approached on the basis that it was "very unlikely that a five years' supply of housing land could now be demonstrated" (paras 5-6). There had been a debate before him whether the recent adoption of the local plan meant that its policies are "automatically up-to-date", but he read the comments of the examining Inspector on the need for an early review of housing delivery as indicating the advantages of "considering development in the light of other up-to date policies", whilst accepting that pending the review "relevant policies for the supply of housing may be considered not to be up-to-date" (para 7).

35. He then considered which policies were "relevant policies for the supply of housing" within the meaning of paragraph 49 (paras 8-9). Policy SP2 "which sets out housing provision for the District" was one such policy and "cannot be considered as up-to-date". Policy SP15 relating to landscape and townscape "and not specifically to the supply of housing" was not a relevant policy "and so is up-to-date". For the same reason, policy SP19, which set the settlement hierarchy and showed percentages of total proposed housing for "broad categories of settlements", but did not suggest figures or percentages for individual settlements, was also seen as up-to-date; as was SP27, which related specifically to Key and Local Service Centres, and sought, among other things, to reinforce their individual character.

36. Of the saved policy AP4 he noted "a degree of conflict" with paragraph 215 of the Framework "due to the absence of a balancing judgement in Policy AP4", but thought its "broad aim" consistent with the aims of the Framework. He said: "these matters reduce the weight that I attach to Policy AP4, although I shall attach some weight to it". Similarly, he thought Policy AP13 consistent with the aims of the Framework to "recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment" (para 10).

37. In relation to the proposal for development outside the defined village limits, he observed that the appeal site was outside the physical limits boundary "as defined in the very recently adopted Local Plan". He regarded the policy directing development to within the physical limits of the settlement to be "in accordance with

one of the core principles of the Framework, recognising the intrinsic character and beauty of the countryside". On this aspect he concluded:

> "I consider that the appeal site occupies an important position adjacent to the settlement, where Old High Road marks the end of the village and the start to the open countryside. The proposed development would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework." (paras 13-14)

38. As to its location within a historic parkland, he discussed the quality of the landscape and the impact of the proposal, and concluded:

> "20. In relation to the built character and layout of Yoxford and its setting, Old High Road forms a strong and definite boundary to the built development of the village here. I do not agree that the proposal forms an appropriate development site in this respect, but would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary and the development site would not be contained to the west by any existing logical boundary.
>
> 21. In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in the Framework and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan …"

39. Finally, under the heading "The planning balance", he acknowledged the advantage that the proposal would bring "additional homes, including some affordable, within a District where the supply of homes is a concern", but said:

> "However, I have found significant conflict with policies in the recently adopted Local Plan. I have also found conflict with some saved policies of the old Local Plan and I have sought to balance these negative aspects of the proposal against its benefits. In doing so, I consider that the unacceptable effects of the development are not outweighed by any benefits and means that it cannot be considered as a sustainable form of

> development, taking account of its three dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework." (paras 31-32)

40. Hopkins challenged the decision in the High Court on the grounds that the inspector had misdirected himself in three respects: in short, as to the interpretation of NPPF paragraph 49; as to the status of the limits boundary to Yoxford; and as to the status of Policy AP4. The Secretary of State conceded that the inspector had misapplied the policy in paragraph 49. Supperstone J referred to the approach of Ouseley J in the *Barwood Land* case, with which he agreed, preferring it to that of Lang J in the *William Davis* case. He accepted the submission for Hopkins that the inspector had erred in thinking that paragraph 49 only applied to "policies dealing with the positive provision of housing", with the result that his decision had to be quashed (paras 33, 38-41). He held in addition that this inspector had wrongly proceeded on the basis that the village boundary had been defined in the recent local plan, rather than in the earlier plan (para 46); and that he had failed properly to assess the significance of the heritage asset as required by paragraph 135 of the Framework (para 53). On 30 January 2015 Supperstone J quashed the decision. The council's appeal to the Court of Appeal failed. It now appeals to this court.

The Willaston site

41. The Crewe and Nantwich Replacement Local Plan, adopted on 17 February 2005 ("the adopted RLP") sought to address the development needs of the Crewe and Nantwich area for the period from 1996 to 2011. Under the 2004 Act, it should have been replaced by a Local Development Framework by 2008. This did not happen. As a consequence, the policies were saved by the Secretary of State by Direction (dated 14 February 2008).

42. Crewe is identified as a location for new housing growth in the emerging Local Plan, which is the subject of an ongoing examination in public and subject to objections, as are some of the proposed housing allocations. At the time of the public inquiry in June 2014, the emerging Local Plan was understood to be over two years from being adopted. Richborough Estates Partnership LLP ("Richborough") in August 2013 applied to Cheshire East Borough Council for permission for a development of up to 170 houses on land north of Moorfields in Willaston. The council having failed to determine the application within the prescribed period, Richborough appealed. Willaston is a settlement within the defined urban area of Crewe, but for the most part is physically separate from the town. As a consequence there is open land between Willaston and the main built up area of Crewe, within which open land the appeal site lies.

43. In the appeal Cheshire East relied on the adopted RLP, in particular policies NE.2, NE.4, and RES.5:

i) Policy NE.2 ("Open Countryside") seeks to protect the open countryside from new build development for its own sake, permitting only a very limited amount of small scale development mainly for agricultural, forestry or recreational purposes.

ii) Policy NE.4 ("Green Gap") relates to areas of open land around Crewe (including the area of the appeal site) identified as needing additional protection "in order to maintain the definition and separation of existing communities". The policy provides that permission will not be granted for new development, including housing, save for limited exceptions. It has the same inner boundary as NE.2.

iii) Policy RES.5 ("Housing in the open countryside") permits only very limited forms of residential development in the open countryside, such as agricultural workers' dwellings.

44. In his decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. He concluded that Cheshire East was unable to demonstrate the minimum five year supply of housing land required under paragraph 47 of the NPFF. The council appears to have accepted at the inquiry that policy NE.2 was a policy "for the supply of housing". The inspector thought that the same considerations applied to the other two policies relied on by the council, all of which were therefore relevant policies within paragraph 49, although he acknowledged that policy NE.4 also performed strategic functions in maintaining the separation and definition of settlements and in landscape protection. He noted also that two of the housing sites in the emerging local plan were in designated "green gaps", which led him to give policy NE.4 reduced weight (paras 31-35).

45. He concluded on this aspect (para 94):

> "94. I have concluded that there is not a demonstrable five-year supply of deliverable housing sites (issue (i)). In the light of that, the weight of policies in the extant RLP relevant to the supply of housing is reduced (issue (ii)). That applies in particular to policies NE.2, NE.4 and RES.5 in so far as their extent derives from settlement boundaries that in turn reflect

> out-of-date housing requirements, though policy NE.4 also has a wider purpose in maintaining gaps between settlements."

46. He considered the application of the Green Gap policy, concluding that there would be "no significant harm to the wider functions of the gap in maintaining the definition and separation of these two settlements" (para 95). His overall conclusion was as follows:

> "101. I conclude that the proposed development would be sustainable overall, and that the adverse effects of it would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no specific policies in the NPPF that indicate that this development should be restricted. In such circumstances, and where relevant development plan policies are out-of-date, the NPPF indicates that permission should be granted unless material considerations indicate otherwise. There are no further material considerations that do so."

47. The council's challenge succeeded before Lang J, who quashed the inspector's decision by an order dated 25 February 2015. In short, she concluded that the inspector had erred in treating policy NE.4 as a relevant policy under paragraph 49, and in seeking "to divide the policy, so as to apply it in part only" (para 63). Richborough's appeal was allowed by the Court of Appeal with the result that the permission was restored. The council appeals to this court.

The Court of Appeal's interpretation

48. Giving the judgment of the court, Lindblom LJ referred to the relevant parts of the NPPF and (at para 21) the three competing interpretations of paragraph 49:

i) *Narrow*: limited to policies dealing only with the numbers and distribution of new housing, and excluding any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority's area.

ii) *Wider*: including both policies providing positively for the supply of new housing and other policies, or "counterpart" policies, whose effect is to restrain the supply by restricting housing development in certain parts of the authority's area.

iii) *Intermediate*: as under (ii), but excluding policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation (as suggested by Ouseley J in the *Barwood Land* case).

49. He discussed the connection between paragraph 49 and the presumption in favour of sustainable development in paragraph 14, which lay in the concept of relevant policies being not "up-to-date" under paragraph 49, and therefore "out-of-date" for the purposes of paragraph 14 (para 30). He explained the court's reasons for preferring the wider view of paragraph 49. He read the words "for the supply of housing" as meaning "affecting the supply of housing", which he regarded as not only the "literal interpretation" of the policy, but "the only interpretation consistent with the obvious purpose of the policy when read in its context". He continued:

> "33. Our interpretation of the policy does not confine the concept of 'policies for the supply of housing' merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed - including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it - that policies of both kinds make the supply what it is." (para 33)

50. The court rejected the "narrow" interpretation, advocated by the councils, which it thought "plainly wrong":

> "It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of promotion or the site allocations by restricting development in parts of the plan area,

> either in a general way - for example, by preventing development in the countryside or outside defined settlement boundaries - or with a more specific planning purpose - such as protecting the character of the landscape or maintaining the separation between settlements." (para 34)

51. Whether a particular policy of a plan was a relevant policy in that sense was a matter for the decision-maker, not the court (para 45). Furthermore

> "46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make 'out-of-date' policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker … Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is 'out-of-date' should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied …"

52. In relation to the Yoxford site, the court agreed with Supperstone J that the inspector had wrongly applied the erroneous "narrow" interpretation. Policies SP 19, 27 and 29, were all relevant policies in that they all "affect the supply of housing land in a real way by restraining it" (paras 51-52). The court also agreed with the judge that the inspector had been mistaken in assuming that the physical limits of the village had been established in the 2013 plan (para 58); and also that he had misapplied paragraph 135 relating to heritage assets (para 65). In that respect there could be no criticism of his treatment of the impact of the development on the local landscape, but what was lacking was

> "… a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a 'heritage asset', and, crucially, the 'balanced judgment' called for by paragraph 135, 'having regard to the scale of any harm or loss and the significance of the heritage asset'." (para 65)

53. In respect of the Willaston site, the court disagreed with Lang J's conclusion that policy NE.4 was not a relevant policy for the supply of housing. The inspector had made no error of law in that respect, and his decision should be restored (paras 69-71).

Discussion

Interpretation of paragraph 14

54. The argument, here and below, has concentrated on the meaning of paragraph 49, rather than paragraph 14 and the interaction between the two. However, since the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the "tilted balance" under paragraph 14, it is important to understand how that is intended to work in practice. The general effect is reasonably clear. In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are "significantly and demonstrably" outweighed by the adverse effects, or where "specific policies" indicate otherwise. (See also the helpful discussion by Lindblom J in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), paras 42ff)

55. It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.

56. If that is the right reading of paragraph 14 in general, it should also apply to housing policies deemed "out-of-date" under paragraph 49, which must accordingly be read in that light. It also shows why it is not necessary to label other policies as "out-of-date" merely in order to determine the weight to be given to them under paragraph 14. As the Court of Appeal recognised, that will remain a matter of planning judgement for the decision-maker. Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the "tilted balance".

Paragraph 49

57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words "policies for the supply of housing" appear to do no more than indicate the category of policies with which we are concerned, in other words "housing supply policies". The word "for" simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word "affecting", which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so *affect* their operation. But that does not make them policies *for* the supply of housing in the ordinary sense of that expression.

58. In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as "out-of-date" to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

59. This may be regarded as adopting the "narrow" meaning, contrary to the conclusion of the Court of Appeal. However, this should not be seen as leading, as the lower courts seem to have thought, to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed.

60. The Court of Appeal was therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph 14. However, it was wrong, with respect, to think that to do so it was necessary to adopt a reading

of paragraph 49 which not only changes its language, but in doing so creates a form of non-statutory fiction. On that reading, a non-housing policy which may objectively be entirely up-to-date, in the sense of being recently adopted and in itself consistent with the Framework, may have to be treated as notionally "out-of-date" solely for the purpose of the operation of paragraph 14.

61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as "out of date", merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not "out of date", but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles.

The two appeals

62. Against this background I can deal relatively shortly with the two individual appeals. On both I arrive ultimately at the same conclusion as the Court of Appeal.

63. It is convenient to begin with the Willaston appeal, where the issues are relatively straightforward. On any view, quite apart from paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011. On my understanding of paragraph 49, the council and the inspector both erred in treating policy NE.2 ("Countryside") as "a policy for the supply of housing". But that did not detract materially from the force of his reasoning (see the summary in paras 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements" (para 94). He recognised that policy NE.4 had a more specific purpose in maintaining the gap between settlements, but he considered that the proposal would not cause significant harm in this context (para 95). His final conclusion (para 101) reflected the language of paragraph 14 (the tilted balance). There is no reason to question the validity of the permission.

64. The Yoxford appeal provides an interesting contrast, in that there was an up-to-date development plan, adopted in the previous year; but its housing supply

policies failed to meet the objectives set by paragraph 47 of the NPPF. The inspector rightly recognised that they should be regarded as "out-of-date" for the purposes of paragraph 14. At the same time, it provides a useful illustration of the unreality of attempting to distinguish between policies for the supply of housing and policies for other purposes. Had it mattered, I would have been inclined to place in the housing category policy SP2, the principal policy for housing allocations. SP 19 (settlement policy) would be more difficult to place, since, though not specifically related to housing, it was seen (as the commentary indicated) as a "planning tool" designed to differentiate between developed areas and the countryside.

65. Understandably, in the light of the judicial guidance then available to him, the inspector thought it necessary to make the distinction, and to reflect it in the planning balance. He categorised both SP 19 and SP 27 as non-housing policies, and for that reason to be regarded as "up-to-date" (see para 35 above). Under the Court of Appeal's interpretation this was an erroneous approach, because each of these policies "affected" the supply of housing, and should have been considered out-of-date for that reason. On my preferred approach his categorisation was not so much erroneous in itself, as inappropriate and unnecessary. It only gave rise to an error in law in so far as it may have distorted his approach to the application of paragraph 14.

66. As to that I agree with the courts below that his approach (through no fault of his own) was open to criticism. Having found that the settlement policy was up-to-date, and that the boundary had been approved in the recent plan, he seems to have attached particular weight to the fact that it had been defined in "the very recently adopted Local Plan" (para 37 above). I would not criticise him for failing to record that it had been carried forward from the previous plan. In some circumstances that could be a sign of robustness in the policy. But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed its supposed status as an "up-to-date" policy under paragraph 49 to give it added weight. It is true that he also considered the merits of the site (quite apart from the plan) as providing a "strong and definite boundary" to the village (para 20). But I am not persuaded that this is sufficient to make it clear that the decision would have been the same in any event.

67. I do not, however, agree with the Court of Appeal's criticisms of his treatment of the Heritage Asset policy. Paragraph 10 of his letter (summarised at para 36 above) is in my view a faithful application of the guidance in paragraph 215 of the Framework. That does not, and could not, suggest that even "saved" development plan policies are simply replaced by the policies in the Framework. What it does is to indicate that the weight to be given to the saved policies should be assessed by reference to their degree of consistency with the Framework. That is what the

inspector did. Having done so he was entitled to be guided by the policies as stated in the saved plans, and not treat them as replaced by paragraph 135.

68. In any event, in so far as there needs to be a "balanced judgement", which the Court of Appeal regarded as "crucial" (para 65), that seems to me provided by the last section of his letter, headed appropriately "the planning balance". Overall the letter seems to me an admirably clear and carefully constructed appraisal of the relevant planning issues, in the light of the judicial guidance then available. It is with some reluctance therefore that I feel bound to agree with the Court of Appeal that the decision must be quashed, albeit on narrower grounds. The result, is that the order of Supperstone J will be affirmed, and the planning appeal will fall to be re-determined.

Conclusion

69. For these reasons I would dismiss both appeals.

LORD GILL: (with whom Lord Neuberger, Lord Clarke and Lord Hodge agree)

70. I agree with Lord Carnwath's conclusions on the decision that is appealed against and with his views as to the disposal of these appeals. I only add some comments on the approach that should be taken in the application of the National Planning Policy Framework (the Framework) in planning applications for housing development.

71. These appeals raise a question as to the respective roles of the courts and of the planning authorities and the inspectors in relation to guidance of this kind; and a specific question of interpretation arising from paragraph 49 of the Framework.

72. In *Tesco Stores Ltd v Dundee City Council, (ASDA Stores Ltd intervening)* ([2012] UKSC 13) Lord Reed considered the former question in relation to development plan policies. He expressed the view, as a general principle of administrative law, that policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context (at para 18). The proper context, in my view, is provided by the over-riding objectives of the development plan and the specific objectives to which the policy statement in question is directed. Taking a similar approach to that of Lord Reed, I consider that it is the proper role of the courts to interpret a policy where the meaning of it is contested, while that of the planning authority is to apply the policy to the facts of the individual case.

73. In my opinion, the same distinction falls to be made in relation to guidance documents such as the Framework. In both cases the issue of interpretation is the same. It is about the meaning of words. That is a question for the courts. The application of the guidance, as so interpreted, to the individual case is exclusively a planning judgment for the planning authority and the inspectors.

74. The guidance given by the Framework is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development (paras 6-10) and to apply those principles by more specific prescriptions such as those that are in issue in these appeals.

75. In my view, such prescriptions must always be interpreted in the overall context of the guidance document. That context involves the broad purpose of the guidance and the particular planning problems to which it is directed. Where the guidance relates to decision-making in planning applications, it must be interpreted in all cases in the context of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, to which the guidance is subordinate. While the Secretary of State must observe these statutory requirements, he may reasonably and appropriately give guidance to decision-makers who have to apply them where the planning system is failing to satisfy an unmet need. He may do so by highlighting material considerations to which greater or less weight may be given with the over-riding objective of the guidance in mind. It is common ground that such guidance constitutes a material consideration (Framework, para 2).

76. In relation to housing, the objective of the Framework is clear. Section 6, "Delivering a wide choice of high quality homes", deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is "to boost significantly the supply of housing". To that end it requires planning authorities (a) to ensure *inter alia* that plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing

delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing, describing how they will maintain delivery of a five-years supply of housing land to meet their housing target; and that they should set out their own approach to housing density to reflect local circumstances. The message to planning authorities is unmistakeable.

78. These requirements, and the insistence on the provision of "deliverable" sites sufficient to provide the five years' worth of housing, reflect the futility of authorities' relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period.

79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.

80. This is the background to the interpretation of paragraph 49. The paragraph applies where the planning authority has failed to demonstrate a five-years supply of deliverable sites and is therefore failing properly to contribute to the national housing requirement. In my view, paragraph 49 derives its content from paragraph 47 and must be applied in decision-making by reference to the general prescriptions of paragraph 14.

81. To some extent the issue in these cases has been obscured by the doctrinal controversy which has preoccupied the courts hitherto between the narrow and the wider interpretation of the words "relevant policies for the supply of housing". I think that the controversy results from too narrow a focus on the wording of that paragraph. I agree with the view taken by Lindblom LJ in his lucid judgement that the task of the court is not to try to reconcile the various first instance judgments on the point, but to interpret the policy of paragraph 49 correctly (at para 23). In interpreting that paragraph, in my opinion, the court must read it in the policy context to which I have referred, having in view the planning objective that the Framework seeks to achieve.

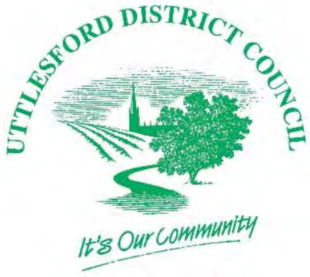
82. I regret to say that I do not agree with the interpretation of the words "relevant policies for the supply of housing" that Lindblom LJ has favoured. In my view, the straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view. The real issue is what follows from that.

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.

84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.

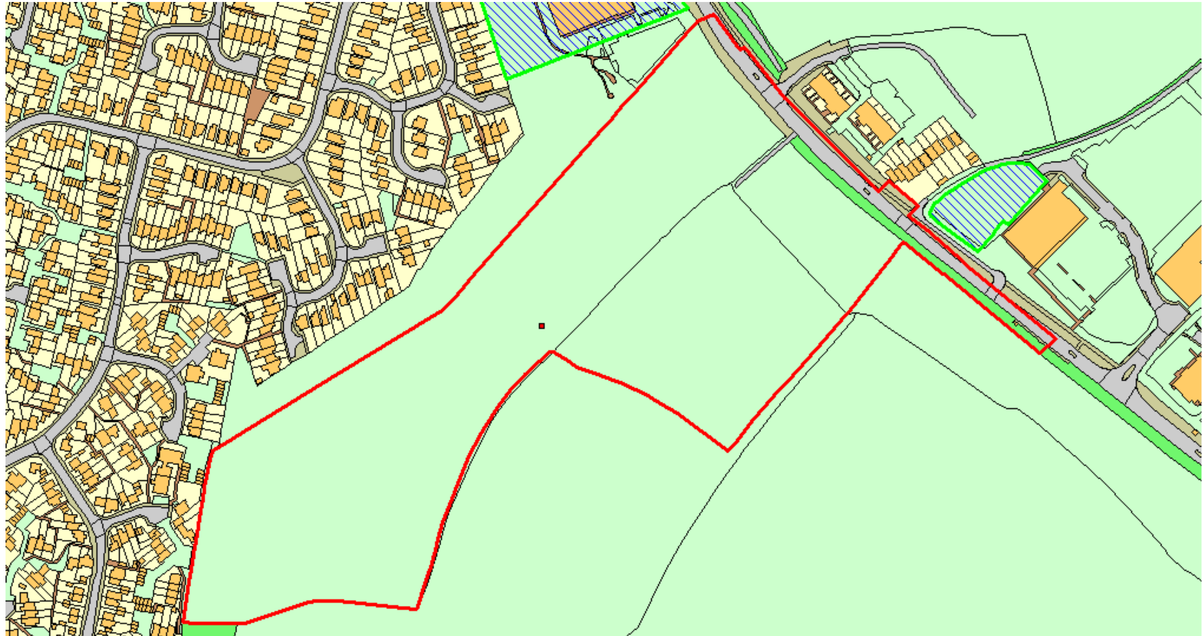
85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply. The decision-maker must next turn to the general provisions in the second branch of paragraph 14. That takes as the starting point the presumption in favour of sustainable development, that being the "golden thread" that runs through the Framework in respect of both the drafting of plans and the making of decisions on individual applications. The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will "significantly and demonstrably" outweigh the benefits of the proposal. Whether the adverse impacts of a grant of permission will have that effect is a matter to be "assessed against the policies in the Framework, taken as a whole". That clearly implies that the assessment is not confined to environmental or amenity considerations. The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to "specific policies in the Framework" cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.

86. Although my interpretation of the guidance differs from that of the Court of Appeal, I have come to the same conclusions in relation to the disposal of these cases. I agree with Lord Carnwath that in the Willaston decision, notwithstanding an erroneous interpretation of policy NE.2 as being a policy for the supply of housing, the Inspector got the substance of the matter right and accurately applied paragraph 14. I agree too with Lord Carnwath, for the reasons that he gives (at para 68), that in the Yoxford decision the Inspector made a material, but understandable, error. I would therefore dismiss both appeals.



ITEM NUMBER:	
PLANNING COMMITTEE DATE:	**11/1/2023**
REFERENCE NUMBER:	**UTT/22/3258/PINS**
LOCATION:	**Land To The West Of, Thaxted Road, Saffron Walden**

SITE LOCATION PLAN:



© Crown copyright and database rights 2021 ordnance Survey 0100018688
Organisation: Uttlesford District Council   Date:19/12/2022

PROPOSAL:	**Consultation on S62A/2022/0014- Outline application with all matters reserved except for access for up to 170 dwellings, associated landscaping and open space with access from Thaxted Road**
APPLICANT:	**Kier Ventures Ltd**
AGENT:	**Mr S Brown, Woolf Bond Planning**
DATE CONSULTATION RESPONSE DUE:	**17th January 2023**
CASE OFFICER:	**Chris Tyler**
NOTATION:	**Outside Development Limits**
REASON THIS APPLICATION IS ON THE AGENDA:	**This is a report in relation to a major (full) planning application submitted to the Planning Inspectorate (PINS) for determination.** **Uttlesford District Council (UDC) has been designated by Government for poor performance in relation to the quality of decisions making on major applications.** **This means that the Uttlesford District Council Planning Authority has the status of a consultee and is not the decision maker. There is limited time to comment. In total 21 days.**

---

1 RECOMMENDATION

That the Director of Planning be authorised to advise the Planning Inspectorate that Uttlesford District Council make the following observations on this application: Details are to be outlined by the Planning Committee.

2 SITE LOCATION AND DESCRIPTION:

2.1 The proposed application site is located to the south west of Thaxted Road on the edge of the town of Saffron Walden. The site is approximately 7.8 hectares in size and its topography consists of a modest slope falling from the rear western boundary to the front eastern boundary.

2.2 The site is formed by three distinct fields currently in arable production and free of any established built form. Mature vegetation is the form of established hedgerows and medium size trees are located along the boundaries of the site and internally splitting the fields.

2.3 Immediately adjacent to the northern boundary is a small area of public open space with residential housing, a community skate park, and the Lord Butler Leisure Centre. To the west lies further residential housing and a primary school. New development in the form of a retail park consisting of commercial premises, restaurants and a hotel, along with new residential housing is located on the opposite side of Thaxted Road to the east.

2.4 In terms of local designations, the site is defined as being outside of the settlement boundary of the Town of Saffron Walden and thereby located in the countryside. The Environmental Agency Flood Risk Maps identifies a site to be located within 'Flood Zone 1'. The site does not fall within or abuts a conservation area, although a grade two listed building known as 'The Granary' lies to the south west of the site. There are no local landscape designations within or abutting the site.

3. PROPOSAL

3.1 This applications seeks outline planning permission with all matters reserved except for access for up to 170 dwellings, associated landscaping and open space with a new access from Thaxted Road.

4. ENVIRONMENTAL IMPACT ASSESSMENT

4.1 The development does not constitute 'EIA development' for the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

5. RELEVANT SITE HISTORY

5.1

Reference	Proposal	Decision
UTT/12/6004/SCO	Request for screening opinion in respect of proposed residential development (225 dwellings) including extension to Stake Park	Refused,3/6/2016al lowed at appeal
UTT/13/2060/OP	Outline application with all matters reserved except access for residential development of up to 300 dwellings, pavilion building, extension to skate park and provision of land for open space/recreation use, including an option for a new primary school on a 2.4 ha site.	Application Refused 2nd May 2014). (Dismissed at Appeal Ref: APP/C1570/A/2221 494 2nd June 2015).

6. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION

6.1 The LPA has engaged in pre application discussion with the planning agent concluding that in light of the above appraisal and for the reasons highlighted, it is officers' opinion that the principle of the development of the site could be considered appropriate when one applies the tilted balance.

However, this would involve the applicant to provide substantial evidence as part of the submission to clearly demonstrate that the benefits of the proposals would outweigh the potential harm that the proposals may cause.

At this stage, it is understood that further work is being undertaken in the background in the preparation of the supporting documentation to help illustrate that any perceived/potential negative harm is avoided, reduced, or offset as well as the benefits that the scheme will manufacture.

As such, officers are not in the position as to the potential recommendation as all final information and documentation would need to be viewed individually and collectively so that a full and quality assessment can be carried out.

6.2 It is confirmed a statement of community involvement has been submitted with the application advising the engagement with the community via electronic feedback between the 28th October and 13th November 2022. 1110 people in total provided feedback, the majority of the comments received were focused on the following:

Increase traffic congestion,
The impact on the local infrastructure,
Environmental concerns,
Support and opposition to the development,

Kier Ventures has undertaken consultation to make sure local residents, and the wider community have been engaged ahead of the submission of the planning application.

7. STATUTORY CONSULTEES

7.1 All statutory consultees are required to write directly to the Planning Inspectorate (PINS) (and not the Local Planning Authority) with the final date for comments being 30th December 2022.

7.2 Accordingly, it should be noted that a number of considerations/advice normally obtained from statutory consultees to assist the Local Planning Authority in the consideration of a major planning application have not been provided and are thereby not included within this report.

7.3 The Health & Safety Executive

7.4 The site is not within the consultation distance of a major hazard site or major hazard pipeline.

8 PARISH COUNCIL

8.1 These should be submitted by the Parish Council directly to PINS within the 21-day consultation period being the 30th December 2022.

No comments have been received from Saffron Walden Town Council.

9 CONSULTEE RESPONSES

9.1 All consultees' comments are required to be submitted directly to PINS (and not the Local Planning Authority) within the 21-day consultation period, which closes 30th December 2022. Accordingly, it should be noted that considerations/advice normally obtained from consultees to assist in the determination of a major planning application have not been provided and are thereby not included within this report.

Notwithstanding, the following comments have been received: -

9.2 UDC Housing Enabling Officer

9.2.1 The affordable housing provision on this site will attract the 40% policy requirement as the site is for up to 170 units. This amounts to 68 affordable housing units and it is expected that these properties will be delivered by one of the Council's preferred Registered Providers.

The tenure split of the affordable housing provision needs to be 70% for affordable rent, 25% for First Homes and 5% for shared ownership. The mix of the affordable housing can be agreed if outline planning approval is granted for the development.
The First Homes will need to be delivered at or below a price cap of £250,000 after a 30% developer contribution has been applied.

9.3 Place Services - Heritage

9.3.1 No objections,

The closest designated heritage asset is the Barn at Herberts Farm, there is a large field gap between this asset and the proposals. The proposals will change the setting of the listed building however given the distance between the site due to the existing fields, plus mitigation through landscaping, I do not consider the proposals to result in harm to the significance of the listed building. I also do not consider the proposals to result in harm to the significance of the Saffron Walden Conservation Area.

9.4 Place Services Archaeology

9.4.1 No objections subject to conditions for the submission and approval of a programme of archaeological investigation has been summited and approved by the LPA.

9.5 Essex Police

9.5.1 No Objection, we would require the finer detail such as the proposed lighting, landscaping, boundary treatments and physical security measures.

9.6 Cadent Gas

9.6.1 No objection.

9.7 UK Power Networks

9.7.1 No Objection.

10. REPRESENTATIONS

10.1 The application was publicised by sending letters to adjoining and adjacent occupiers and by displaying a site notice. Anyone wishing to make a representation (whether supporting or objecting) are required to submit their comments directly to PINS within the 21-day consultation period ending 9th January 2023.

UDC has no role in co-ordinating or receiving any representations made about this application. It will be for PINS to decide whether to accept any representations that are made later than 21 days.

Notwithstanding the above, PINS has granted Uttlesford District Council an extension until 17 January 2022 to submit comments due to the Council's scheduled timetable for Planning Committee meetings.

11. MATERIAL CONSIDERATIONS

11.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the "Considerations and Assessments" section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.

11.2 Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to

(a)The provisions of the development plan, so far as material to the application,:
(aza) a post-examination draft neighbourhood development plan, so far as material to the application,
(b) any local finance considerations, so far as material to the application, and
(c) any other material considerations.

11.3 Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, or, as the case may be, the Secretary of State, in considering whether to grant planning permission (or permission in principle) for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses or, fails to preserve or enhance the character and appearance of the Conservation Area.

11.4 The Development Plan

11.4.1 Essex Minerals Local Plan (adopted July 2014)
Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)
Uttlesford District Local Plan (adopted 2005)
Felsted Neighbourhood Plan (made Feb 2020)
Great Dunmow Neighbourhood Plan (made December 2016)
Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)
Thaxted Neighbourhood Plan (made February 2019)
Stebbing Neighbourhood Plan (made 19 July 2022)
Saffron Walden Neighbourhood Plan (made October 2022)

12. <u>POLICY</u>

12.1 National Policies

12.1.1 National Planning Policy Framework (2021)

12.2 Uttlesford District Plan 2005

S7 – The Countryside
GEN1 – Access
GEN2 – Design
GEN3 – Flood Protection
GEN4 – Good Neighbourliness
GEN5 – Light Pollution
GEN6 – Infrastructure Provision
GEN7 – Nature Conservation
GEN8 – Vehicle Parking Standards
ENV1 – Design of Development within Conservation Areas

ENV2 – Development Affecting Listed Buildings
ENV3 – Open Spaces and Trees
ENV4 – Ancient Monuments and Sites of Archaeological Interest
ENV5 – Protection of Agricultural Land
ENV7 – Protection of the Natural Environment
ENV8 – Other Landscape Elements of Importance
ENV10 – Noise Sensitive Developments
ENV12 – Groundwater Protection
ENV14 – Contaminated Land
H1 – Housing Development
H9 – Affordable Housing
H10 – Housing Mix

12.3 Supplementary Planning Document or Guidance

Uttlesford Local Residential Parking Standards (2013)
Essex County Council Parking Standards (2009)
Supplementary Planning Document- Accessible homes and play space homes Essex Design Guide
Uttlesford Interim Climate Change Policy (2021)

13 CONSIDERATIONS AND ASSESSMENT

13.1 The issues to consider in the determination of this application are:

13.2 **A) Principle Of Development**
B) Highways Considerations
C) Design, Landscape and Heritage
D) Housing Mix and Tenure
E) Flooding
F) Energy And Sustainability
G) Air Quality and Pollution
H) Ecology
I) Planning Obligations
J) Other matters
K) Planning Balance and Conclusion

13.3 (A) Principle of development

13.3.1 The application site is located outside the town of Saffron Walden where the principle of development would not generally supported as outlined in Policy S7 of the Uttlesford Local Plan.

13.3.2 However, regard must be given the fact that the Uttlesford Local Plan is not up to date and significantly pre – dates the National Planning Policy Framework 2021.

13.3.3 Additionally, the Council as Local Planning Authority is not currently able to demonstrate a 5-year housing land supply (5YHLS). Both of the

aforementioned factors are cited in paragraph 11 of the NPPF as grounds to grant planning permission unless:

i. the application of policies in this Framework that protect areas or assets, or particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

13.3.4 With regard to (i) above Guidance is given in the NPPF re the areas /assets of particular importance that provide a clear reason for refusing the proposed development. These areas are habitat sites and/or designated Sites of Special Scientific Interest, land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park or defined as heritage Coast; irreplaceable habitats; designated heritage assets and areas at risk of flooding or coastal change

13.3.5 The application site is not located within an area that is specifically protected as outlined in (i) above.

13.3.6 Paragraph 11 of the NPPF requires the decision maker to grant planning permission unless having undertaken a balancing exercise there are (a) adverse impacts and (b) such impacts would 'significantly and demonstrably' outweigh the benefits of the proposal

13.3.7 The proposal seeks outline planning permission for up to 170 residential units. This quantum of development would make a valuable contribution to the district's housing supply. In principle the proposal may be acceptable subject to an assessment of sustainability.

13.3.8 There are three mutually dependent strands to sustainability which need to be jointly considered in the assessment of this application.

13.3.9 Economic:

The NPPF identifies this is contributing to building a strong, responsive and competitive economy that supports growth and innovation and identifies and co-ordinates development requirements including the provision of infrastructure.

The NPPF identifies this is contributing to building a strong, responsive and competitive economy that supports growth and innovation and identifies and co-ordinates development requirements including the provision of infrastructure. In economic terms the proposal would have short – term benefits to the local economy in terms of localised construction activity. It would also have medium/long term benefits in terms of local support of services and infrastructure provision arising from the proposed residential development.

13.3.10 Social:

The NPPF identifies this is supplying homes in a high-quality built environment with accessible local services that reflect community need and wellbeing. In social terms, the proposal would make a reasonable contribution to local/regional/national housing supply in an area that has a reasonable level of public transport accessibility. The proposal would also make a suitable contribution to the provision of affordable housing. Additional social benefits include the provision of public open space/play /recreation areas.

13.3.12 Environmental:

The NPPF identifies this as making effective use of land, seeking to protect and enhance the natural and built environment, improving biodiversity, minimising waste and pollution and mitigating and adapting to climate change.

13.3.13 The site is currently undeveloped, and the proposal will therefore result in the loss of land that is in agricultural use. The proposal seeks to compensate for this loss with an indicative housing density of 39 dwellings per hectare providing a variety of landscape features both within the site and around its perimeters; together with the provision of a SUDS, indicative internal roads are wide, and include planted areas for landscape enhancement.

13.3.14 The proposed development will included landscaping edge to the boundaries of the site, in particular the eastern boundary that will further enclose the development in conjunction with the ancient woodland to the south. The scheme secures high quality residential environment together with extensive areas of open space, a children's play park, cycle path and walking routes.

13.3.15 It is acknowledged that the site is situated outside of the settlement boundaries. Policy S7 of Local Plan seeks to protect the Countryside and would normally preclude the location of this form of development in this location.

13.3.16 This specifies that the countryside will be protected for its own sake and planning permission will only be given for development that needs to take place there or is appropriate to a rural area. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there. A review of policy S7 for its compatibility with the NPPF has concluded that it is partially compatible but has a more protective rather than positive approach towards development in rural areas. It is not considered that the development would meet the requirements of Policy S7 of the Local Plan and that, as a consequence the proposal is contrary to that policy.

13.3.17 The landscape of the site itself is not particularly unusual and contains features which are present within the wider area. This does not mean however, that the site has no value, and that it is regarded as having a medium to high sensitivity to change.

13.3.18 The proposal would introduce built form onto an area of open countryside. The application would elongate development into the open countryside where it is currently devoid of buildings.

13.3.19 The development of the site will impact upon the cross-valley views and characteristic views across the meadow fields in the locality that would be widely seen from public vantage points including the Public Rights of Way (PRoW) to the south and north of the site, residential receptors to the north and west, and nearby highways

13.3.20 The proposals will inevitably cause some level of harm upon the character and openness of this part of the countryside due to the changing nature of the site from arable fields to one consisting of new built form of a substantial size.

13.3.21 The application includes the submission of a Landscape and Visual Appraisal (FPCR Environment and Design Ltd- Nov 2022) and confirms that the proposal would be similar in character to the existing residential development to the west, and the retention of the existing woodlands and trees will further mitigate the appearance of the scheme. The Landscape and Visual Appraisal concludes that the receiving landscape is one that can accommodate change (given the context provide by existing built form), with the consequential effects of the proposed development it is considered that the site and the immediate landscape is one that could accommodate change as presented by the proposed development and the consequential effects would not result in any unacceptable level harm to landscape character or visual resources.

13.3.22 As proposed a well-designed residential development situated to the west of Thaxted Road can be accommodated within the local landscape with minimal adverse impact upon the wider landscape character and visual resources. Within the site proposed built development would create a high quality scheme that relates well to the adjacent settlement and does not harm Saffron Walden's character. A cohesive green infrastructure framework is proposed, providing an attractive setting to the proposed development. Vegetation cover would be increased along retained field hedgerow boundaries, ensuring that the proposed built development could be well integrated within the local landscape.

13.3.23 ULP policy ENV5 considers the protection of agricultural land and advises development of best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required,

developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.

13.3.24 The application site comprises of Grade 2 land which is considered good quality agricultural land. In terms of policy ENV5, this policy is only partly consistent with the Framework and the requirement to undertake in effect a sequential approach is not consistent with the Framework, however the Framework does provide significant weight to the protection of the best and most versatile agricultural land. Although the proposal will include the permanent loss of the agricultural land the benefits arising from the proposed development could be substantial and the benefits of housing delivery, affordable housing and the other benefits set out in section K of this report could all individually carry substantial weight.

13.3.25 Having regard to the details set out in the submitted Landscape and Visual Appraisal, location of the application site to nearby services and the lack of a 5YHLS, the proposal is considered likely to be acceptable in principle.

13.4. (B) Highways Considerations.

13.4.1 Policy GEN1 of the Local Plan sets out that development will only be permitted if the following criteria is met: -

a) Access to the main road network must be capable of carrying the traffic generated by the development safely.

b) The traffic generated by the development must be capable of being accommodated on the surrounding transport network

c) The design of the site must not compromise road safety and must take account of the needs of cyclists, pedestrians, public transport users, horse riders and people whose mobility is impaired.

d) It must be designed to meet the needs of people with disabilities if it is development to which the general public expect to have access.

e) The development encourages movement by means other than driving a car.

13.4.2 The means of access is considered in this outline planning application. Vehicular access to the proposed dwellings will be provided by a single means of access from Thaxted Road. The proposed arrangements for vehicular access to the Site that is proposed to take the form of a giveway controlled priority junction off the B184 Thaxted Road sited opposite The Kilns and 60 metres (centre to centre) south-east of the recently constructed traffic signals junction serving the development to the east of Thaxted Road.

13.4.3 The proposed vehicular access involves widening of the B184 Thaxted Road within publicly maintainable highway land, adjacent to the Site to

enable a ghosted right turn lane into the Site to be accommodated as well as maintaining the existing ghosted right turn lane into The Kilns. These works will also require the removal and replacement of the existing traffic island to the north-west of The Kilns.

13.4.4 The proposal which seeks consent for 170 residential units will, cumulatively lead to an increase in traffic movements within the locality. The submitted Transport Assessment advises the proposal could be expected to generate 621 daily vehicle movements. However, in mitigation the applicants suggest that the application site, within walking and distance from the facilities available within Saffron Walden, gives a real opportunity for the majority of trips to be made on foot and by bicycle thereby contributing towards sustainable modes of transport and corresponding reduction in traffic emissions. At this stage however, as no comments are available from Essex County Council as Highway Authority it is not possible to assess whether vehicular movements associated with this proposed development is acceptable.

13.4.5 There will be a need to comply with the Council's parking standards as outlined in the Uttlesford Local Residents Parking Standards (December 2012) and the Essex County Council's Parking Standards (September 2009. There is a requirement for a minimum of 2 spaces per dwelling (and 3 spaces per dwelling for dwellings with 4+ bedrooms) and 0.25 spaces per dwelling for visitor parking. Cycle provision will also be required if no garage or secure parking is provided within the curtilage of the dwelling. These are matters that will be considered further at detailed stage.

13.4.6 The proposed access arrangements for this outline planning application and the highway impact associated with the proposed development fall to be considered by Essex County Council as the highway authority. However due to the particular nature of this application process; wherein comments are to be provided directly to the Planning Inspectorate for decision making; the Local Planning Authority are unable to make detailed comments on the highway aspect of the proposed development. Details regarding the parking provision for this scheme will be considered at reserved matters stage when detailed layouts have been provided.

13.5 C) Design, Landscape and Heritage.

13.5.1 This application seeks consent for the principle of the development and the access only at this stage; with scale, layout, external appearance and landscape considerations being reserved for future consideration.

13.5.2 The guidance set out in Section 12 of National Planning Policy Framework outlines that proposed development should respond to the local character, reflect the identity of its surroundings, optimise the potential of the site to accommodate development and is visually attractive as a result of good architecture.

13.5.3 Local Plan Policy GEN2 seeks to promote good design requiring that development should meet with the criteria set out in that policy. Regard should be had to the scale form, layout and appearance of the development and to safeguarding important environmental features in its setting to reduce the visual impact of the new buildings where appropriate. Furthermore, development should not have a materially adverse effect on the reasonable occupation and enjoyment of residential properties as a result of loss of privacy, loss of daylight, overbearing or overshadowing.

13.5.4 The wider landscape to the south of the site is characterised by gently undulating agricultural fields along the Cam Valley. Vegetation cover along field boundaries, lanes and track varies, typically including hedgerows, with occasional copses, tree belts and woodland. Providing an appropriate relationship with the existing settlement edge and wider rural character can be achieved by respecting the framework of established streets, public open space and field hedgerows and by setting development back from site boundaries to minimise the visual impact.

13.5.5 A cohesive green infrastructure framework is proposed, providing an attractive setting to the proposed development. Vegetation cover would be increased along retained field hedgerow boundaries, ensuring that the proposed built development would be well integrated within the local landscape.

13.5.6 The application has been submitted with an illustrative masterplan and land use parameter plan and green infrastructure parameter plan demonstrating potentially how this development form could be accommodated on the site. The extent to which these aspirations have been achieved cannot be assessed at this stage, due to the lack of detailed information including comments from the Council's Landscape Officer.

13.5.7 The illustrative plans indicates that there is a potential to provide the number of units proposed; with buildings generally at two storeys. However, the Illustrative Masterplan does provide an opportunity for two and a half storey houses in the eastern part of the site. All of the dwellings proposed in the western part of the site are proposed as a maximum of two storeys in height, with some bungalows proposed to the higher parts of the site to the south-west. Apartment buildings are to be designed as three storey focal buildings; and placed in key locations where they can act as visual markers to streets and spaces.

13.5.8 The Illustrative Site Plan provides for up to 170 dwellings which equates to a gross density of 39dph. However further consideration is required of the overall layout details including pedestrian connectivity to the site and surrounding area. It's also considered that and aspects of the landscape features of the proposals may need further consideration. However, these are matters that would be considered in future submissions, should consent be granted.

13.5.9 In regards to heritage, the application site lies within the setting the grade two listed building known as 'The Granary'. Policy ENV2 seeks to protect the historical significance, preserve and enhance the setting of heritage assets. The guidance contained within Section 16 of the NPPF, 'Conserving and enhancing the historic environment', relates to the historic environment, and developments which may have an effect upon it. Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

13.5.10 Paragraphs 201 and 202 address the balancing of harm against public benefits. If a balancing exercise is necessary (i.e. if there is any harm to the asset), considerable weight should be applied to the statutory duty where it arises. Proposals that would result in substantial harm or total loss of significance should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss (as per Paragraph 201). Whereas, Paragraph 202 emphasises that where less than substantial harm will arise as a result of a proposed development, this harm should be weighed against the public benefits of a proposal, including securing its optimum viable use.

13.5.11 A Heritage Statement has been submitted with the application and advises the scheme will not result in any harm to the setting of any listed buildings and as such, heritage is not a footnote 7 consideration that could otherwise disengage the presumption in favour of sustainable development. The Council's Heritage Consultant has reviewed the proposal and advises the proposals will change the setting of the listed building however given the distance between the site due to the existing fields, plus mitigation through landscaping, it is not considered the consider the proposals to result in harm to the significance of the listed building. I also do not consider the proposals to result in harm to the significance of the Saffron Walden Conservation Area.

13.5.12 Policy ENV4 seeks to ensure development proposals preserve and enhance sites of known and potential archaeological interest and their settings. Place Services (Archaeology) have provided comments advising the Historic Environment Record shows that the proposed development lies in an area of potential archaeological deposits directly southwest of Thaxted, southeast of the historic settlement of Saffron Walden. As such a condition for trial trenching is recommended in line with the National Planning Policy Framework paragraph 205.

13.6 D) Housing Mix and Tenure

13.6.1 In accordance with Policy H9 of the Local Plan, the Council has adopted a housing strategy which sets out Council's approach to housing provisions. The Council commissioned a Strategic Housing Market

Assessment (SHMA) which identified the need for affordable housing market type and tenure across the district. Paragraph 62 of the Framework requires that developments deliver a wide choice of high-quality homes, including affordable homes, widen opportunities for home ownership and create sustainable, inclusive, and mixed communities.

13.6.2 The delivery of affordable housing is one of the Councils' corporate priorities and will be negotiated on all sites for housing. The Councils policy requires 40% on all schemes over 0.5 ha or 15 or more properties. The affordable housing provision on this site will attract the 40% policy requirement as the site is for up to 170 dwellings. This amounts to up to 68 affordable homes. The applicant is aware of this requirement. This weighs in favour of the scheme.

13.6.3 Layout is not being considered at this stage and as such there will be further opportunity to ensure that an appropriate housing mix is secured. Notwithstanding it is the Councils' policy to require 5% of the whole scheme to be delivered as fully wheelchair accessible (building regulations, Part M, Category 3 homes). A condition requiring this will be suggested if the Inspector is mindful of granting consent.

13.7 E) Flooding

13.7.1 The NPPF states that inappropriate development in areas of high-risk flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.

13.7.2 The NPPF states that inappropriate development in areas of high-risk flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.

13.7.3 The application is supported by an outline Flood Risk Assessment and Drainage Strategy. This outlines that the proposed development will follow best practice regarding site drainage to ensure that surface water runoff from the development is managed. The surface water run-off from the site will be directed towards and drained by areas of permeable paving, under drained swales, attenuation ponds and an infiltration basin. It is also proposed that during the detailed design, raingardens and tree pits are considered, to increase the benefits to the site. It is proposed that foul water should be disposed of by connecting to the extended sewer in agreement with the relevant asset owner.

13.7.4 The proposals will be assessed by Essex County Council who are the lead local flood authority in respect to matters of relation surface water drainage and to flooding. The authority will provide written advice directly to PINs.

13.8 F) Energy And Sustainability

13.8.1 Council's supplementary planning document 'Uttlesford Interim Climate Change Policy (2021)' requires new development proposals to demonstrate the optimum use of energy conservation and incorporate energy conservation and efficiency measure. The applicant has provided a Sustainability Statement which outlines potential technologies and strategies to achieve and met the targets in the SPD.

13.8.2 All new development, as part of a future growth agenda for Essex, should provide climate friendly proposals in terms climate change mitigation and adaptation measures.

13.8.3 However, given the outline nature of the application under consideration which is seeking consent for access only at this stage; it is not possible to provide a detailed analysis of this aspect of the scheme at this stage.

13.9 G) Air Quality and Pollution

13.9.1 Policy ENV13 of the adopted local plan states that new development that would involve users being exposed on an extended long-term basis to poor air quality outdoor near ground level will be refused.

13.9.2 The Air Quality Assessment ("AQA") considers the potential of the Proposed Development to cause impacts at sensitive locations. These may include fugitive dust emissions associated with construction works and road traffic exhaust emissions from vehicles travelling to and from the Proposed Development during the operational phase.

13.9.3 The submitted Air Quality Assessment advice the proposed development has the potential to expose future users to elevated pollution levels in the vicinity of the Site during operation. Model results indicates that future users are unlikely to be exposed to pollutant concentrations that exceed Air Quality Objectives (AQOs).

13.9.4 The use of Electric Vehicle Charging Points will help mitigate against climate change and harmful impacts to air quality.

13.9.5 Policy ENV14 requires appropriate investigation and remediation of sites that could be harmful to future users. Given the previous use of the site and the nearby uses, there may be the potential that the site contains contaminated deposits. It is the developer's responsibility to ensure that final ground conditions are fit for the end use of the site in accordance with policy ENV14 of the adopted Local Plan. It I noted no contamination assessment has been submitted with the application.

13.9.6 The application has been submitted with an Acoustic Assessment which seeks to demonstrate that the proposed residential development can be provided in this location without harm to residential amenity. It concludes the assessment has demonstrated that incident ambient noise levels

around the proposed residential development should not be viewed as a constraint for the planning application.

13.9.7 An assessment of air quality, noise pollution and land contamination cannot be undertaken without considered input from Environmental Health specialists. Any comments from Environmental Health are required to be submitted directly to PINS.

13.10 H) Ecology

13.10.1 The application has been accompanied by an Ecological Assessment and supplementary supporting documents which indicates the impact to habitat and protected species primarily comprise the minor loss of hedgerow, which is suitable habitat for reptile, GCN, and bats, and the loss of the arable land, which comprises suitable breeding habitat for skylark. The loss of what is mostly habitat of negligible ecological importance and the introduction of new areas of more valuable habitat is considered to provide an overall long-term benefit to biodiversity and protected species on the site. The proposals demonstrate that a 10% BNG is achievable on-site. This assessment is based on the loss of predominantly arable land and a minor removal of hedgerow, replaced by the proposed planting areas of grassland, mixed scrub, and SuDS features.

13.10.2 Due to the nature of the application process; wherein consultee have not been obtained (and will be submitted directly to the Planning Inspectorate); it is not possible for the Local Planning Authority to provide further details on this aspect of the development.

13.10.3 Paragraph 56 of the NPPF sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. This is in accordance with Regulation 122 of the Community Infrastructure Levey (CIL) Regulations.

13.10.4 Relevant statutory and non-statutory consultees will directly provide PIN’s their formal consultation response in respect to the proposals which may or may not result in the need for obligations to be secured by a Section 106 Legal Agreement. Such matters that may arise include:

On-site provision

- On-site provision of affordable housing (40%),
- On-site public open space, including ongoing maintenance,
- Travel Plan,
- Provision of a Green Orbital Route through the Site,
- Car club.

Off-site provision

- Provision of public open space,

- Healthcare care,
- Education (early years and primary),
- Off-site highway works, including the provision of a shared footway and cycleway improvements on the B184 Thaxted Road.
- New bus stops on the B184 Thaxted Road, to include passenger facilities, step-free access, seating and real-time passenger information)

13.11 J) Other matters

13.11.1 From 1 October 2013 the Growth and Infrastructure Act inserted two new provisions into the Town and Country Planning Act (1990) ('the Act'). Section 62A allows major applications for planning permission, consents and orders to be made directly to the Planning Inspectorate (acting on behalf of the Secretary of State) where a local planning authority has been designated for this purpose.

13.11.2 The Planning Inspectorate will appoint an Inspector to determine the application. The Inspector will be provided with the application documents, representations and any other relevant documents including the development plan policies. Consultation with statutory consultees and the designated LPA will be carried out by the Planning Inspectorate.

13.11.3 The LPA also must carry out its normal notification duties, which may include erecting a site notice and/or writing to the owners/occupiers of adjoining land.

13.11.4 The LPA is also a statutory consultee and must provide a substantive response to the consultation within 21 days, in this case by the 29th of December 2022. However, due to the planning committee falling on the 11th January 2023, an extension of time was sought and agreed with the planning inspectorate until the 17th January 2023. This should ideally include a recommendation, with reasons, for whether planning permission should be granted or refused, and a list of conditions if planning permission is granted. However, as indicated above, the Local Planning Authority are not in possession of all the required information that would be available to it to make an informed assessment of this development proposal.

13.11.5 The Planning Inspectorate will issue a formal decision notice incorporating a statement setting out the reasons for the decision. If the application is approved the decision will also list any conditions which are considered necessary. There is no right to appeal.

13.12 K) Planning Balance and Conclusion

13.12.1 The Local Planning Authority is currently unable to demonstrate a 5-year housing land supply (although the position is improving). Additionally, the Uttlesford Local Plan significantly predates National Planning Policy

Framework 2021; meaning that some (not all) policies do not fully comply with it.

13.12.2 As a result of both of these factor's paragraph 11d of the NPPF therefore applies which states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless there are (a) adverse impacts and (b) such impacts would 'significantly and demonstrably' outweigh the benefits of the proposal.

13.12.3 In respect to highlighting the benefits, adverse impacts and the neutral impacts of the proposed development, the following has been concluded:

13.12.4 **Benefits:**

- Sustainable location of the site that linked to the existing main settlement.
- Provision of up to 170 dwellings would represent a boost to the district's housing supply. The provision would also provide economic gains in the form of additional local use of services.
- The proposal would provide additional housing to the locality including much needed affordable housing at 40%. This would equate to 68 affordable homes.
- Proposed indicative/illustrative layout indicates an intention to make efficient use of the land available with proposed development that is commensurate with the surrounding locality. 39 (DPH) dwellings per hectare.
- This site represents a location where there would be no significant impact upon the landscape, historic environment nor on the amenity of neighbouring properties.
- The scheme secures high quality residential environment together with extensive areas of open space, a children's play park and walking routes.

13.12.5 **Adverse impacts:**

- In environmental terms the proposal will result in the loss of agricultural land.
- Potential to affect the setting of the Grade II listed building 'The Granary'
- Potential impact upon the character and openness of this part of the countryside due to the changing nature of the site from arable fields to one consisting of new built form.

- Potential decline in air quality and increase in noise pollution arising from additional traffic.

- Increase in traffic movements

13.12.6 **Neutral:**

- Cumulative impact of the development proposals on local infrastructure can be mitigated by planning obligations and planning conditions.

- Proposed travel plan to promote sustainable travel options including improved localised cycle/ pedestrian infrastructure.

- Indicative plans indicate an intention to provide landscape features at the site to compensate for the loss of green space.

- Proposed SuDs features on site.

- Proposed biodiversity net gain.

13.12.7 Due to the nature of this application process, it is not possible to provide a detailed assessment of any traffic and transportation, ecology, design considerations relating to this proposal. Neither have any neighbour considerations been factored into this assessment.

13.12.8 All other factors relating to the proposed development will need to be carefully considered by relevant statutory and non-statutory consultees in respect to the acceptance of the scheme and whether the scheme is capable of being satisfactorily mitigated, such that they weigh neutrally within the planning balance. These factors include biodiversity, highways, drainage and flooding, local infrastructure provisions and ground conditions.

13.12.9 The unique application process that is presented by this submission, requires the Local Planning Authority to advise the Planning Inspectorate whether or not it objects to this proposal. Having regard to the limited opportunity to consider the proposals the Planning Committee is invited to provide its comments on this proposal.

WB3

Neutral Citation Number: [2018] EWCA Civ 1808

Case No: C1/2017/3339

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE SUPPERSTONE
[2017] EWHC 2865 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2018

Before:

Lord Justice Davis
Lord Justice Lindblom
and
Lord Justice Hickinbottom

- -

Between:

Hallam Land Management Ltd.	**Appellant**
- and -	
(1) Secretary of State for Communities and Local Government **(2) Eastleigh Borough Council**	**Respondents**

- -
- -

Mr Thomas Hill Q.C. and Ms Philippa Jackson (instructed by **Irwin Mitchell LLP**) for the **Appellant**
Mr Zack Simons (instructed by **the Government Legal Department**) for the **First Respondent**
Mr Paul Stinchcombe Q.C. and Mr Ned Helme (instructed by **Eastleigh Borough Council**) for the **Second Respondent**

Hearing date: 3 May 2018

- -

Judgment Approved by the court or handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. In deciding an appeal against the refusal of planning permission for housing development, how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land? That is the central question in this appeal.

2. With permission granted by Lewison L.J. on 6 March 2018, the appellant, Hallam Land Management Ltd., appeals against the order of Supperstone J., dated 16 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 by which it had challenged the decision of the first respondent, the Secretary of State for Communities and Local Government, in a decision letter dated 9 November 2016, dismissing an appeal under section 78 of the 1990 Act. The section 78 appeal was against the refusal by the second respondent, Eastleigh Borough Council, of outline planning permission for a development of up to 225 dwellings, a 60-bed care home and 40 care units, the provision of public open space and woodland, and improvements to Hamble Station, on land to the west of Hamble Lane, in Hamble.

3. The site of the proposed development is about 23 hectares of pasture, on the Hamble Peninsula, between the Hamble River and Southampton Water. It is not within any settlement, nor allocated for development in the Eastleigh Borough Local Plan Review (2001-2011), adopted in 2006. The settlements of Bursledon, Netley and Hamble lie, respectively, to the north, the west and the south. Because it is in the "countryside", the site is protected by policy 1.CO of the local plan. And because it lies within the Bursledon, Hamble, Netley Abbey Local Gap, it also has the protection of policy 3.CO.

4. An inquiry into the section 78 appeal was held by an inspector appointed by the Secretary of State on four days in June 2015. On 24 June 2015, the second day of the inquiry, the appeal was recovered by the Secretary of State, because it involved a proposal for "residential development of over 150 units … , which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities". In his report, dated 26 August 2015, the inspector recommended that the appeal be dismissed. The Secretary of State subsequently received a large number of further representations, some of them in response to letters he sent to the parties on 15 April 2016 and 29 June 2016. In those representations the Secretary of State received the parties' comments on two decisions of inspectors on appeals in which the supply of housing land in the council's area had been assessed – first, an appeal relating to a proposed development of up to 335 dwellings on land at Bubb Lane, Hedge End, which was dismissed on 24 May 2016, and secondly, an appeal relating to a proposed development of up to 100 dwellings on land at Botley Road, West End, which was allowed on 7 October 2016. In his decision letter on Hallam Land's appeal the Secretary of State largely agreed with the inspector's conclusions and accepted his recommendation.

5. The challenge to the Secretary of State's decision was made on four grounds. The first and second grounds went to his failure – unlawfully, it was said – to ascertain the extent of the shortfall against the five-year housing land supply in the council's area, and to provide adequate reasons for his relevant conclusions. The third and fourth grounds asserted that his decision was inconsistent with the conclusions on housing land supply and the weight to be given to policy 3.CO in an inspector's report, dated 25 August 2016, in an appeal relating to a proposed development of up to 680 dwellings on land at Winchester Road, Boorley Green. Supperstone J. rejected all four grounds.

The issues in the appeal

6. The appeal before us raises two main issues:

    (1) given that the council could not demonstrate the requisite five-year supply of housing land under government policy in the first National Planning Policy Framework ("NPPF"), published in March 2012, whether the Secretary of State established the shortfall with sufficient precision, and whether his relevant reasons were adequate; and
    (2) whether the Secretary of State erred in law in deciding Hallam Land's appeal without having regard to the inspector's report on the Boorley Green appeal.

7. These issues raise no question of law that has not already been amply dealt with in a series of cases on the meaning of relevant policies in the NPPF, and on the importance of consistency in planning decision-making.

NPPF policy

8. We are not concerned in this appeal with the policies in the revised NPPF, which was published on 24 July 2018. I shall refer only to the policies in the first NPPF, as if they were still extant.

9. Paragraph 47 of the NPPF states:

> "To boost significantly the supply of housing, local planning authorities should:
> …
> - identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements …
>
> …".

Paragraph 49 states:

> "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

Paragraph 14 contains the Government's policy for the "presumption in favour of sustainable development". It explains that:

> "…
> For decision-taking this means:
> - approving development proposals that accord with the development plan without delay; and
> - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>   – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>   – specific policies in this Framework indicate development should be restricted."

The inspector's report

10. In his report the inspector noted, under the heading "The Case for the Council", that the council "acknowledge that they are not currently able to demonstrate a 5 year housing supply, as required by NPPF para 47" (paragraph 22). It was the council's case, however, that "the proposal is contrary to development plan policies which are not out of date, and is not the sustainable form of development for which there is a presumption in favour", and that "[even] if the presumption in NPPF para 14 was engaged, the negative aspects of the scheme, including the landscape impact and the loss of openness, would significantly and demonstrably outweigh the benefits" (paragraph 41).

11. Summarizing the case for Hallam Land, under the heading "The Case for the Appellants", he referred (in paragraph 62) to the uncontested evidence of its planning witness, Mr Usher:

> "62. The need for housing is demonstrated in Mr Usher's proof … , which has not been challenged by the Council, and which reflects the conclusions of the Local Plan Examination that the draft is unsound for failing to make adequate provision. The Council accept that they cannot demonstrate a five year supply, the level being shown by the appellants to be 2.92 years, or 1.78 years if the need for affordable housing is included."

Because the council would "not be able to meet its housing land requirements without the loss of significant areas of countryside…", it was "inevitable that there will be a change to the open and undeveloped character of such land". This was "not, of itself, an adequate ground to resist the development when there is no 5 year land supply, nor an up to date development plan" (paragraph 65).

12. In his conclusions the inspector identified the "main issues" as being "i) the effect of the development on the character and appearance of the countryside and its role in separating settlements, and ii) whether any harm would be outweighed by the potential benefits of the development, including a supply of market and affordable housing, and the improvement of station facilities" (paragraph 88).

13. He said that "[the] proposal would not fall within any of the specified uses in Local Plan policy 1.CO …". He concluded that there was "no doubt that a development of this scale would diminish the Local Gap both physically and, to some degree, visually, contrary to policy 3.CO …", and that "[in] these respects it would not comply with the development plan" (paragraph 90). He went on to find that "there are grounds to conclude that policy 1.CO may be regarded as out of date, but that there is not justification for giving any substantial reduction to the weight applied to policy 3.CO" (paragraph 96).

14. Under the heading "The Benefits of the Proposal" he noted that Hallam Land had particularly emphasized "the supply of market and affordable housing to meet an acknowledged need, and the provision of facilities for Hamble Station" (paragraph 107). He continued (in paragraph 108):

> "108. The Council acknowledge that they are not able to demonstrate more than a four and a half years supply of deliverable housing land, and it is the appellants' view that the actual level is significantly less. It is not necessary for this report to carry out a detailed analysis of the housing land supply position, which is better left to the Local Plan

examination, where all the evidence is available to the inspector. However, it can be said that there is a material shortfall against the five year supply required by NPPF para 47, and that there is evidence of an existing need for affordable housing. In these circumstances, the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme. It is also the case that the new dwellings would meet sustainable construction and accommodation standards, and be of a mix to satisfy a wide range of housing needs. In these respects, the development would help meet the NPPF objectives of boosting significantly the supply of housing, and delivering a wide choice of high quality homes. …".

He accepted that "[the] choice of accommodation would also be boosted by the provision of 100 care and extra care spaces", and that "such accommodation would be likely to release a supply of existing, under-used homes to meet the general housing demand" (paragraph 109).

15. Bringing his conclusions together under the heading "Sustainability and Overall Conclusions", the inspector said (in paragraph 116):

"116. When assessed against the criteria in para 7 of the NPPF, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space, although, in the latter case, at the expense of the loss of the rural character of the public footpath crossing the site. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. There would be the environmental and community benefits arising out of the station improvements (but having regard to the Council's alternative scheme), any spin-off advantages for traffic and pollution levels, from the off-site highway works, and the environmental and ecological aspects of the landscaping proposals."

He accepted that "[on] balance, this is a reasonably sustainable location in terms of accessibility" (paragraph 117). His final conclusion, however, went against the proposal. He found that "the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity" would be contrary to policy 3.CO of the local plan and corresponding policies in the NPPF; that "[the] countervailing benefits of the scheme, as well as compliance with other development plan policies … would not outweigh the harm that this loss of separation would cause"; and that "[taken] as a whole, the proposal does not amount to the form of sustainable development for which there is a presumption in favour" (paragraph 118).

The decision in the Bubb Lane appeal

16. The inspector in the Bubb Lane appeal concluded (in paragraph 45 of his decision letter):

"45. The evidence before me does not support EBC's view that it is 'a whisker' away from demonstrating a five year supply of deliverable housing land. Notwithstanding EBC's considerable efforts to improve housing provision, something in the order of a four year supply at the time of this Inquiry indicates that EBC has a considerable way to go to demonstrating a five year supply of deliverable sites. There is no convincing evidence that measures currently taken have been effective in increasing the rate of housing

delivery. The scale of the shortfall is a significant material consideration in determining this appeal. The contribution that the appeal scheme would make to the housing supply, and particularly to affordable housing provision in the area in accordance with EBLP Policy 74.H, would be a significant benefit of allowing the appeal."

Under the heading "Planning balance", the inspector concluded that "some weight can be given to the conflict with EBLP Policy 2.CO, arising from the harm that would result from the proposal to the separation of settlements …", but that "this weight is limited because of the significant shortfall in housing supply, and the lack of convincing evidence that EBC's efforts to address this are proving effective" (paragraph 52). He went on to say that, "[given] the current scale of the housing shortfall, the provision of additional market and affordable housing would be a significant benefit of the proposal" (paragraph 55). But he concluded, finally that "[in] my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole" (paragraph 57).

The decision in the Botley Road appeal

17. In the decision letter on the Botley Road appeal, the inspector stated these conclusions on "Housing land supply" (in paragraphs 18 and 19 of his decision letter):

"18. In conclusion, the final calculation taking a requirement figure of 1,120dpa, or 5,602 dwellings over the 5 year period, there is a 4.25 years' supply of housing land. Even on the Council's most favourable calculations, taking the Council's approach to the buffer and with its suggested contributions from all the disputed sites, the supply would still only be 4.71 years, but the evidence indicates that this is unlikely to be achievable.

19. There is therefore a significant shortfall in the amount of deliverable housing land, amounting to some 833 dwellings. The Leader of the Council gave evidence of the impressive efforts the Council had made to underpin housebuilding confidence following the recession, but this does not seem to have been translated into the provision of enough housing land. Net completions for the two years 2014/15 and 2015/16 amounted to less than one year's requirement. Referring to recent outline approvals, the Council said that it was making progress towards improving housing supply; recent permissions might enable it to exceed the OAN to a degree this year. Even if that happens, it is still well short of the requirement for the year. There is a significant shortfall to be made up, and the evidence that the gap might be closing quickly enough is far from convincing. The Council is not, as it claims, on the cusp of achieving a 5 year supply of deliverable housing land."

Under the heading "Effect on the countryside and the strategic gap", he noted (in paragraph 27) that "planning permission has been granted for a number of sites which have included dwellings in the strategic gaps", and went on to say:

"27. … But the Council's argument that present needs can be met substantially within the land outside the gaps is wholly unconvincing; even with the permissions on gap land, there is still no 5 year housing land supply and without them, even on the Council's unduly optimistic housing land supply calculations, there would only be 3.4 years' supply of housing land. On the contrary, the evidence is that the gaps are a factor in limiting the choice of sites available for the provision of housing, and that breaches of

the strategic gap policy have proved necessary and will prove necessary to cater to meet current housing needs."

In his "Conclusion" the inspector said (in paragraph 52):

"52. There is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites. There is also severe under-delivery of affordable housing. The scheme would deliver up to 100 dwellings including up to 35% affordable homes and, although it is in the countryside and in a defined strategic gap, would cause little practical harm. In a situation where there is a pressing need for housing and affordable housing, and where both saved Policies 1.CO and 2.CO are out of date, the adverse impacts of the scheme to the landscape, the countryside and the strategic gap, and the other impacts of the scheme discussed above, would be slight and would not significantly and demonstrably outweigh the benefits. Indeed, even if saved Policy 2.CO were not accepted as being a policy relevant to the supply of housing, and not out-of-date, the considerable benefits of the scheme, weighed against the limited harm, would indicate a decision other than in accordance with that policy."

The post-inquiry representations

18. The further representations made by Hallam Land and by the council after the inquiry largely concerned the status of policies 1.CO and 3.CO of the local plan for the purposes of NPPF policy, in the light of this court's decision in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2016] EWCA Civ 168, which was handed down on 17 March 2016, and the weight to be given to those policies in the absence of a five-year supply of housing land.

19. In its further representations dated 15 April 2016, in response to the Secretary of State's letter of the same date, the council asserted that it was now "able to demonstrate a 4.93 year supply" of housing land (paragraph 2.7.2(1)), and that "the action which has been taken to address the shortfall has been both considerable and effective" (paragraph 2.7.2(2)). In further representations dated 5 May 2016, Hallam Land rejected the council's suggestion that it now had a housing land supply of 4.93 years (paragraph 5). On 11 May 2016 the council submitted additional representations, referring to the planning permissions it had granted for housing development since the inquiry (paragraph 2.8 and Appendix 5), and contending that Hallam Land had failed to recognize "the wide range of measures being taken by the Council to boost housing supply" (paragraph 2.9). Hallam Land responded to those representations with further representations of its own, dated 24 May 2016, and took issue again with the council's argument that there was now a housing land supply of 4.93 years. That figure was "not based upon an up to date SHMA", was "not tested", and was "not reflective of unmet need in adjacent areas" (paragraph 8). Its case, it said, "had always been that there remains a substantial shortfall" and it "[continued] to rely upon its evidence and submissions as submitted to the inquiry" (paragraph 10). The council was "still unable to demonstrate a 5YHLS, even against its own target (which is not accepted to be correct)". Also on 24 May 2016, the council sent the inspector's decision letter in the Bubb Lane appeal to the Secretary of State, drawing his attention to it as a relevant decision.

20. On 17 June 2016 the council made yet further representations, "in order that the decision can be taken upon the best and most up-to-date information …" (paragraph 1.1). It now resiled

from its previous concession that policy 3.CO was a policy "for the supply of housing", and, in the absence of a five-year supply of housing land, "out of date" (paragraphs 2.4 and 3.1 to 3.5). It said it would shortly provide "an updated position in respect of its housing land supply reflecting further (recent) changes of circumstance, including its agreement for the purposes of another inquiry [in the Botley Road appeal] (and in the light of the conclusions of the Bubb Lane Inspector) that the full objectively assessed needs for Eastleigh should be taken to be 630 dwellings per annum" (paragraph 4.1). The council provided its promised "Update on Housing Land Supply" on 23 June 2016. This referred to the conclusion of the inspector in the Bubb Lane appeal that "the OAN for Eastleigh was 630dpa", which had now been reflected in the statement of common ground for the imminent inquiry into the Botley Road appeal (paragraphs 2.1 and 2.2). The council's evidence for that inquiry explained that "on its preferred approach [it] is able to demonstrate a 4.86 year supply" (paragraph 2.3). Its position therefore remained that although it could not demonstrate a five-year supply of deliverable housing sites, it was "very close to being able to do so" (paragraph 2.4).

21. In representations dated 19 July 2016, in response to the Secretary of State's letter of 29 June 2016, Hallam Land attacked the council's "volte face" on the status of policy 3.CO (paragraphs 4 to 12). It also made clear that it did not accept the council's "latest attempt to revise its case on the extent of its 5YHLS …", and that it maintained the position it had taken in the representations it had submitted in May 2016 (paragraph 13).

22. In a letter dated 13 October 2016 to Mr Barber, the Secretary of State's decision officer, Barton Willmore, on behalf of Hallam Land, asked him to draw to the Secretary of State's attention the inspector's decision in the Botley Road appeal, "in order that he is fully appraised of the recent approach of one of his senior Planning Inspectors … in relation to a series of identical issues which he will now be considering when making a decision …" in this case. Barton Willmore pointed out that the inspector had rejected "the proposition that [the council] can meet its housing land requirements without impinging upon land which is designated as gap", and had concluded that policy 2.CO "is a relevant policy for the supply of housing". They argued that an "identical conclusion" must follow for policy 3.CO in this case. They referred to "the principle often expounded by the Courts that it is desirable that there be consistency in planning decision-making". It was therefore "highly important", they said, that the Botley Road decision, "relating to a virtually identical issue", was "formally before the Secretary of State" in this appeal. They also emphasized the fact that the inspector's decision letter dealt directly with the issue of housing land supply, "exposing a significant shortfall in deliverable housing land, amounting to some 833 dwellings". They quoted paragraph 27 of the decision letter in full, and also the inspector's conclusion in paragraph 52 that "there is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites".

23. The council did not respond to those representations, but in an e-mail to the Secretary of State dated 3 November 2016, drew his attention to the inspector's decision in an appeal relating to proposed housing development on a site at Hamble Lane – the Botley Road appeal – and, in particular, what he had said about policy 2.CO, "which also applies to Saved Policy 3.CO". But it said it did not intend to provide further submissions on this point, and was drawing the inspector's decision to the attention of the Secretary of State "in the interests of full disclosure".

The Secretary of State's decision letter

24. In his decision letter the Secretary of State said that he agreed with the inspector's conclusions, "except where stated", and his recommendation (paragraph 3).

25. He referred to the representations he had received after the inquiry, including those made in response to his letters of 15 April 2016 and 29 June 2016, in the light of the judgment of this court in *Hopkins Homes Ltd.*. He confirmed that those representations had been circulated to the parties (paragraphs 5 and 6). He then referred (in paragraph 7) to the further representations he had received in October and November 2016:

> "7. The Secretary of State has also received representations from Barton Willmore dated 13 October 2016, and from Eastleigh Borough Council dated 3 November to which he has given careful consideration. The Secretary of State has also received other representations, set out at Annex A, to which he has given careful consideration. He is satisfied that the issues raised do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to the parties."

He said that, "[in] reaching his decision", he had "taken account of all the representations and responses referred to in paragraphs 5-7" (paragraph 8).

26. When he came to "The Policy Context" he concluded that policies 1.CO and 3.CO of the local plan were both "out-of-date" (paragraphs 14 to 16). But he went on to qualify this conclusion (in paragraph 17):

> "17. The Secretary of State has considered carefully the Inspector's analysis at IR93-100 on the matter of whether Policy 3.CO would be out of date through no longer meeting the development needs of the Borough, and whether there is justification for reducing the weight applied to that policy. The Secretary of State acknowledges that its weight should be reduced because he has found it to be out-of-date, but taking into account its consistency with the Framework, its role in protecting the Local Gap and the limited shortfall in housing land supply, he concludes that he should still afford significant weight to Policy 3.CO."

27. As for "The Benefits of the Proposal", he said this (in paragraph 19):

> "19. The Secretary of State notes the Inspector's comment (IR108) that at the time of inquiry the Council were not able to demonstrate more than a four and a half years supply of deliverable housing land, and that there is evidence of an existing need for affordable housing. Whilst the Secretary of State notes that the Council are now of the view that they are able to demonstrate a 4.86 year supply, he agrees with the Inspector that the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme, and it would help meet the objectives of the Framework by boosting significantly the supply of housing and delivering a wide choice of high quality homes. The Secretary of State notes too that the choice of accommodation would also be boosted by the provision of 100 care and extra care spaces (IR109)."

28. On the proposal's "Sustainability" he said (in paragraph 25):

"25. In terms of sustainability, the Secretary of State agrees with the Inspector's conclusion (IR116) that, when assessed against the policies in the … Framework taken as a whole, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space (although he acknowledges that the latter is at the expense of the loss of the rural character of the public footpath crossing the site). Furthermore, he agrees that the additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. In addition, he recognises, like the Inspector, the environmental and community benefits arising out of the station improvements identified at paragraphs 20-21 above. For the reasons given by the Inspector at IR117, the Secretary of State concludes that, on balance, this is a reasonably sustainable location in terms of accessibility."

29. Under the heading "Planning balance and overall conclusion" the Secretary of State said (in paragraphs 29 to 36):

"29. For the reasons given above, the Secretary of State concludes that the proposal is not in accordance with the development plan policies 1.CO and 3.CO and is not in accordance with the development plan as a whole. He has gone on to consider whether material considerations indicate that the proposal should be determined other than in accordance with the development plan.

30. The Secretary of State notes that in their letter of 23 June 2016, the Council updated their position on the supply of deliverable housing land, now claiming to be able to demonstrate a 4.86 year supply. In the absence of a 5-year housing land supply, and having concluded that policies 1.CO and 3.CO are relevant policies for the supply of housing, the presumption in favour of sustainable development is engaged, meaning that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits.

31. He considers that the provision of market and affordable housing in an area with an acknowledged shortfall, along with care facilities in this case carries substantial weight in favour of the development. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall, to which he gives moderate weight. The environmental and community benefits arising out of the station improvements carry moderate weight in favour of the proposal.

32. Set against the identified positive aspects is the environmental and social damage which would arise out of the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity. The Secretary of State considers that this would be contrary to those policies of the Framework which apply the principle of recognising the different roles and character of different areas, and this carries significant weight against the proposal. He further considers that the loss of "best and most versatile" agricultural land carries moderate weight against the proposal.

33. The Secretary of State also considers that the appeal site performs a function which is specific to its location and which would be permanently undermined by the development.

34. The Secretary of State considers overall that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits.

35. The Secretary of State has taken into account the wide range of judgments and appeal decisions referred to in the inquiry and the post-inquiry representations but, having considered all the matters raised, he concludes that none is of such weight as to alter the balance of his conclusions.

36. Overall he concludes that there are no material considerations which indicate that he should determine the case other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed."

He therefore agreed with the inspector's recommendation and dismissed the appeal (paragraph 37).

The Boorley Green appeal decision

30. In a decision letter dated 30 November 2016, about three weeks after he had issued his decision on Hallam Land's appeal, the Secretary of State allowed the Boorley Green appeal. The inquiry into that appeal had taken place in May 2016. The inspector's report, though dated 25 August 2016, was released only with the Secretary of State's decision letter, in the normal way. Like the site in Hallam Land's appeal, the Boorley Green site is in the "countryside", protected by policy 1.CO of the local plan, and also within an area protected under policy 3.CO, the Botley-Boorley Green Local Gap.

31. The inspector in the Boorley Green appeal concluded that the supply of housing land in the council's area was "very close to 4 years", observing that this was consistent with the conclusion reached on this question by the inspector in the Bubb Lane appeal – that there was "something in the order of a four year supply" (paragraph 12.16 of the Boorley Green inspector's report). He found that "the HLS is around 4 years". He said that, at this level, it "falls well short of that required and has done for many years …" (paragraph 12.45). He concluded that "the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight …" (paragraph 12.47). He described the shortfalls in land for housing and affordable housing as "substantial" (paragraph 12.55).

32. In his decision letter, under the heading "Housing supply", the Secretary of State said (in paragraph 17):

"17. The Secretary of State has given very careful consideration to the Inspector's analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply expected at paragraph 47 of the Framework (IR12.10); and agrees with the Inspector's conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State

also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits to which the scheme would bring through delivering affordable housing."

33. Under the heading "Planning balance and overall conclusion", the Secretary of State concluded that "[the] proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing" (paragraph 24). Agreeing with the inspector's recommendation, he allowed the appeal.

Did the Secretary of State establish the extent of the shortfall against the five-year supply of housing land with sufficient precision, and were his reasons adequate?

34. Before Supperstone J., and again before us, Mr Thomas Hill Q.C., for Hallam Land, argued that, in any case where there is a dispute as to the five-year supply of housing land, the Secretary of State, or his inspector, is obliged to establish the level of supply and the extent of any shortfall. This, Mr Hill submitted, was because the local planning authority's failure to demonstrate a five-year supply of housing land will bring into play the balancing exercise provided for in paragraph 14 of the NPPF, and the extent of the shortfall, if there is one, will influence the weight given by the decision-maker to the benefits of the proposed development, and to its conflict with the relevant restrictive policies of the development plan. He sought to strengthen this submission with observations made by judges at first instance – in particular, *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) (at paragraph 60), *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin) (at paragraph 28), and *Jelson Ltd. v Secretary of State for Communities and Local Government* [2016] EWHC 2979 (Admin) (at paragraph 13).

35. In this case, Mr Hill submitted, the Secretary of State had failed to make the planning judgments he needed to make. He noted, in paragraph 19 of his decision letter, that the council was "now of the view that [it was] able to demonstrate a 4.86 year supply". But he did not say whether he accepted that this figure was accurate. Nor did he deal with the material before him, including the decision letters in the Bubb Lane and Botley Road appeals, showing that the council was now able to demonstrate only a supply of 4.25 years or even less than that. This could not sensibly be described as a "limited shortfall" – the expression the Secretary of State used in paragraph 17. In fact, Mr Hill submitted, the Secretary of State had failed to reach any conclusion on this question. His decision was vitiated by that failure.

36. Supperstone J. rejected those submissions. He did not accept that one can find in the authorities relied upon by Mr Hill the principle that the decision-maker is required "to determine a workable [five-year housing land supply] or range" in every case. He accepted the argument of Mr Zack Simons, for the Secretary of State, and Mr Paul Stinchcombe Q.C., for the council, that in a case such as this, where there was "inadequate housing supply on either [side's] figures", the Secretary of State was "not required to fix a figure for the extent of that inadequacy" (paragraph 22). He went on to say that "[in] making judgments on the issues of housing requirements and housing supply the decision maker was not required to fix a figure for the precise extent of the Council's housing shortfall". In his view the "key question" was "whether the housing supply is above or below five years". This was what Lord Carnwath had called the "important question" in paragraph 59 of his judgment in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (paragraph

23). The tenor of relevant decisions at first instance was to the same effect – for example, the observation of Gilbart J. in *South Oxfordshire District Council v Secretary of State for Communities and Local Government* [2016] EWHC 1173 (Admin), at paragraph 102, that it is "not necessary to conduct a full analysis of requirements and supply in every case", and "[whether] one has to do so depends on the circumstances".

37. On the basis of the inspector's conclusion in paragraph 108 of his report, having regard to "the updated material before him from the Bubb Lane [decision letter] and the Botley Road [decision letter]", and Hallam Land having provided "no further evidence" on housing land supply since the inquiry, the Secretary of State was, said Supperstone J., "entitled to note the agreed shortfall, describe it as "limited" (DL17), and agree with his Inspector that the scheme's contribution to the Council's housing shortage would be "significant" (DL19)". Nothing more was required (paragraph 29).

38. In his submissions to us, Mr Hill argued that the authorities on which Supperstone J. had based his conclusions did not deny the need for a decision-maker to establish the extent of a shortfall against the five-year supply of housing land when conducting the balancing exercise under paragraph 14 of the NPPF. Relevant parts of the judgment of the Court of Appeal in *Hopkins Homes Ltd.* – particularly paragraph 47 – which were effectively endorsed by Lord Carnwath in the Supreme Court, indicate that there is such a requirement. Detailed analysis may not always be necessary. A range or an approximate figure may be enough. But, submitted Mr Hill, the judge's view that the crucial question is simply whether the supply of housing land exceeds or falls below five years was unduly simplistic. In this case there were several factors that made it imperative for the Secretary of State to define the shortfall: in particular, the size of the development – more than 150 dwellings – which had led to the appeal being recovered by the Secretary of State; the significance of the shortfall for the weighting of policies in the development plan that went against the proposal, which could be decisive, especially policy 3.CO of the local plan; and the fact that there were other relevant and recent appeal decisions in which the scale of the shortfall had been considered, and on which the parties had made representations. In the circumstances, Mr Hill submitted, it was not enough for the Secretary of State merely to describe the shortfall as "limited", without resolving what it actually was by the time he made his decision.

39. Mr Hill also submitted that, in any event, the Secretary of State had failed to explain how and why he had reached a markedly different conclusion on housing land supply from the conclusions recently reached by the inspectors in the Bubb Lane and Botley Road appeals – in spite of the further representations he had received from Hallam Land in the light of them. Those two decisions were clearly relevant in this case. Yet the Secretary of State did not even refer to them in his decision letter. He said he had given "careful consideration" to the representations made after the inquiry, but in this important respect it is not clear that he had in fact done so. In both cases the decision-maker had identified a considerable shortfall against the required five-year supply materially greater than the council had conceded here. In the Bubb Lane appeal the inspector had found "something in the order of a four year supply" (paragraph 45) and had described the shortfall as "significant" (paragraph 52). In the Botley Road appeal the supply was found to be 4.25 years. And the inspector there had also described the shortfall – which amounted to "some 833 dwellings" – as "significant" (paragraphs 18, 19 and 52).

40. Those conclusions, and those descriptions of the shortfall, Mr Hill submitted, simply cannot be reconciled with the figure of 4.86 years' supply put forward by the council in its "Update on Housing Land Supply" of 23 June 2016. An explanation of some kind was clearly called for in

the Secretary of State's decision letter. None was provided. Even if he did not have to resolve the precise level of the shortfall, the Secretary of State had fallen short of his duty to provide intelligible and adequate reasons for his conclusion on an issue crucial to the outcome of the appeal (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at paragraph 36). In the circumstances it was not enough for him simply to refer to the shortfall as "limited", without more.

41. Mr Simons and Mr Stinchcombe supported the judge's analysis. They submitted that it is not always, or generally, a decision-maker's task to determine the precise level of housing land supply. The critical question will always be whether or not a five-year supply of housing land has been demonstrated. Under NPPF policy, the degree of detail required in ascertaining housing need and supply is left largely to the decision-maker's planning judgment in the circumstances of the case before him – as Gilbart J. emphasized in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) (at paragraphs 43 to 45), and in *South Oxfordshire District Council* (at paragraph 102). Mr Stinchcombe pointed to the recent decision of this court in *Jelson Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 24 as lending support to this submission (see, in particular, paragraph 25). Mr Simons recalled Sir David Keene's warning in *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610 (at paragraph 26) about section 78 appeals descending into the kind of exercise appropriate only for the process of plan preparation.

42. In this case, Mr Simons and Mr Stinchcombe submitted, by the time the Secretary of State came to make his decision in November 2016, the evidence given by Hallam Land at the inquiry in June 2015 in contending for a housing land supply of between 1.78 and 2.92 years was stale. The Secretary of State did not have to go beyond his conclusions that the shortfall was now "limited", and that the provision of market and affordable housing in an area with an "acknowledged" shortfall merited "substantial weight". These conclusions were, in themselves, fully justified. The existence of a shortfall in housing land supply was not a "principal controversial issue" in this appeal, even if it was in the Bubb Lane and Botley Road appeals. The parties had drawn the Secretary of State's attention to the inspectors' decisions in those appeals. But that did not make it necessary for him to deal with those decisions in the reasons he gave for concluding as he did on the evidence in this case. The reasons he gave were sufficient to explain the decision he made.

43. Mr Hill's argument was persuasively presented, but I accept it only in part.

44. The Secretary of State's decision here was taken in the light of the judgment of this court in *Hopkins Homes Ltd.*, but before the Supreme Court had dismissed the subsequent appeals – though on the basis of a narrower reading of the policy in paragraph 49 of the NPPF. As this case shows, however, nothing turns on the difference between the so-called "wider" interpretation of paragraph 49, in which the phrase "policies for the supply of housing" embraces local plan policies that create and constrain the supply, and the "narrow" interpretation, which excludes policies that operate to constrain the supply but does not prevent the decision-maker from giving such policies reduced weight under the policy in paragraph 14 of the NPPF when five years' supply is not demonstrated. Either way, the consequences will, in the end, be the same. The weight given to a policy ultimately depends not on its status but on its effect – whether it enables the requisite five-year supply to be realized or acts contrary to that objective. Policies in a local plan are liable to carry less weight in the making of a decision on a proposal for housing development if – and because – their effect is to prevent a five-year supply of housing land (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at

paragraphs 59 and 61, followed in this court in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 22).

45. None of that is controversial here, nor should it be. As Lord Carnwath said in *Hopkins Homes Ltd.* (at paragraph 54), "the primary purpose of paragraph 49 [of the NPPF] is simply to act as a trigger to the operation of the "tilted balance" under paragraph 14". And he went on to say (in paragraph 59) that the "important question" is "not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47". If the local planning authority fails to demonstrate that supply, "it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies". In such a case "[the] shortfall is enough to trigger the operation of the second part of paragraph 14". As Lord Carnwath emphasized (in paragraph 61), a restrictive policy may not itself be "out of date" under paragraph 49, "but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles".

46. As this court said in *Hopkins Homes Ltd.* (in paragraph 47), the policies in paragraphs 14 and 49 of the NPPF do not prescribe how much weight is to be given to relevant policies of the development plan in the determination of a planning application or appeal. Weight is always a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H) (paragraph 46). It will "vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements". The decision-maker must judge "how much weight should be given to conflict with policies for the supply of housing that are out-of-date". This is "not a matter of law; it is a matter of planning judgment" (see the first instance judgments in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) (at paragraphs 70 to 75), *Phides* (at paragraphs 71 and 74), and *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin) (at paragraphs 87, 105, 108 and 115)).

47. The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth.

48. Relevant authority in this court, and at first instance, does not support the proposition that, for the purposes of the appropriate balancing exercise under the policy in paragraph 14 of the NPPF, the decision-maker's weighting of restrictive local plan policies, or of the proposal's conflict with such policies, will always require an exact quantification of the shortfall in the supply of housing land. This is not surprising. If the court had ever said there was such a

requirement, it would have been reading into the NPPF more than the Government has chosen to put there, and more than is necessarily implied in the policies it contains.

49. Several decisions at first instance were cited in argument before Supperstone J., including those in *Jelson Ltd.* (at paragraphs 2 and 13) – upheld on appeal, *Shropshire Council* (at paragraph 28), *South Oxfordshire District Council* (at paragraph 102), *Dartford Borough Council* (at paragraphs 44 and 45), *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 1879 (Admin) (at paragraphs 42(ii) and 48) – upheld on appeal, and *Phides* (at paragraph 60). Mr Simons also referred to *Eastleigh Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 4225 (Admin) (at paragraphs 17 and 18). It is not necessary to explore the facts of these cases, or to set out the relevant observations of the judges who decided them. In summary, however, three main points emerge.

50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in paragraphs 47 and 49 of the NPPF and the corresponding guidance in the Planning Practice Guidance ("the PPG"). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definitions or footnotes, sometimes not (see *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33; *Jelson Ltd.*, at paragraphs 24 and 25; and *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraphs 36 and 37). It is not the role of the court to add to or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.

51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.

52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant "non-housing

policies" in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd.*. It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.

53. With those three points in mind, I do not think that in this case the Secretary of State could fairly be criticized, in principle, for not having expressed a conclusion on the shortfall in the supply of housing land with great arithmetical precision. He was entitled to confine himself to an approximate figure or range – if that is what he did. Government policy in the NPPF did not require him to do more than that. There was nothing in the circumstances of this case that made it unreasonable for him in the "Wednesbury" sense, or otherwise unlawful, not to establish a mathematically exact figure for the shortfall. It would not have been an error of law or inappropriate for him to do so, but if, as a matter of planning judgment, he chose not to do it there was nothing legally wrong with that.

54. But what was his conclusion on housing land supply? He obviously accepted, as the council had acknowledged, that the requisite five-year supply had not been demonstrated. In paragraph 30 of his decision letter he referred to the "absence of a 5-year housing land supply". And in the same paragraph he made it plain that he was applying "the presumption in favour of sustainable development", which, as he said, meant "that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits". He went on, in the following paragraphs, to apply that presumption, in accordance with the policy in paragraph 14 of the NPPF. In the course of that balancing exercise, he referred, in paragraph 31, to the "acknowledged shortfall", which went into the balance on the positive side. All of this is clear.

55. Not so clear, however, is whether the Secretary of State reached any concluded view on the scale of the "acknowledged shortfall". His reference in paragraph 17 to "the limited shortfall in housing land supply" suggests he had not found it possible to accept Hallam Land's case at the inquiry, as recorded by the inspector in paragraph 62 of his report, that the supply of housing land was as low as "2.92 years, or 1.78 years if the need for affordable housing is included", or even the "material shortfall" to which the inspector had referred in paragraph 108, in the light of the council's concession that it was "not able to demonstrate more than a four and a half years supply of deliverable housing land". A "limited shortfall" could hardly be equated to a "material shortfall". It would have been a more apt description of the shortfall the council had now acknowledged in conceding, or contending, that it was able to demonstrate a supply of 4.86 years – the figure to which the Secretary of State referred in paragraphs 19 and 30 of his decision letter.

56. On a fair reading of the decision letter as a whole, I do not think one can be sure that the Secretary of State did fix upon a precise figure for the housing land supply. It may be that, in truth, he went no further than to conclude that the supply remained below five years. He certainly did not adopt the figures put forward by Hallam Land at the inquiry, nor did he even mention those figures. And he neither adopted nor rejected the council's position at the inquiry. Instead, he took care to say, in paragraph 19 of his decision letter, that he "notes" the inspector's comment that at the time of the inquiry the council was not able to demonstrate more than four and a half years' supply. He was equally careful not to adopt or reject the figure that was now put forward by the council – a supply of 4.86 years. In paragraph 19, again, he said merely that he "notes" the council was now of the view that it was "able to demonstrate a 4.86 year supply". In paragraph 30, once again, he used the word "notes" when referring to the position the council had taken in its letter of 23 June 2016 – "now claiming to

be able to demonstrate a 4.86 year supply". He was not, I think, unequivocally endorsing that figure, but rather was relying on it as proof of "the absence of a 5-year housing land supply".

57. The Secretary of State's conclusions on housing land supply are not said to be irrational on their face – nor could they be. If one leaves aside for the moment the decisions in the Bubb Lane and Botley Road appeals and what had been said about those decisions in the parties' further representations, they make sense. To describe the shortfall in housing land supply as "limited", as the Secretary of State did in paragraph 17, seems reasonable if he was assuming – though without positively finding – that the housing land supply now stood at or about 4.86 years. And there is nothing necessarily inconsistent between that conclusion and his later conclusions: in paragraph 19, that the amount of new housing proposed was a "significant advantage"; in paragraph 30, that the "presumption in favour of sustainable development" fell to be applied in this case; and, in paragraph 31, that the provision of housing in an area with an "acknowledged shortfall" carried "substantial weight in favour of the development".

58. All of this is logical, as far as it goes. It may reflect an assumption on the part of the Secretary of State that he could rely on the figure of 4.86 years for the housing land supply, or at least on a range of between four and half and 4.86 years, and that this was sufficient to found his conclusions on the weight to be given to the benefits of the housing development proposed and to its conflict with restrictive policies in the local plan.

59. This reading of the decision letter may be overly generous to the Secretary of State, because it resolves in his favour the doubt as to what figure, or range, he was actually prepared to accept for the present supply of housing land in the council's area. Assuming it to be correct, however, he can be acquitted of any misunderstanding or unlawful misapplication of NPPF policy. If he did adopt, or at least assume, a figure of 4.86 years' supply of housing land, or even a range of between four and half and 4.86 years, his approach could not, I think, be stigmatized as unlawful in either of those two respects. It could not be said, at least in the circumstances of this case, that he erred in law in failing to calculate exactly what the shortfall was. In principle, he was entitled to conclude that no greater precision was required than that the level of housing land supply fell within a clearly identified range below the requisite five years, and that, in the balancing exercise provided for in paragraph 14 of the NPPF, realistic conclusions could therefore be reached on the weight to be given to the benefits of the development and its conflict with relevant policies of the local plan. Such conclusions would not, I think, exceed a reasonable and lawful planning judgment.

60. However, even if that assumption is made in favour of the Secretary of State, there is in my view a fatal defect in his decision in his failure to engage with the conclusions on housing land supply in the recent decisions in the Bubb Lane and Botley Road appeals. Here, it seems to me, Mr Hill's argument is demonstrably well founded.

61. At least by the time the parties in this appeal were given the opportunity to make further representations, an important issue between them, and arguably the focal issue, was the extent of the shortfall in housing land supply. This was, or at least had now become, a "principal controversial issue" in the sense to which Lord Brown of Eaton-under-Heywood referred in *South Bucks District Council v Porter* (at paragraph 36 of his speech). A related issue was the weight to be given to restrictive policies in the local plan – in particular, policy 3.CO. These were, in my view, clearly issues that required to be properly dealt with in the Secretary of State's decision letter, in the light of the representations the parties had made about them, so as to leave no room for doubt that the substance of those representations had been understood and properly dealt with. This being so, it was in my view incumbent on the Secretary of State to

provide intelligible and adequate reasons to explain the conclusions he had reached on those issues, having regard to the parties' representations.

62. There is no explicit consideration of the inspectors' decisions in the Bubb Lane and Botley Road appeals in the Secretary of State's decision letter, nor any reference to them at all, despite the fact that they had been brought to his attention and their implications addressed in the further representations made to him after the inquiry. The inspectors' conclusions on housing land supply in those two decisions, and the consequences of those conclusions for the weight to be given to local plan policies, clearly were material considerations in this appeal. They would, in my view, qualify as material considerations on the basis of the case law relating to consistency in decision-making (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137, at p.145, most recently followed by this court in *DLA Delivery Ltd. v Baroness Cumberlege of Newick and Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305, at paragraphs 29, and 42 to 56). But leaving aside the principle of consistency, they would have been, it seems to me, material considerations if only on the basis that they represented an up to date independent assessment of housing land supply in the council's area, which had been squarely put before the Secretary of State. Yet he said nothing at all about them. Nor is there any explicit reference to the relevant content of the representations the parties had made. It is clear that the reference in paragraph 19 of the decision letter to the council's view that it was now able to demonstrate 4.86 years' supply of housing land was taken from the "Update on Housing Land Supply" that it produced on 23 June 2016. But he did not refer to the very firm and thoroughly reasoned conclusions of the inspector in the Botley Road appeal, which were reached in the light of that evidence.

63. So it is not clear whether the Secretary of State confronted the conclusions of the inspectors in the Bubb Lane and Botley Road appeals, and in particular the latter. Had he done so, he would have appreciated that the conclusions they had reached on the scale of the shortfall in housing land supply could not reasonably be reconciled with his description of that shortfall, in paragraph 17 of his decision letter, as "limited". The language used by those two inspectors was distinctly different from that expression, and incompatible with it unless some cogent explanation were given. No such explanation was given. In both decision letters the shortfall was characterized as "significant", which plainly it was. This was more akin to saying that it was a "material shortfall", as the inspector in Hallam Land's appeal had himself described it in paragraph 108 of his decision letter. Neither description – a "significant" shortfall or a "material" one – can be squared with the Secretary of State's use of the adjective "limited". They are, on any view, quite different concepts.

64. Quite apart from the language they used to describe it, the inspectors' findings and conclusions as to the extent of the shortfall – only "something in the order of four year supply" in the Bubb Lane appeal and only "4.25 years' supply" in the Botley Road appeal – were also substantially different from the extent of the shortfall apparently accepted or assumed by the Secretary of State in his decision in this case, which was as high as 4.86 years' supply on the basis of evidence from the council that had been before the inspector in the Botley Road appeal and rejected by him.

65. One is left with genuine – not merely forensic – confusion on this important point, and the uncomfortable impression that the Secretary of State did not come to grips with the inspectors' conclusions on housing land supply in those two very recent appeal decisions. This impression is not dispelled by his statement in paragraph 7 of the decision letter that he had given "careful consideration" to the relevant representations.

66. The significance of the parties' dispute over the extent of the shortfall in housing land supply was not confined to that issue alone. It also bore on the question of how much weight should be given to restrictive policies in the local plan – in particular, policy 3.CO – for the purposes of the balancing exercise required by the policy in paragraph 14 of the NPPF. A factor to which the Secretary of State attached some importance in determining that "significant weight" should be given to policy 3.CO was that the shortfall in housing land supply was, as he said in paragraph 17 of the decision letter, only "limited". This was an important issue in itself, and potentially decisive in the planning balance.

67. In the circumstances I am driven to the conclusion that the Secretary of State's reasons were in this respect deficient, when considered in the light of the familiar principle in *South Bucks District Council v Porter*, and that Hallam Land was substantially prejudiced by the failure to provide intelligible and adequate reasons. The parties, and in particular Hallam Land, whose section 78 appeal was being dismissed after a protracted exchange of post-inquiry representations, were entitled to know why the Secretary of State had concluded as he did not only on the question of housing land supply but also on its consequences, in spite of two very fresh appeal decisions in which the question of supply had been decided in a materially different way. This was a matter on which proper reasons were undoubtedly called for, but were not given. In the absence of those reasons, one cannot be sure that the Secretary of State had come to his conclusion lawfully, having regard to all material considerations. It follows, in my view, that in failing to provide such reasons the Secretary of State erred in law and his decision is liable to be quashed for that error. I can see no basis on which the court, in the circumstances, could properly withhold an order to quash his decision. To do so, we would have to speculate as to the outcome of Hallam Land's section 78 appeal on the assumption that the Secretary of State had regard to all material considerations, including the decisions in the Bubb Lane and Botley Road appeals.

68. Having come to that conclusion, I can take the other main issue more shortly.

Should the Secretary of State have had regard to the inspector's report on the Boorley Green appeal?

69. The argument here is that the Secretary of State's conclusion in this case that the shortfall in housing land supply was "limited" is impossible to reconcile with the conclusion in his decision letter in the Boorley Green appeal, issued about three weeks later, that the supply of housing land in the council's area was "around four years". This offended the principle that there is a public interest in planning decisions in like cases being consistent, and that, in cases of inconsistency, the decision-maker should explain that inconsistency (see the judgment of Mann L.J. in *North Wiltshire District Council*). Where relevant matters arose after the close of an inquiry, such as an inspector reporting to him on an appeal raising closely similar planning issues in the same area as the appeal in hand, it was incumbent on the Secretary of State to take reasonable steps to inform himself of those matters, and so avoid inconsistent decisions. The inspector's report in the Boorley Green appeal fell into that category. By the time the Secretary of State eventually came to make his decision on Hallam Land's appeal, he had had that report for almost three months.

70. Supperstone J. rejected this argument, on the simple basis that the Secretary of State's decision in the Boorley Green appeal had not yet been made when the decision in this case was issued, and "accordingly, it cannot have been a material consideration to which the principle of

consistency can apply". Although the inspector's report on the Boorley Green appeal had been submitted to the Secretary of State before he made his decision in this case, "the principle of consistency in decision taking has no application to Inspectors' reports which are not decisions" (paragraph 33 of the judgment). The proposition that the Secretary of State must always have imputed knowledge of an inspector's report in an undetermined appeal was incorrect (paragraph 35). So was the submission that it was irrational, and a breach of the principle recognized by the House of Lords in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1976] 3 W.L.R. 641 that a decision-maker must take reasonable steps to acquaint himself of relevant matters, for the Secretary of State not to take into account an unpublished inspector's report in another appeal that was yet to be decided on its own, different facts (paragraph 38).

71. The judge also accepted the submission of Mr Simons and Mr Stinchcombe that there was, in fact, no material inconsistency between the two decisions. In both cases the Secretary of State had found that there was less than the requisite five-year supply of housing land, and that the consequences provided for by NPPF policy must follow. In his decision on the Boorley Green appeal the Secretary of State did not adopt the inspector's description of the shortfall as "significant". His conclusion in that case that the housing land supply "should be regarded as standing at around four years" was consistent with his corresponding conclusions in his decision in this case. And in both cases, given the shortfall, he gave significant weight to the provision of housing: "substantial weight" in this case, "considerable weight" in the Boorley Green case (paragraph 39). The Secretary of State's application of policy 3.CO of the local plan in this appeal, the weight he gave to that policy, and his relevant reasons did not betray an inconsistent approach with his inspector's or his own in the Boorley Green appeal (paragraphs 40 to 46).

72. I agree with the judge's approach to this issue, and the conclusions he reached upon it, essentially for the reasons he gave.

73. The principle of consistency in planning decision-making is not a principle of law. It is a principle of good practice, which the courts have traditionally supported and the Court of Appeal has recently confirmed in *DLA Delivery Ltd.*.

74. The principle applies to decisions of planning decision-makers, and is exercised with a view to the public interest in planning decisions in like cases being consistent, or if inconsistency arises, a clear explanation for it being given in the second of the two decisions concerned (see *DLA Delivery Ltd.*, at paragraphs 28 to 30, 46 and 47). It does not apply, in the case of decisions on planning appeals made by the Secretary of State, to inspectors' reports that have been submitted to the Secretary of State but on which his decision is still to be made at the time of the decision subject to challenge in the case before the court. The purpose and status of such a report is, essentially, that of advice given to the Secretary of State by his appointed inspector, which will inform the decision itself, but which the Secretary of State is not bound to follow and is free to reject, so long as he gives adequate reasons for doing so. It is an intermediate stage in the process of decision-making. The assessment and conclusions contained in the report do not constitute the Secretary of State's decision, nor do they form any part of that decision unless and until they are incorporated into it, whether in whole or in part. Usually, as in the Boorley Green appeal, the inspector's report is not published until the Secretary of State has made his decision. On occasions, however, it may be released by the Secretary of State with a view to inviting further representations or evidence from the parties to deal with a particular issue raised in it.

75. It would be a radical and unjustified extension to the principle of consistency to embrace within it unpublished inspectors' reports, whose conclusions and recommendations the Secretary of State may in due course choose to accept or reject. Indeed, this would not be an extension of the principle of consistency but a distortion of it, because the basis for it would not be consistency between one decision and another, but consistency between a decision and a non-decision, a decision yet to be made. That is not a principle the court has ever recognized, nor even, in truth, a meaningful principle at all.

76. In my view, therefore, this part of the appeal is mistaken, and I would reject it.

Conclusion

77. For the reasons I have given, I would allow this appeal on the first issue alone and on the basis I have indicated.

Lord Justice Hickinbottom

78. For the reasons given by Lindblom L.J., with which I entirely agree, I agree that the appeal is allowed on the first issue alone.

Lord Justice Davis

79. I also agree that the appeal should be allowed.

80. I would like to make some observations of my own on the first issue.

81. Clearly a determination of whether or not there is a shortfall in the 5 year housing supply in any particular case is a key issue. For if there is then the "tilted balance" for the purposes of paragraph 14 of the NPPF comes into play.

82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficulty in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that is itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will be a relevant and material consideration, requiring to be evaluated.

83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of *Hopkins Homes*. I agree also with the observations of Lang J in paragraphs 27 and 28 of her judgment in the *Shropshire Council* case and in particular with her statements that "…Inspectors generally will be required to make judgments about housing need and supply. However these will not involve the kind of detailed analysis which would be appropriate at a "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14." I do not

regard the decisions of Gilbart J, cited above, when properly analysed, as contrary to this approach.

84. Thus exact quantification of the shortfall, even if that were feasible at that stage, as though some local plan process was involved, is not necessarily called for: nor did Mr Hill QC so argue. An evaluation of some "broad magnitude" (in the phrase of Lindblom LJ in his judgment) may for this purpose be legitimate. But, as I see it, at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighing process will be undermined. And even if some exception may in some cases be admitted (as connoted by the use by Lang J in *Shropshire Council* of the word "generally") that will, by definition, connote some degree of exceptionality: and there is no exceptionality in the present case.

85. In this case (and in striking contrast to the Bubb Lane and Botley Road cases) a sufficient evaluation of the extent of the shortfall did not happen. Instead, the Secretary of State, having "noted" the council's updated figure of 4.86 year supply and without any express reference to the Bubb Lane and Botley Road cases, simply announced a bald conclusion that there was a "limited" shortfall in the housing land supply. Broad statements elsewhere in the decision letter to the effect that "the Secretary of State has taken into account" the post-inquiry representations do not overcome the defect of a demonstrable lack of engagement with the actual extent of the shortfall: thereby resulting in an absence of a reasoned conclusion on this material issue. Moreover, such a conclusion departs – again, for no stated reason – from the inspector's statement in paragraph 108 of his report that "it can be said that there is a material shortfall against the five year supply…".

86. Although it was submitted on behalf of the council that the result would still inevitably have been the same, even had the extent of the shortfall been properly addressed, I cannot accept that that is necessarily so. So the matter must be the subject of further consideration.

87. Thus I too would allow the appeal on this basis. I would reject the appellant's arguments on the second issue, for the reasons given by Lindblom LJ.

The Planning Inspectorate

Appeal Decision

Inquiry held on 6 -13 September 2022

Site visit made on 9 September 2022

by C Masters MA (Hons) FRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/C1570/W/22/3296426
Land South of (East of Griffin Place) Radwinter Road, Sewards End, Saffron Walden, CB10 2LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Rosconn Strategic Land against the decision of Uttlesford District Council
- The application ref UTT/21/2509/OP dated 3 August 2021 was refused by notice dated 18 March 2022.
- The development proposed is outline application for the erection of up to 233 residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road. All matters reserved except for means of access

Decision

1. The appeal is allowed and planning permission is granted for the outline application for the erection of up to 233 residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road. All matters reserved except for means of access at Land South of (East of Griffin Place) Radwinter Road, Saffron Walden, CB10 2LB in accordance with the terms of the application, Ref UTT/21/2509/OP, dated 3 August 2021, subject to the conditions contained in the attached schedule.

Applications for costs

2. At the inquiry an application for costs was made by Rosconn Strategic Land against the Rule 6 Party. A counter costs application was made by the Rule 6 party for responding to the costs claim. These applications are the subject of a separate decision.

Preliminary Matters

3. Saffron Walden Town Council and Sewards End Parish Council were represented as a Rule 6 party and took part in the inquiry.

4. The appellant sought to introduce two additional plans to the inquiry. These plans are 2206-01- TS-01REVB traffic signal design and 20-1142-SK16 proposed western pedestrian/cycle link. Consultation was undertaken in relation to these plans on 1 August 2022 and the Council did not object to

these plans being submitted. In light of this, I do not consider that any persons would be prejudiced or disadvantaged by my consideration of these plans and have considered the appeal on this basis.

5. On 25 July 2022, the Council confirmed by letter that it no longer contested the appeal.

6. Two Statements of Common Ground were submitted which covered planning matters (Uttlesford District Council and the Appellant) and Highways matters (Essex County Council and the Appellant). I have had regard to the development plan policies referred to within these documents in reaching my decision below.

7. The appellant submitted an unsigned Section 106 Agreement (s106) to the inquiry. This was discussed at a round table session, and I allowed a short amount of time after the inquiry for the document to be signed. The signed version was received on 23 September 2022. The agreement made includes a number of obligations and provisions for payments to be made to both the Council and County Council and I will return to this matter below.

8. On the 15 September 2022, the referendum took place in connection with the Saffron Walden Neighbourhood Plan and the result was in favour of the Neighbourhood Plan. The parties were provided the opportunity to comment on this in writing. I have taken into account those comments received in reaching my decision below.

9. There is no dispute that the Council cannot currently demonstrate a 5 year supply of housing. It was agreed between the main parties that the Council currently have 3.52 years of supply.

Main Issues

10. Having regard to the above, the main issues in this appeal are:

- Whether the proposal adequately provides for sustainable transport measures including pedestrian and cycle movements.
- Whether the proposal makes adequate provision for any additional need for local services, amenities and infrastructure arising from the development.

Reasons

Whether the proposal adequately provides for sustainable transport measures including pedestrian and cycle movements

11. The appeal site is located on the edge of Saffron Walden. Saffron Walden is one of the three main centres within the district and provides for a broad range of facilities and services reflective of the size of the settlement. In light of this, it is important that opportunities to promote walking, cycling and public transport use from the appeal site to Saffron Walden are identified and pursued in accordance with paragraphs 104 and of the Framework.

12. Radwinter Road provides a generally flat level walk to the town centre and I was able to see that the route was well used by pedestrians and cyclists alike during my site visits. I note that the route was particularly well used by school children from the existing Linden Homes site to access schools within the town. Table 3.1 of the transport statement of common ground outlines the range of

facilities and services accessible from the appeal site and the indicative walk and cycling times along Radwinter Road. It is clear to me that key facilities such as convenience shopping (Tesco superstore) hospital, schools, gym and leisure and fitness facilities are located within Saffron Walden and would be readily accessible from the appeal site on both foot and by cycle. Contrary to the views expressed by the Rule 6 party, the depth and variety of facilities within Saffron Walden means it is unlikely that future residents would be heading towards Sewards End due to the very limited facilities on offer there. In my view, the appeal site represents a sustainable location in this regard.

13. The appeal site would be served by one single vehicular access from Radwinter Road. In order to ensure pedestrian connectivity is maximised, the proposal includes for a new 2m wide footway on the south side of Radwinter Road connecting to the footway adjoining the Linden Homes site. There would also be a shared footpath/cyclepath at 3m in width to the western boundary of the site so as to provide a potential connection to the adjoining housing scheme. The connection to the adjoining housing development would require the footpath to be extended across third party land. In terms of the pedestrian and cycle linkages, the proposal adequately provides for pedestrian and cycle movements.

14. The access and movement parameters plan, which provides an indication as to how the site could be designed at the reserved matters stage, illustrates how this access road would serve the appeal site. In terms of pedestrian and cycle movements across the site, the Council will have the opportunity to input into the detailed design of the scheme at reserved matters stage. The access and movement parameters plan provides a useful indication as to how pedestrian and cycle opportunities could be maximised across the site, ensuring that easy access to the public open space is achieved.

15. In terms of public transport offer, the proposal includes for a bus turning area within the site as well as two new bus stops on Radwinter Road to the east of the appeal site. These stops would include a shelter and real time passenger information and would be DDA compliant. A pedestrian crossing would be provided between the two stops which would include relocating the pedestrian splitter island on Radwinter Road crossing the Tesco site access. The footway on the northern side of Radwinter Road would be widened to 2m width between the new crossing and the bus stop. This new crossing would deliver benefits to both future occupiers of the appeal site as well as the wider population in this location. The proposal also includes for a number of other sustainable transport measures which I address in further detail in relation to the legal agreement. Opportunities to provide for sustainable transport measures have therefore been adequately addressed.

16. To conclude, I therefore find that the proposal would provide adequate sustainable transport measures including pedestrian and cycle movements. It would therefore accord with policy GEN1 of the Uttlesford Local Plan (ULP) 2005. This policy advises, amongst other things, that the design of development must take into account the needs of cyclists, pedestrians and public transport users. This policy is broadly consistent with the overall objectives of the Framework.

Whether the proposal makes adequate provision for any additional need for local services, amenities and infrastructure arising from the development

17. The appellant has entered into a completed s106 to secure a number of planning obligations which have been identified by both Uttlesford District Council and Essex County Council. The obligations are supported by CIL compliance statements which explain how each obligation accords with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

18. The completed s106 planning obligation secures the following:

- 40% affordable housing;
- Public open space provision on site including provision for its ongoing maintenance;
- Contributions towards health care provision, primary and early years education provision, library provision and bus service provision;
- A number of sustainable transport measures including a contribution towards the provision of bus services, provision of sustainable travel vouchers, the implementation of a travel plan (including monitoring fee), contribution towards a car club, provision of publicly accessible car club parking spaces with electric vehicle charging points and on plot parking to be provided with electric vehicle charging points;
- Highways works (Radwinter Road/Tesco access works, pedestrian/cycle link extension and on site pedestrian/cycleway);
- 5% custom build housing;
- Monitoring fee.

19. Schedule 4, Part 4 of the completed agreement contains a clause to safeguard land for a potential future relief road through the site which would connect Radwinter Road to Thaxted Road. I understand that this road does not form part of any adopted or emerging plan which is publicly available. The Council were neutral on the matter. Essex County Council advised that the safeguarding of the road would deliver '*strategic planning **benefits***'. Be that as it may, the correct place for such proposals to be assessed is the development plan. As such, the safeguarding of land for a relief road is not necessary to make the development acceptable. The obligation therefore fails the tests set out and I do not therefore consider it would be lawful to take it into account.

20. The western pedestrian/cycle link is covered at Schedule 4, Part 3. Here, the wording of the Agreement places the owners under an obligation to use all (but not commercial imprudent) endeavours to secure this link within 12 months of the start of the development. Given the circumstances and as the full link would require third party land, I concur with the views expressed by the Council that this represents a proportionate and pragmatic approach. As such, the western pedestrian/cycle link would accord with the CIL Regulations.

21. Although a number of local residents have expressed concerns regarding the capacity of the secondary schools to accommodate additional students, the consultation response from Essex County Council confirms that no contribution towards secondary education is necessary to mitigate the impact of the proposal on local secondary school provision.

22. The Council have produced CIL compliance statements which set out the detailed justification for each of the obligations listed. Save for the safeguarding of land for a potential future relief road which I have addressed above, there is no dispute between the Council and the appellant that the obligations contained within the agreement are necessary and would otherwise meet the tests contained at Regulation 122. I have also carefully considered the individual drafting points made by the Rule 6 party and discussed in detail at the round table session. However, in light of the need to mitigate the **impact of the development, as well as the Council's own pol**icies, I conclude the obligations are necessary have taken the obligations into account.

23. I therefore conclude on the second main issue that the proposal would make adequate provision for any additional need for local services, amenities and infrastructure arising from the development. The proposal would therefore accord with policy GEN6 of the ULP which advises, amongst other things, that development will not be permitted unless it makes provision for infrastructure necessary to support the proposed development. This policy is generally consistent with the Framework.

Other Matters

Heritage

24. The Rule 6 party allege harm to heritage assets as follow:

- the setting of both Pounce Hall and St Mary's Church
- the Saffron Walden Conservation Area
- the setting of Nos 10-12,14,16, 17,19 and 21 High Street

25. I deal with each of these assets in turn. I have had special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses in accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Pounce Hall

26. This is a detached grade II listed dwelling located off the north side of Radwinter Road. It is situated along with other isolated dwellings on a private road accessed from Radwinter Road. The significance of the asset is in my view very much related to its built form and fabric. From what I saw on my site visit, the extent of the setting which contributes to its significance is limited to both the enclosed well established garden which in some parts is on a lower level and wraps around the side and rear of the property as well as the clear vista to the west which provides extensive uninterrupted views directly towards Saffron Walden. This is supported by the historical maps which show the garden area to the front of the building laid out with a central path facing towards the meadow and the property is clearly positioned to take account of the meadow. Taking into account these factors, I do not agree that the hedges on Radwinter Road make any contribution to the heritage significance of the asset concerned.

27. To inform this analysis, I was able to visit both the interior and exterior of the property during the site visit. From both the first and second floors of the

windows facing east, there are glimpsed views through the tops of the trees and existing dense vegetation across to limited parts of the appeal site. However, these glimpsed views from some of the upper floor windows to limited parts of the appeal site do not make any contribution to the historical significance of the dwelling or its setting which I have clearly identified above. They do not in my view contribute to the setting of the heritage asset which is clearly focused towards the meadow and Saffron Walden .

28. I was also able to experience the view across towards Pounce Hall from the appeal site. It is not possible to view the heritage asset due to a number of factors including the distance, topography and significant dense vegetation in place.

29. The appeal proposal would not result in any change to the built form or fabric of the building. It would also not change the relationship between the residential garden or the contribution the longer range views back towards Saffron Walden make towards the assets significance. These are the factors which provide the most significant contribution to the significance of the heritage asset concerned.

30. I conclude that the proposal would not result in any harm to the setting or significance of the heritage asset concerned. As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, and there would be no conflict with policy ENV2 of the ULP which relates to development effecting listed buildings.

St Mary's Church

31. The Church is a grade I property and is a central, dominant feature within Saffron Walden town centre. It sits on an elevated position within the town centre and has a tall spire which is visible from a number of vantage points across the appeal site and across the wider town and beyond.

32. The significance of the asset is in my view related to its high level of architectural design and detailing and prominent position within Saffron Walden town centre. There are no designated views between the appeal site and St Mary's Church and it was agreed between the parties that the appeal site is not visible from the Church. This is due in part to the built-up nature of the town centre, the central location where the Church is located as well as the distance between the two. Views of the Church from parts of the appeal site are noted, however these views are more distant and include significant areas of more recent development that has taken place such as the Linden Homes scheme. In any event the presence of these views do not equate to heritage harm. They do not in my view contribute to the significance of the heritage asset which I have clearly identified above.

33. The appeal proposal would not result in any change to the built form or fabric of the building. Taking into account the intervening buildings and separation distances involved, the development would not cause harm to the significance of St Mary's Church or the appreciation of the significance of the heritage asset. It would also not change the dominant relationship that the Church has on the centre of Saffron Walden. These are the factors which provide the most significant contribution to the significance of the heritage asset concerned.

34. In reaching this view, I have had regard to the appeal decision referred to at Stowmarket[1]. However, in the case of that appeal, the Inspector was clear that the significance of the heritage asset was related to the physical isolation of the Church. This is not the case here.

35. I conclude that the proposal would not result in any harm to the setting or significance of the heritage asset concerned. As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, and there would be no conflict with policy ENV2 of the ULP which relates to developments effecting listed buildings.

Saffron Walden Conservation Area

36. My attention has been drawn to the Saffron Walden Conservation Area Appraisal and Management Proposals document, 2018. This document notes that the Conservation Area as a whole is dominated by the St Mary's Church which is located on a strategically elevated position. It divides the Conservation Area into 6 different character areas. There is no 'grading' as such to these character areas and nothing to substantiate the claim that the High Street/Church Street junction presents the most important part of the Conservation Area. The document notes that one of the key environmental qualities is the varied historic roofscape as well as high quality open spaces. From what I saw on my site visit, the significance of the Conservation Area is in my view mainly derived from the quality and variety of historic buildings, the use of local vernacular materials, roofspaces and detailing.

37. The Rule 6 party allege harm to a number of different areas of the Conservation Area and I deal with each of these in turn.

38. The Common (Castle Green) part of the Conservation Area is characterised by the central open space enclosed with tree planting and residential properties surrounding it. The appeal site is located some distance from this part of the Conservation Area and from what I saw on my site visit, I am not convinced that it would be in anyway visible from this location. The minimal views of the rooftops of the Linden Homes scheme do not in my view detract from this part of the Conservation Area. Taking into account the separation distances involved, the proposal would not result in any harm to the features which contribute to the significance of this part of the Conservation Area.

39. In relation to the capacity improvement highways works to Radwinter Road/Thaxted Road/East Street/Chaters Hill, there would be no loss of trees in this location however a small area of grassed land would be effected by the highways works. The highways works would only involve changes within the highway land, which would include a filter lane being added. These works are limited in nature and would have a very localised effect on the highway in character and appearance terms. In my view the works would deliver benefits to the Conservation Area as a whole in terms of assisting the free flow of traffic in this location and the wider town centre. There is no evidence to support the assertion that there would be conflict with the bridge structure itself or road signage. The proposal would not result in any harm to the features which contribute to the significance of this part of the Conservation Area.

[1] APP/W3520/W/18/3214324

40. The Rule 6 party also allege harm to the Conservation Area as a result of the off site highways works at High Street/Church Street. As works to the highway, the traffic lights at the High Street/Church Street junction would result in a very limited change to the Conservation Area. They would introduce a modern feature at this busy junction as well as including the widening of the footways on Church Street. There is existing street apparatus in the vicinity such as highways signage, road markings and traffic lights further along the High Street at the junction with George Street. Given the town centre location, as one would expect there are also modern shopfronts, signage and lighting associated with the commercial nature of the centre. Traffic lights and signage are to my mind relatively understated features when set in the context of the Conservation Area and town centre location as a whole. As a widely used traffic management tool, I am satisfied that the final design of the traffic lights which would be subject to the Council's control through an appropriately worded condition could be such that the proposal would preserve the character and appearance of the Conservation Area. There is also some merit in the suggestion that assisting the free flow of traffic in this location would deliver wider benefits in terms of the appreciation of the Conservation Area as a whole. Similarly, the opportunity to rationalise the existing highways signage and painted road markings could also deliver benefits to the appearance of this part of the Conservation Area.

41. I conclude that the proposal would not result in any harm to the character and appearance of the Conservation Area. As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, and there would be no conflict with policy ENV1 of the ULP which relates to developments effecting Conservation Areas.

The Setting of Nos 10-12,14,16, 17,19 and 21 High Street

42. Turning to consider the individual heritage assets, I have also had due regard to the effect of the offsite highways works at the High Street/Church Street junction on numbers 10-12,14,16,17,19 and 21 High Street which are all grade II properties save for No 21 which is grade II*.

43. I acknowledge that the individual buildings all have their own particular features of interest and significance. However, in so far as relating to this appeal, there is a common significance associated with the individual buildings built form and fabric which is derived from their historic interest as town centre buildings. The Framework defines setting as the surroundings in which a heritage asset is experienced. Given the modern character of the busy High Street, little of the significance of these listed buildings is derived from their setting.

44. The off site highways works would require a change from the existing five posts with signage at the junction to eight posts with signage and lighting. The appellant has highlighted that there maybe scope to reuse two of the existing posts and I have no reason to disagree. In any event, the installation of a modest set of traffic lights at this busy road junction is unlikely to obscure key features of the individual buildings concerned or adversely impact the historic frontages. Indeed, the Council would retain control over the precise size, siting and final design of the lights and control box through a suitably worded condition. I have no reason to doubt the evidence presented that heritage advisors have been party to the design to date along with Essex County Council

traffic signal team. I am not persuaded that the siting of the traffic lights would detract from the setting of the listed buildings or provide a feature which would visually compete with any feature of significance in connection with the heritage assets concerned.

45. Concerns have also been expressed regarding the impact of the traffic lights on the cellars at 10-12 and 14, 16 and 19-21 High Street. The proposal is supported by a topographical survey as well as a ground penetrating radar survey. A detailed structural survey submitted with the appeal illustrates the extent of these cellars. I am satisfied that on the basis of this evidence, no part of the proposed highways works would harm the fabric of the heritage assets concerned.

46. I conclude that the proposal would not result in any harm to the setting or significance of the heritage asset concerned. As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, and there would be no conflict with policy ENV2 of the ULP which relates to developments effecting listed buildings.

Heritage - overall conclusion

47. I conclude that the proposal would not result in any harm to the setting or significance of the heritage assets concerned. The proposal would also not result in any harm to the character and appearance of the Conservation Area As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged. There would be no conflict with policy ENV1 or ENV2 of the ULP which relates to developments effecting Conservation Areas and listed buildings respectfully. There would also be no conflict with policy SW3 of the Saffron Walden Neighbourhood Plan which is a general design policy.

Landscape and Visual Impact

48. The appeal site is located next to the built up edge of Saffron Walden. There are no national or local landscape designations within the site. The proposal would result in this built up edge expanding into the existing countryside. It was readily accepted by all parties that in order to meet housing needs, development will have to take place beyond existing settlement boundaries and on greenfield sites. Nevertheless, the construction of residential dwellings and associated necessary infrastructure will have a permanent and significant effect on the existing landscape character of the site.

49. The proposal was supported by a landscape and visual impact assessment (LVIA) as part of the Environmental Statement. This document explains clearly the methodology used to complete the assessment, including how both landscape and visual effects were assessed. It goes onto identified a number of viewpoints from which the impact of the proposal has been assessed. It concludes that the construction stage of the development would have a moderate-major effect, reducing to moderate and minor after 15 years. I concur that this LVIA and the conclusions reached provides a robust assessment of the landscape impact of the proposal. I also note that the LUC Landscape Sensitivity Assessment commissioned by the Council in 2021 identifies the appeal site as being located in an area surrounding Saffron Walden with the least sensitivity in this regard.

50. In terms of the immediate environment, the site benefits from existing trees and hedgerows around the site which are dense in places and this is particularly so on the eastern boundary towards Sewards End. The removal of some of the hedgerow to Radwinter Road would be necessary to ensure the required visibility splays can be achieved. There would be no removal of the veteran tree. Replacement hedgerow planting would follow the alignment of the visibility splays and given this would have a very localised impact, I do not consider that this would be unduly harmful in landscape impact terms. Across the remainder of the site, hedgerows and trees would be retained as part of the proposal, thereby softening the impact of the proposed development. To add to this, additional landscaping would be secured through an appropriate landscape strategy at reserved matters stage. There would be the opportunity to enhance the landscape character of the site through this scheme.

51. Importantly, the green infrastructure plan indicates how 55% of the site area would be dedicated to landscape and green infrastructure. This is a significant amount of the overall site area which would include green corridors and public open space. Taking into account the topography of the site and the gradual rising slope to the south/southeast, the potential for a new public park on this higher ground is illustrated through the green infrastructure plan which would also facilitate the creation of a new public vantage point within the site. This would afford the opportunity to maximise views back towards Saffron Walden as part of the detailed design stage.

52. In terms of visual impacts, assertions are made regarding the design of the final scheme however this is an outline scheme only with all matters reserved save for the access. Through the reserved matters submission, the Council would have the opportunity to secure a high-quality layout and design within the parameters of the strong landscape framework identified through the green infrastructure plan. These concerns are therefore without substance.

53. Turning to the issue of coalescence, concerns were expressed that the proposal is of such a scale that it would result in the coalescence of Sewards End with Saffron Walden. I disagree. Sewards End is a small and compact settlement with approximately 190 houses. In qualitative terms, on leaving the village heading towards Saffron Walden, Radwinter Road is characterised by dense vegetation on both sides. This is more pronounced on foot given the local topography and denser vegetation along the footpath edge. There is a clear sense of leaving the village and travelling along Radwinter Road before coming to the Linden Homes scheme and the built up edge of Saffron Walden. There can be no doubt that the appeal proposal will bring this builtup edge closer to Sewards End. However, the remaining fields and dense vegetation either side of Radwinter Road will mean that the settlements will remain separate, and the identity and spatial setting of Sewards End will not be adversely effected. In quantitative terms, the separation distances would be between 251m-476m. This quantitative separation supports the views I have expressed above that the proposal would not result in coalescence.

54. To conclude, the proposal would result in some harm to the landscape in terms of the visual impact of built development and the associated necessary infrastructure. However, in my view the landscape value of the existing site is low. The retention of a significant amount of the existing landscaping, the opportunity to enhance this through the green infrastructure plan, additional planting and subsequent reserved matters submissions along with the scope to

provide extensive publicly accessible open space would deliver benefits which would go someway towards mitigating this harm.

55. My attention has been drawn to policy S7 of the ULP in relation to this issue. Policy S7 designates all land within the district and outside of the settlements, site boundaries and beyond the green belt as countryside. It states that the countryside will be protected for its own sake and advises that there will be a strict control on new development within the countryside. This approach presents a more restrictive approach than the more flexible and balanced approach of the Framework, which supports well designed new buildings to support sustainable growth whilst recognising the importance of the natural environment. Nevertheless, I agree with the analysis provided by the Inspector at Bran End[2], namely that the approach outlined within policy S7 does not fundamentally undermine the continued relevance of the policy approach and that the policy is therefore partially consistent with the Framework. I acknowledge that there is conflict with this policy. I shall return to the matter of weight to be attached to this policy conflict in my planning balance section below.

56. I have also had regard to policy GEN2 of the ULP concerning design. As this is an outline scheme, only limited parts of the policy are applicable to the appeal proposal. However, I am content that the proposal would accord with part (b) in that it safeguards important features in its setting, enabling their retention and helping to reduce the visual impact of new buildings and structures where appropriate. There is therefore no conflict with this policy.

Highways

57. Paragraph 111 of the Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe. In the case of this appeal, the site access will be provided through a new priority junction with ghost island right turning lane on Radwinter Road. It is agreed between the appellant, Council and Essex County Council as highways authority that the access as proposed would provide a suitably safe access to service the number of dwellings proposed.

58. In terms of the effect on the wider public highway network, improvements have been identified at three off site junctions – Radwinter Road/Thaxted Road/East Street/Chaters Hill (existing junction improvements), Thaxted Road/Peasland Road (signalisation of junction) and High Street/Church Street (signalisation of junction). It is also accepted that the delivery of these off-site works has been adequately demonstrated, and that the measures will not only address the impact of the appeal proposal but will also address existing capacity issues and therefore deliver broader highways benefits. I note that concerns have been raised regarding existing parking and delivery activity on both the High Street and Church Street however this is reflective of an existing situation and is not related to the appeal proposal.

59. The scope of these highways assessments has been agreed with Essex County Council as highways authority and is supported by detailed junction capacity analysis work and traffic surveys. As a result of this technical analysis, I can see no reason to reach a different view that the proposal will provide a safe

[2] APP/C1570/W/3263440

and suitable access and will have an acceptable impact on the wider highway network.

60. To conclude, the proposal would accord with policy GEN1 of the ULP. This policy advises, amongst other things, that the access to the main road network must be capable of carrying the traffic generated by the development safely, and the traffic generated by the development can be accommodated on the surrounding transport network. I have already set out above that in my view this policy is broadly consistent with the overall objectives of the Framework. In addition, some of the off site highways works are located within the area defined as the Saffron Walden Neighbourhood Plan area. I have had regard to this document in reaching my conclusions above. In particular, I note that the proposal would accord with policy SW15 concerning vehicular transport.

Loss of Agricultural Land

61. I note the proposal would result in the loss of high quality agricultural land and concerns have been raised regarding the viability of the remaining agricultural land. The Council acknowledges that most of the agricultural land within the district is classified as the best and most versatile. The Council also accepts that it is inevitable that future development will probably have to use such land as the supply of brownfield land within the district is restricted. I can see no reason to disagree with this view. The appellant has confirmed that access to the remaining agricultural land outside of the appeal site would remain. I have no technical evidence to support the assertion that the viability of this land would be adversely affected.

62. Nevertheless, I acknowledge that the proposal would be in conflict with policy ENV5 of the ULP which states that development of the best and most versatile land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. This policy is broadly consistent with the Framework however the emphasis on an assessment of alternative sites is plainly not consistent with the Framework. I will return to the matter of weight to be attached to this conflict in my planning balance below.

Other Matters – general

63. I acknowledge the concerns expressed in relation to issues concerning ecology and biodiversity, noise, air quality, flooding, archaeology, buffer zones and safety. The ES has provided a comprehensive assessment of the impact of the proposed development and where necessary, additional supporting statements have also been provided. I note that there are no objections from the Council in relation to these matters and I have no evidence before me which would lead me to reach a different conclusion in relation to these matters. Where appropriate, suitably worded conditions have been included to address any impact of the appeal proposal in relation to these other matters identified.

64. The Rule 6 party allege there would be conflict with policy S1 of the ULP. However this policy defines the development limits for the main urban areas and sets out what development will be permitted within these boundaries. The appeal site is not within this defined area. I share the views of the Council in this regard in that it is not a development plan policy which is directly relevant to the main issues before me.

65. I also acknowledge that the site is located within the Parish of Sewards End. Be that as it may, this does not lead me to reach a different conclusion on the main issues I have identified above.

Other appeal decisions

66. I have been referred to several previous appeal decisions by the Rule 6 party as well as several other appeal decisions provided by the appellant. I have taken these decisions into account in reaching my conclusions above. In particular, a number of the cases referred to present a different set of circumstances. The Coggleshall[3] case proposes a different number of units and was located in an area where a number of public footpaths traversed the site and the Inspector placed weight on the recreational value of the site. For the reasons I have set out within my decision, I do not share this view. In the context of the case at Stowmarket[4] the site was located within an area of high scenic quality, forming an important landscape setting to Stowmarket and was visually significant. For the reasons I have set out above, I do not share those views in relation to this appeal. In the case of the Steeple Bumpstead appeal[5], the appeal site appears to be within a sensitive location close to the Conservation Area and was deemed to have a high landscape value. For the reasons set out above, I have reached a different view in relation to this appeal.

67. Turning to consider the Bures Hamlet decision[6], there were long views of the appeal site from the Conservation Area across the site and the Inspector took the view here that the proposed development would be very visible from the Conservation Area and the appeal site was also close to the Dedham Vale Area of Outstanding Natural Beauty. This is not the case with this appeal. In relation to the Bran End decision[7], I have drawn similarities in relation to the consistency of policies with the Framework in relation to this appeal. However, in terms of the landscape assessment, the appeal site was located within a visually prominent location including views from a number of public rights of way and was deemed to have a high sensitivity to change. This is not the case here. This appeal can therefore be distinguished from all of the others referred to.

Benefits

68. Turning to consider the benefits of the proposal, there is a general imperative to boost the supply of housing land. The delivery of dwellings in an authority which does not have a 5 year supply of housing sites attracts substantial weight. In addition, the proposal would provide 40% affordable housing as well as 5% custom build housing. The delivery of affordable housing would accord with the objectives of policy H9 of the UDLP. Based on the evidence I heard in relation to this matter, in a district where there is a clear need for such provision to be made, these factors also attract substantial weight.

69. The proposal would deliver a number of other benefits. These include improvements to the off site highway junction improvements which will deliver benefits beyond the mitigation necessary to make the development acceptable.

[3] APP/Z1510/W/16/3160474
[4] APP/W3520/W/18/3214324
[5] APP/Z1510/W/17/3173352
[6] APP/Z1510/W/18/3207509
[7] APP/C1570/W/20/3263440

A number of sustainable transport measures including the contribution towards the provision of bus services and bus stops as well as the provision of publicly accessible car club parking spaces with electric vehicle charging points are also benefits which go beyond mitigation. I attach moderate weight to both of these factors. In terms of biodiversity, the appellant has committed to achieving a minimum metric of at least 10% biodiversity net gain. This is consistent with paragraph 179b of the Framework and I attach moderate weight to this factor in terms of the planning balance.

70. In economic terms, the proposal will also deliver jobs benefits, albeit temporarily in terms of the construction phase of the development. There would also be economic benefits in the context of the spending generated by future occupants and I attach moderate weight to this. The proposal would also deliver a significant amount of publicly accessible open space. However, I am also mindful that the proposal would also result in the loss of fields where there is currently no development resulting in some limited landscape harm. Taking into account the size, scale and accessibility of the open space to be created as part of this scheme, in the circumstances of this appeal, I am attaching moderate weight to this.

Whether the proposal conflicts with the development plan as a whole

71. The parties agree that there is no five-year land supply in Uttlesford. Accepting that the agreed housing land supply position is 3.52 years, this shortfall is to my mind very significant. Paragraph 11 (d) of the Framework and the associated footnote 8 is engaged and the lack of a 5 year supply of housing sites means that the policies most important for determining this appeal are deemed to be out of date.

72. The proposal would result in some harm in terms of landscape and visual impact. The proposal would also result in the loss of agricultural land. As such, the proposal would conflict with policies S7 and ENV5 of the ULP.

73. In terms of policy ENV5, this policy is only partly consistent with the Framework and the requirement to undertake in effect a sequential approach is not consistent with the Framework. I am therefore attaching only limited weight to the policy conflict.

74. In relation to policy S7, I have set out above that the general objective of the policy accords with the Framework. However, I recognise that the detailed wording which requires the countryside to be protected for its own sake is inconsistent with the Framework. It is my view that only limited weight should be attached to this policy conflict.

75. As a result, it is my view that on the basis of the conflict with the policies outlined above, the proposed development would conflict with the development plan when taken as a whole.

Planning Balance

76. It is common ground that the tilted balance identified within the Framework and as set out above has been engaged. In the case of this appeal, this means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

77. The proposal would conflict with policies S7 and ENV5 of the ULP. In relation to policy S7, it is my view that limited weight should be attached to this policy conflict. I also attach limited weight to the policy conflict with policy ENV5.

78. The benefits arising from the proposed development would be substantial. I have concluded that the benefits of housing delivery, affordable housing and custom build housing should all individually carry substantial weight. I have also attributed moderate weight to the wider off site highways benefits that the scheme would deliver beyond mitigation measures. I have also attributed moderate weight to the sustainable transport measures which would also deliver benefits to the wider population and not just future residents of the scheme. I have attributed moderate weight to the economic benefits in terms of employment generation, as well as moderate weight to the biodiversity net gain the proposal would secure. Finally, I have attributed moderate weight to the delivery of a significant amount of publicly accessible open space provision at the site.

79. I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. In the case of this appeal, I conclude that the material considerations of the appeal are such that they outweigh the conflict with the development plan.

Conditions

80. The Council and the appellant provided a list of agreed conditions which they considered would be necessary in the event that planning permission be granted. These are set out on the attached schedule. I have amended the wording where necessary for precision. Some of the conditions require matters to be approved before development is commenced. The appellants have agreed to the pre commencement conditions.

81. Conditions 1 and 2 present a standard time implementation condition and submission of reserved matters condition. These are necessary in the interests of certainty. For the same reason, condition 3 sets out the list of approved plans. Condition 4 relates the submission of a phasing plan as part of the reserved matters submission and this is necessary for effectiveness.

82. Condition 5 relates to the implementation of the tree protection measures. This is necessary in the interest of protecting and enhancing biodiversity. Condition 6 addresses archaeology and is necessary in the interests of protecting the archaeological potential of the site. Conditions 7 and 8 address surface water drainage at the site, these conditions are necessary to ensure surface water drainage is adequately addressed at the site. Condition 9 requires a ground contamination assessment to be completed, this is in the interests of managing risks to pollution. Conditions requiring the submission of a construction environment management plan (condition 10) and construction management plan (condition 11) are necessary in the interests of protecting the living conditions of nearby residents. A landscape and ecological management plan (condition 12) is necessary in the interests of protecting and enhancing biodiversity.

83. Condition 13 requires details of noise mitigation measures which is in the interests of the living conditions of the future occupiers. Conditions 14 and 15 cover the installation of any external lighting which are both necessary in the

interests of the character and appearance of the area as well as the interests of protected species. For the same reason, condition 18 requires the submission of a biodiversity enhancements strategy and condition 19 requires the submission of a Farmland Bird Mitigation Strategy.

84. A number of conditions cover highways matters. Condition 21 covers all of the off-site highways works. The wording includes reference to the possible requirement for a traffic regulation order. This is a proportionate and justified approach should it be necessary. The condition is necessary in the interests of highways safety. Condition 22 requires the access road to be completed to the satisfaction of the local planning authority and condition 23 covers the visibility splays. Both of these conditions are necessary in the interests of highways safety. Condition 24 covers the off site highways works including the bus stop measures and uncontrolled crossing with drop kerb and pedestrian island. The written evidence prepared by the Rule 6 party requested that the condition included a reference to the footpath up to Sewards End to also be subject to replacement and repair by the appellant. Although this request was not pursued at the round table session, a condition requiring such works would be neither reasonable or necessary in this instance. Condition 25 covers the provision of sustainable transport links as part of the reserved matters submission. This is necessary in the interests of sustainable travel.

85. Condition 26 covers the issue of renewable energy sources, this is in the interests of energy efficiency. Condition 27 addresses the safeguarding of the route of the CLH pipeline, this is necessary to allow for its ongoing maintenance and access. I have also imposed the condition requiring the submission of a travel plan (condition 20) which is necessary in the interests of sustainable travel.

Conclusion

86. Taking all of the above matters into account and for the reasons given above I conclude the appeal is allowed.

C Masters

INSPECTOR

Conditions

1. The development hereby permitted must be begun not later than the expiration of two years from the date of approval of the last of the Reserved Matters to be approved.

2. Application(s) for approval of the Reserved Matters must be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Site Location Plan – Drawing No. DE_436-002 Rev A
- Land Use Parameters Plan – Drawing No. DE_436-020
- Building Heights Parameters Plan – Drawing No. DE_436-021
- Access and Movement Parameters Plan – Drawing No. DE_436-022
- Green Infrastructure Parameters Plan - Drawing No. DE_436-023
- Proposed Means of Access – CTP-20-1142 Drawing No. SK01 Rev D

4. Approval of the details of the layout, scale, landscaping, appearance and means of access (other than the means of access off Radwinter Road) ('the Reserved Matters') for each phase of development must be obtained from the Local Planning Authority in writing before the development on that phase commences and the development in that phase must be carried out as approved. The submission of Reserved Matters for the first phase of the development shall be accompanied by the submission of a phasing plan that identifies the subsequent phases of development. The development shall be carried out in accordance with the approved details.

5. Prior to commencement of any building, engineering works or other activities on the site (with the exclusion of site investigation works), the approved tree protection measures as set out in the BJ Unwin 'Tree Constraints, Tree Impacts and Tree Protection Method Statement for new development' (June 2021) and the associated Tree Retention and Protection Plan (Dwg No. SWTRP-JUN21) shall be put in place. The development shall be carried out in accordance with the approved details. The approved means of protection shall remain in place until completion of works obviates the need for protection of trees during the construction process.

6. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the Applicant and approved in writing by the Local Planning Authority. No development or preliminary groundworks can commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy. The Applicant will submit to the Local Planning Authority a post-excavation assessment (to be submitted within six months of the completion of the

fieldwork unless otherwise agreed in advance with the Local Planning Authority). This will comprise the completion of post-excavation analysis; the preparation of a full site archive and report ready for deposition at the local museum.

7. No development shall take place until a detailed surface water drainage scheme for the site, including provisions for maintenance, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The surface water drainage shall be carried out in accordance with the approved details.

8. No development shall be occupied in any phase until confirmation has been provided that either: foul water capacity exists off site to serve the development; or a development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Anglian Water (or the relevant water company). Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan, or all foul water network upgrades required to accommodate the additional flows for the development have been completed.

9. No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard or Model Procedure if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

   a) A survey of the extent, scale and nature of contamination;
   b) The potential risk to: Human health, Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems; and archaeological sites and ancient monuments.

   No development shall take place in locations where (following the risk assessment) land affected by contamination is found, which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s); the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that on completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out (and upon completion a verification by a suitably qualified contaminated land practitioner shall be

submitted to and approved in writing by the Local Planning Authority) before the development (or relevant phase of development) is occupied.

10. Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
a) Risk assessment of potentially damaging construction activities
b) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
c) The location and timing of sensitive works to avoid harm to biodiversity features
d) The times during construction when specialist ecologists need to be present on site to oversee works
e) Responsible persons and lines of communication
f) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
g) Use of protective fences, exclusion barriers and warning signs
h) The approved CEMP shall be implemented throughout the construction period in accordance with the approved details
i) Provision of a Soil Management Plan
The development shall only proceed strictly in accordance with the approved details.

11. Prior to the commencement of the development, a detailed Construction Management Plan (CMP) incorporating the measures contained within Appendix F of the Air Quality Assessment by Kairus Ltd Ref: AQ051769 dated 12/7/2021 shall be submitted to and approved in writing by the Local Planning Authority, and the plan shall include the following:
a) The construction programme and phasing
b) Risk assessment of potentially damaging construction activities
c) Hours of operation and delivery
d) Delivery and storage of materials on the site
e) Details of any highway works necessary to enable construction to take place
f) Contractors access arrangements for vehicles, plant and personnel including the location of construction traffic routes to, from and within the site, details of their signage, monitoring and enforcement measures.
g) Parking and loading arrangements
h) Details of hoarding
i) Management of traffic to reduce congestion
j) Control of dust and dirt, including on the public highway
k) Wheel and underbody washing facilities
l) Responsible persons and lines of communication
m) Details of any membership of the Considerate Contractors scheme
n) Details of consultation and complaint management with local businesses and neighbours
o) Waste management proposals
p) Mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour.
q) Prohibition of the burning of waste on site during construction

r) Details of any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures.
s) Before and after condition survey to identify defects to highway in the vicinity of the access to the site and the arrangements to ensure that, where necessary, repairs are undertaken at the developer expense where damage to the highway has been caused by the construction of the development.
t) Mechanisms to identify and protect strategic pipes and services crossing the site.
The approved CMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved materials.

12. Prior to the commencement of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:
a) Description and evaluation of features to be managed
b) Ecological trends and constraints on site that might influence management
c) Aims and objectives of management
d) Appropriate management options for achieving aims and objectives, including provision for funding
e) Prescriptions for management actions
f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period)
g) Details of the body or organisation responsible for the implementation of the plan
h) Ongoing monitoring and remedial measures

The approved plan shall be implemented in accordance with the approved details.

13. The details of layout and appearance to be submitted in accordance with the Reserved Matters shall include full details of the noise mitigation measures required. The scheme shall follow the recommendations identified in the Resound Acoustics Report Reference: RA00693 – Rep I and shall ensure that reasonable internal and external noise environments are achieved in accordance with the provisions of BS8233:2014 and BS4142:2014. Dwellings shall not be occupied until such a scheme has been implemented, in accordance with the approved details for mitigating noise at that dwelling. The mitigation scheme shall be retained in accordance with those details thereafter.

14. Prior to the installation of any external lighting, details of said lighting, including the design of the lighting unit, any supporting structure and the extent of the area to be illuminated, shall be submitted to and approved in writing by the local planning authority. Only the details thereby approved shall be implemented.

15. Prior to the installation of any external lighting, a lighting scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on the site that

are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specification and locations set out in the scheme and maintained thereafter in accordance with the scheme. No external lighting shall be installed without prior consent from the local planning authority.

16. Prior to first occupation of the development hereby permitted, a scheme setting out the arrangements for electric vehicle charging to include at least one electric vehicle charging point for each dwelling with on-plot parking and a publicly accessible car club parking space with the installation of an electric vehicle charging point for use in connection with a future town wide car club shall be submitted to, and approved in writing by, the Local Planning Authority. At least 20% of parking spaces, including the car club parking space, should be provided with fast charging points (7 – 22kW) and the remainder should be adaptable for electric vehicle fast charging. Thereafter the charging points shall be installed in accordance with the approved scheme and fully wired and connected ready to use before first occupation of each dwelling. The charging points shall be maintained thereafter.

17. The submission of details of layout for each phase shall include a scheme for the provision of secure covered cycle storage and arrangements for car parking to meet the standards set out in ECC Parking Standards: Design and Good Practice 2009. The approved provision for cycle storage and car parking shall be made available prior to the first occupation of each dwelling in that phase.

18. Prior to commencement of the development hereby approved, a Biodiversity Enhancement Strategy for protected and Priority species, in accordance with the details contained in the Addendum to the
Environmental Statement Volume 1: Chapter 8 Ecology (Harris Lamb, January 2022) shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement
Strategy shall include the following:
a) Purpose and conservation objectives for the proposed enhancement measures;
b) detailed designs to achieve stated objectives;
c) locations of proposed enhancement measures by appropriate maps and plans;
d) timetable for implementation demonstrating that works and protections are aligned with the
proposed phasing of development;
e) persons responsible for implementing the enhancement measures;
f) details of initial aftercare and long-term maintenance (where relevant);
g) details of the appointment of a person (e.g. ecological clerk of works) to provide ecological
expertise during construction; and
h) details of a Reptile Mitigation Strategy.
The identified enhancement measures shall be implemented in accordance with the approved details and timetable to achieve as a minimum a metric of

at least 10% biodiversity net gain. All features shall be retained in that manner thereafter.

19. Prior to the commencement of development, a Farmland Bird Mitigation Strategy shall be submitted to and approved in writing by the local planning authority to compensate the loss or displacement of any Farmland Bird territories identified as lost or displaced. This shall include provision for on-site mitigation measures prior to commencement.

The content of the Farmland Bird Mitigation Strategy shall include the following:
a) Purpose and conservation objectives for the proposed compensation measure, e.g. Skylark nest
plots;
b) detailed methodology for the compensation measures, e.g. Skylark plots must follow Agri-
Environment Scheme option: **'AB4 Skylark Plots';**
c) locations of the compensation measures by appropriate maps and/or plans;
d) persons responsible for implementing the compensation measure; and
e) a timetable for the implementation of the mitigation measures.
The Farmland Bird Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained for a minimum period of 10 years.

20. Prior to first occupation of the proposed development, a residential travel plan shall be submitted to the Local Planning Authority for approval in consultation with Essex County Council. The approved travel plan shall include provision for travel packs to be provided to all residents setting out public transport options, promoting cycling and walking routes, and a travel plan co-ordinator and shall then be implemented for a minimum period from first occupation of the development until 1 year after first occupation of the final dwelling.

21. Prior to the construction of any dwelling, a scheme shall be submitted to, and approved by, the local planning authority in consultation with Essex County Council which includes the following:
a) Capacity improvements for the Radwinter Road/Thaxted Road/East Street/Chaters Hill junction
as shown in principle on Dwg No. CTP-20-1142 SK10 Rev A;
b) Signalisation of the Thaxted Road/Peaslands Road junction as shown in principle on Dwg No. CTP- 20-1142 SK11 Rev A;
c) Signalisation of the Church Street/High Street junction as shown in principle on Dwg No. 2206-01-TS-01 Rev B. The scheme shall include appropriate connections with the existing signals at the High Street/George Street junction.
The approved works shall include (but not be limited to) all necessary traffic regulation orders, safety audits, lighting, signing and surfacing and shall be implemented prior to first occupation of the development.

22. The access road shown on Dwg No. CTP-20-1142 SK01 Rev D shall be completed to the satisfaction of the LPA in consultation with Essex County

Council as Highway Authority prior to the first occupation of the development.

23. Prior to occupation of the development, the access of 6.75m width, one 2m wide footway and one 3.5m wide footway cycleway – as shown in principle on submitted Dwg No. CTP-20-1142-SK01-D – shall be provided, including clear to ground visibility splays at the access with dimensions of 2.4 metres by 160 metres to the west and 2.4 metres by 120 metres, as measured from and along the nearside edge of the carriageway. The access with associated vehicular visibility splays shall retained free of any obstruction at all times thereafter.

24. Prior to occupation of the development, the highway works as shown in principle on Dwg No. 20-1142- SK01-D shall be provided and include (but not be limited to) all necessary traffic regulation orders, safety audits, lighting, signing and surfacing and shall. The works include:

    a) Two bus stops which shall comprise (but not be limited to) the following facilities: shelters; seating; raised kerbs; bus stop markings; poles and flag type signs, timetable casings.
    b) An uncontrolled crossing with drop kerbs and pedestrian island.
    c) Initiating the process to extend the 30mph speed limit east to include the access and bus stops and if the process is successful implementing the approved Traffic Regulation Order. Process and implementation to be implemented at no cost to the highway authority.
    d) A 2m footway from the access eastwards to the proposed bus stop and westwards to join the existing footway on the south of Radwinter Road.

25. The details for the layout as a Reserved Matter, as required by Condition 4, shall make provision for:
    i) a bus turning facility and bus stop within the site as shown in principle in drawing number DE- 463-022; and
    ii) a 3m wide pedestrian and cycle link to the western site boundary in the position as shown in principle on Dwg No. 20-1142 SK16. The pedestrian and cycle use shall be made available for public use.

26. Prior to the construction of any dwelling on each phase of the development, details for the provision of domestic heating from a renewable source of energy and the installation of PV solar panels shall be submitted to, and approved by, the local planning authority. The approved details shall be installed prior to the occupation of each dwelling.

27. Details of layout required pursuant to the provisions of Condition 2 shall safeguard the route of the CLH pipeline, including requirements that may be made for maintenance and access.

APPEARANCES

FOR THE APPELLANT:

Christopher Young KC & Odette Chalaby	Instructed by Paul Frampton, Framptons

They called:

Paul Frampton BSc (Hons) TP MRICS MRTPI	Framptons
James Stacey BA (Hons) DipTP MRTPI	Tetlow King Planning
Andrew Williams	Define
Chris Elliott BSc (Hons) MCIHT	Rappor
Ben Stephenson BA (Hons) MA DipHistCon	BSA Heritage Limited

FOR THE LOCAL PLANNING AUTHORITY:

James Burton of Counsel	Instructed by the Solicitor for Uttlesford District Council

He called:

Tim Dawes MRTPI	Planit Consulting
Katherine Wilkinson	Essex County Council Highways (Section 106 discussion only)

SAFFRON WALDEN TOWN COUNCIL & SEWARDS END PARISH COUNCIL (RULE 6 PARTY):

Phillip Kratz	GSC Solicitors LLP
Corrie Newell BA (Arch) Hons RIBA ARB IHBC	Corrie Newell Historic Buildings Consultancy
Adrian Knowles	Parish Councillor

INTERESTED PERSONS:

Mr Toy	Local resident
Hazel Mack	Local resident
Paula Griffiths	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Opening Statement on behalf of the Appellant
Opening Statement on behalf of the Council
Opening Statement on behalf of the Rule 6 Party
P Griffiths Statement to the inquiry
Mack & Hutchinson Statement to the inquiry
Mr Toy Statement to the inquiry
A Knowles Statement to the inquiry
Drawing CTP-20-1142 SK19 off site highways works
Extract from Traffic Signals Manual
Saffron Walden Neighbourhood Plan referendum Plan 2021-2036
CIL Compliance Statement – ECC Highways
Updated draft conditions v19
Final draft of the Section 106 Agreement and associated plans
Uttlesford District Council CIL compliance statement (track changes and final clean version)
Email from C Elliott dated 7 September 2022 regarding heritage discussions on traffic signals
Rule 6 party comments on Section 106 Agreement and conditions
OS extract map of Saffron Walden
Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council
Closing submissions on behalf of the Appellant
Closing submissions on behalf of the Council including appendix
Closing submissions on behalf of the Rule 6 Party
Costs application on behalf of the Appellant
Costs response on behalf of the Rule 6 Party
Costs application on behalf of the Rule 6 Party

Decision Notice and Statement of Reasons

Site visit made on 8 June 2022
Hearing held on 25 August 2022

By Owen Woodwards MRTPI

A person appointed by the Secretary of State

Decision date: 11 October 2022

Application Reference: S62A/22/0000002

Site address: Friends School, Mount Pleasant Road, Saffron Walden, Essex CB11 3EB

- The application is made under section 62A of the Town and Country Planning Act 1990.
- The site is located within the administrative area of Uttlesford District Council.
- The application dated 8 April 2022 is made by Chase (SW) Ltd (Chase New Homes).
- The development proposed is the conversion of buildings and demolition of buildings to allow redevelopment to provide 96 dwellings, swimming pool and changing facilities, associated recreation facilities, access and landscaping.

Decision

1. Planning permission is granted for the conversion of buildings and demolition of buildings to allow redevelopment to provide 96 dwellings, swimming pool and changing facilities, associated recreation facilities, access and landscaping in accordance with the terms of the application dated 8 April 2022, subject to the conditions set out in the attached schedule.

Statement of Reasons

Procedural Matters

2. The application was submitted under s62A of the Town and Country Planning Act 1990. This allows for applications to be made directly to the Secretary of State (SoS), where a local authority has been designated. In this case, Uttlesford District Council (UDC) have been designated for major applications from 8 February 2022.

3. The proposal falls within 10(b) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regs). However, the proposal is for a relatively modest residential-led development, using significant amounts of the existing built form, and of an overall scale commensurate with the previous use of the application site. There would be localised effects on the site and surrounding area but these would not likely result in significant effects on the environment, either alone or cumulatively with other development. Therefore, an Environmental Impact Assessment was not required, as set out in the letter from the Planning Inspectorate, dated 13 May 2022. I am satisfied that the requirements of the EIA Regs have been complied with.

4. On 12 August 2022, on behalf of the SoS, I published an Issues Report, prepared under the provisions of the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013. This included a description of the development, consultation details and material considerations, and explored the issues to be considered in relation to the application. In addition to that report, I set out an agenda and a schedule of draft conditions, which were put forward on a without prejudice basis, and discussed at the Hearing.

5. I carried out a site visit on 8 June 2022, which included the site and surrounding area including all relevant roads. This took place on an access-required, unaccompanied basis.

6. I then held a public Hearing on 25 August 2022 at UDC's offices in Saffron Walden, which was attended by members of the local and Parish Councils, by officers of UDC, a representative of Sport England and members of the public.

7. The Council considered the proposal at the Planning Committee on 11 May 2022, where it was resolved that UDC request that the Planning Inspectorate approve the application, subject to a number of measures required in a s106 agreement(s) and to be controlled by conditions.

8. The applicant submitted further information in June 2022, including further information regarding drainage, ecology, a schedule of garden sizes, transport and access, energy efficiency, sports facilities and playing fields, and a note regarding the Saffron Walden Neighbourhood Plan 2021-2036 (SWNP). All relevant parties were given the opportunity for further comment. Further information was also submitted by the applicant in August 2022 regarding bat surveys and the SWNP. This information was relatively limited and did not require re-consultation. In September 2022, the applicant submitted additional information in relation to playing fields. Re-consultation was undertaken.

9. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The application is therefore determined on the basis of the revised and additional documents and drawings. The documents submitted at the Hearing, and subsequent to the Hearing, are listed in the attached schedule.

10. I have taken account of all written and oral representations in reaching my Decision.

Background

Planning history

11. There is extensive planning history for the site, but this relates to when it was in use as a school. There is no planning history directly relevant to the proposal.

Planning policy

12. The development plan includes the Uttlesford District Local Plan 2005 (the LP). The emerging Local Plan has not been released for Regulation 18 Preferred Options consultation and it has been confirmed in a statement dated 13 September 2022 from the Leader of the Council, Councillor Petrina Lees,

that there is no confirmed timetable for production and eventual adoption of the emerging plan. The emerging Local Plan therefore has very limited weight. In contrast, the SWNP was formerly approved by UDC on 7 July 2022 and at a referendum on 15 September 2022. It is not yet 'made' but that is a formality in light of the approval and referendum result, and I afford the full weight.

The application site

13. The application site is c.3.25 ha. It comprises the former Friends' School, most recently occupied by Walden School, which has been vacant since July 2017. It contains the former main school building as extended including an indoor swimming pool, and a number of other buildings and structures, including the relatively attractive Assembly Hall and Croydon Buildings, large utilitarian Gym building, and other relatively modern and unassuming buildings. Primary vehicular access is from Mount Pleasant Road, although the site can also be accessed from The Avenue to the rear and Debden Road via Water Tower Place to the west.

14. The site lies within Saffron Walden, which is identified as a 'Main Urban Area' and also as a 'major service centre' in the LP. The land to the front of the site in and around the crescent access road is listed as Protected Open Space. A relatively small part of the site to the south east of the gym is Protected Open Space for Playing Fields. The entire site lies within the Saffron Walden Conservation Area (the CA). The main school building is a locally listed building. The school as a whole is a designated Asset of Community Value (ACV)[1]. The trees lining The Avenue, some along the western boundary, and a number within the open space to the front of the school, are covered by a Tree Preservation Order (TPO)[2].

15. The application site lies within Saffron Walden, to the south of the town centre. It is primarily surrounded by residential development and also by the playing fields for the former school. There are two grade II Listed buildings relatively close to the site, 9 and 10 Mount Pleasant Road and a water tower to the west.

The proposal

16. It is proposed to convert the existing main school building to provide 52 flats, a communal library/drawing room and to refurbish the existing swimming pool and changing rooms. Some newer extensions to this building would be demolished and there would be internal works relating to the conversion. It is also proposed to convert the Croydon Building into four flats, and to convert and extend the Assembly Hall to provide six dwellings. The remainder of the existing buildings would be demolished and replaced with a mixture of flats and houses. Overall, a total of 96 dwellings are proposed, split into 25 one-bed, 44 two-bed, 18 three-bed, and 9 four-bed units. All market housing and there would be no affordable housing. Car parking is proposed, including 35 spaces for visitors and users of the swimming pool.

17. It is also proposed to extensively re-landscape the site, including the provision of replacement tennis courts and multi-use games area (MUGA) and a variety of soft and hard landscaping. Access would largely remain as existing, though

[1] Ref UTT/18/0036/ACV
[2] Ref 7/07/38

upgraded where necessary, albeit with The Avenue between the lime trees changed to be for pedestrians and cyclists only.

Main Issues

18. The main issues for this application are:

- the effect of the proposed development on the character and appearance of the area, including whether or not the proposed development would preserve or enhance the character or appearance of the Saffron Walden Conservation Area (the CA);
- the effect of the proposed development on sports facilities, in particular playing pitches; and,
- the financial viability of the proposal, including consideration of Vacant Building Credit (VBC).

Reasons

Character and appearance

19. The main school building is a locally listed building, constructed in 1879 to designs by Edward Burgess as a Quaker day and boarding school. It is a handsome red brick building with refined architectural detailing and a central tower providing a strong focal feature. However, there are also some more modern, and less architecturally successful, extensions to the main building. In addition, the main building is surrounded by a number of other more modern buildings, which have been built incrementally in an ad hoc manner. These include the gym block which is excessively bulky and lacks articulation and detracts from the setting of the main building and Mount Pleasant Road. There are also a number of further modern buildings also of limited architectural merit. However, the Assembly Hall and Croydon Building are both of greater intrinsic architectural value, being well proportioned, and with relatively attractive facades and fenestration detailing.

20. The optimum use of the site, in particular the main school building, would be as a school. It is proposed to change the use of the site to a largely residential development, including conversion of the main school building. This would cause some harm to the character of the site through the change of use itself, and also the proposed removal of historic fabric and plan form in the main school building in order to create the proposed flats. However, the school closed in 2017. It has lain empty since then. No evidence has been provided of any providers willing to open a school on the application site. Externally, the important historic elements of the main school building would remain. This harm would therefore be limited and the proposal would be putting the main school building, and the wider site, to viable use consistent with its conservation, in accordance with paragraph 197 of the National Planning Policy Framework (the Framework).

21. Nevertheless, in light of its locally listed status and the extensive remaining original plan form and historic fabric to the building, preservation by record of the building would be a proportionate response to the proposed works, in accordance with paragraph 205 of the Framework. This could be controlled by condition.

22. The proposed demolition of the modern buildings of limited architectural merit is acceptable in principle. I particularly note that the Croydon Building and Assembly Hall, the two existing buildings of greatest architectural merit, would both be retained, and sensitively refurbished and extended where necessary. The new buildings would be in a modern architectural style, with a variety of designs proposed, but with the predominant use of brick as a unifying feature. They would be in the same or similar locations to the buildings they would replace. The modern architectural approach for the new buildings is successful with suitable articulation and design detailing through a variety of gables and fenestration patters. The combination of the reduced scale of built development and improved architectural detailing and articulation are successful elements of the proposed design.

23. The open space around the semi-circle access road to the Mount Pleasant Road frontage would be retained. The appearance of the site along this key, prominent, road frontage would be enhanced through the demolition of the gym building and sensitive refurbishment of the Croydon Building and Assembly Hall. To the rear, behind the main school building, an existing MUGA and two grass tennis courts would be relocated and provided. There would also be a formal, landscaped area of communal open space including a pond, and a more informal pocket park to the east. There would be fairly extensive areas of car parking. However, these would be heavily screened by the retained lime trees along The Avenue and additional planting in and amongst the proposed car parking spaces. There are also a number of smaller car parks close to the proposed buildings, helping to break-up the parking across the site. Importantly, the avenue lined by lime trees would be retained as an attractive spine to the site.

24. The layout largely reflects the existing layout with the main school building remaining as the clear dominant feature. The Ash Houses would be much less bulky and set further away from the main school building than the existing gym building, thereby improving this relationship. Similarly, the existing modern extensions to the west of the school building would be demolished and replaced by the Pine Building, which would be a more attractive and subservient structure than the existing extensions. To the south of the site, several existing buildings would be demolished and replaced by the Lime houses, two buildings of semi-detached houses with a logical layout of parking to the front addressing the street and gardens to the rear. The Oak houses would present some inactive frontages to The Avenue. However, they would be laid out in a mews street style, which is a similar approach to the adjacent 'The Avenue' development, and helps this element of the site successfully assimilate into its surroundings.

25. The site falls within Area 6 of the CA. The area, and the site, is dominated by the former school 'campus', and in particular the main school building. It presents its most attractive and characterful features to Mount Pleasant Road. These are the key elements of the appeal site providing significance to the CA. As assessed above, the proposal would enhance the site as it presents itself to Mount Pleasant Road. The main school building would lose some character from the proposed change of use because it is a grand, civic building that was originally constructed, and until 2017 was still in use as, a school. However, it would also gain from the removal of unsightly extensions, and by the creation

of a more respectful setting, in particular through the demolition of the gym building.

26. Overall, the proposal would preserve, and in places enhance, the character and appearance of the area, including the CA. This is a conclusion shared by Historic England, which finds the proposal to be contextually acceptable in relation to the setting of the locally listed former school building and the character or appearance of the conservation area. The proposal therefore complies with LP Policy ENV1, with regard to the protection of conservation areas, GEN2 which requires high quality design, and ENV3 which resists the loss of open spaces and trees. It complies with SWNP Policy SW3 which required high quality design. It also complies with paragraph 203 of the Framework, which requires that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account.

27. Essex County Council (ECC) has requested that the proposal be taken through a Design Review Panel process by ECC prior to determination. However, paragraph 133 of the Framework recommends, but does not require, such a design review assessment to be undertaken. I also note that the proposal does not include an assessment against Building for Life 12 by the Design Council, as required by the SWNP. However, for the reasons given above, I have found the design of the proposal to conserve and enhance the character and appearance of the area, and the CA. The lack of a design review process or Design Council assessment does not negate the success of the design.

Sports facilities

Playing fields

28. The application site lies directly adjacent to extensive playing fields that were associated with the former school and have not been in use since it closed. The total area of the playing fields is 5.9 hectares (ha). The application site itself also contains the former changing facilities and a car park associated with use of the playing fields. Although owned by the school, the playing fields and associated facilities were regularly used by the local community outside of normal school hours, through a formal community use agreement.

29. The proposal would result in the loss of at least 0.029 ha of the playing field, through the proposed swimming pool car park and access road, and car parking. However, this is a difficult calculation on which to be precise. This is because some of the existing designated playing field is an existing hard standing car park. On the other hand, it also involves assuming that the thin landscaping strips to the rear of the proposed car parking could be turned over to the playing fields. Whilst possible, it is unlikely that such land so close to the proposed car parking could be fully utilised. There are also discrepancies between the official LP playing fields designation and the reality of the open land used as playing fields on the ground. The actual loss could therefore be at 0.15 ha or even greater.

30. Sports England (SE) are a statutory consultee for playing fields and it has objected to the proposal. This is because although the area to be lost would be relatively modest, because of its location SE state that it would not be possible to re-instate the former cricket pitch and may prevent the use of some small winter pitches for eg football. SE also highlight the importance of the proposed

loss of visitor car parking and changing facilities, which would harm the useability and viability of the remaining playing fields, irrespective of the above.

31. Paragraph 99 of the Framework is applicable where a proposal would result in the loss of playing fields. Part a) relates to whether or not the existing playing field is surplus to requirements. In this regard, UDC has undertaken a relatively recent forensic assessment of the demand for sports facilities[3]. This found that there is a shortfall in Saffron Walden of six match equivalent sessions for adult football, more shortages for youth football and eight match equivalent sessions for cricket. The governing bodies for football and cricket, the Football Association and the England and Wales Cricket Board respectively, have confirmed that this shortfall is likely to have increased since the 2019 report. It is therefore clear that the playing field is not surplus to requirements.

32. Part b) requires the replacement of equivalent or better provision. The applicant has not sought to re-provide football or cricket facilities in an alternative location(s). However, it has demonstrated that a cricket pitch could still operate from the remaining area of the playing field. SE's guidance is that a suitable cricket pitch ought to provide for nine wickets The applicant's cricket pitch as detailed only includes one wicket but it has a larger outfield to the boundary rope than in SE's guidance. It is not therefore clear if a SE compliant nine-wicket cricket pitch could be provided. It is nevertheless clear that at least a one-wicket, and probably near to nine-wicket, pitch could be provided. Given that only a small area of playing field would be lost and the greater flexibility for the laying out of temporary football pitches, it also seems likely there would be relatively limited restriction, in terms of playing field area, on football provision.

33. However, the above does not take into account the crucial factor that the proposal would remove the existing car parking and changing facilities from the application site. This would harm the potential use of the adjacent playing fields, irrespective of the cricket and football pitch location considerations. It is of course possible that if any proposal were to come forward for the use of the playing fields then suitable facilities could form part of any such application. However, this is not before me and cannot be guaranteed.

Swimming pool

34. The existing swimming pool and associated changing rooms would be refurbished and reopened. SE raise concerns that the refurbishment cost is not sufficient and that, consequentially, operational feasibility for the pool is questioned. However, the cost for this has been provided by the applicant through the Toolkit Viability Assessment, at £558k. This has then been independently reviewed through the Financial Viability Assessment by Gerald Eve. Both assessments agree that the sum allocated for the refurbishment of the swimming pool and associated facilities is acceptable. The applicant states that funding of the ongoing maintenance and use of the pool should be possible through service charges for the future occupants of the proposed dwellings, at £593 per home per year. They additionally state that the pool would be open for wider community use and that this and/or changes to operational costs would influence the level of the service charge, up or down.

[3] The Playing Pitch Strategy & Action Plan 2019

35. SE question this and think the running costs could be higher, eg energy costs. Of course, that is possible. However, I have not been provided with any substantiated evidence that the pool could not be maintained by a combination of service charges for future residents and membership options for visitors. There is a reasonable prospect that the pool would be provided and retained as set out by the applicant. There would not, therefore, be a loss in the provision of swimming pool facilities and the proposal would in fact bring back into use a currently closed facility.

Other

36. The existing gym/sports hall would be demolished. Whilst the school was open, this was used by the community outside of school hours. However, it has not been in use since 2017. Saffron Walden has alternative facilities, for example at Lord Butler Leisure Centre. Therefore, whilst the proposal would result in the loss of a gym, I place limited weight on this factor. The existing MUGA is to be retained and refurbished. Two grass tennis courts would be reinstated, but two existing hard standing courts would be lost, which are arguably of greater utility because they are less prone to damage and can be used in a greater range of weather. This represents a loss, albeit a relatively minor one, of an existing sports facility.

Overall

37. The proposed harm to the adjacent playing fields, primarily by loss of ancillary facilities and also through a slight reduction in their useability, and the loss of the gym and two hard court tennis courts, would harm existing sports facilities. The proposal therefore fails to comply with paragraph 99 of the Framework. It fails to comply with LP Policy LC1 which resists the loss of sports fields. It also fails to comply with reasoned justification paragraph 11.2.1 of the SWNP, which states that the SWNP opposes the loss of the specific playing fields affected by the proposal.

Viability

38. Paragraph 64 of the Framework states that where vacant buildings would be re-used or redeveloped, any affordable housing contribution should be reduced by a proportionate amount, ie a 'vacant building credit' (VBC). Planning Practice Guidance expands on this, stating that an applicant should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority (or in this case, myself, as the appointed person) calculates any affordable housing contribution which will be sought.[4] All of the buildings on the application site are vacant, totalling 10,754 sq m. The total proposed floorspace would be 10,590 sq m. VBC therefore applies and no affordable housing is required. LP Policy H9 or SWNP Policy SW2, both requiring 40% affordable housing provision, are therefore not relevant to the application.

39. However, the proposal is for 96 new dwellings. The previous use of the site was as a school and this ceased five years ago. The new residents would create demand and put pressure on local infrastructure, for example health services. The general approach in such instances is to seek financial contributions, or the

[4] Paragraph: 026 Reference ID: 23b-026-20190315

direct provision of facilities, to mitigate the effect of the proposal on local infrastructure.

40. In the case of this application, the applicant has submitted a Toolkit Viability Assessment January 2022 (TVA) which concludes that the scheme is unviable and cannot provide s106 contributions in this regard. This is based on the conclusion of a residual land value of £4.37m and a benchmark land value (BLV) is £5.1m, ie a loss of £733k. The Planning Inspectorate commissioned an independent review of the applicant's TVA. This was carried out by Gerald Eve and is dated August 2022 (the FVA). The FVA concludes that the proposal has a deficit of £2.15m, greater than that found by the applicant's assessor.

41. Therefore, whilst the proposal would not provide any contributions in mitigation of any effects on local infrastructure, this is acceptable in the context of the financial viability, or rather unviability, of the proposal. However, the consequential, unmitigated harms to local infrastructure would conflict with Policy GEN6 of the LP which requires community facilities that are made necessary by the proposal, and form part of the overall planning balance considerations, as set out below.

Other Matters

Listed buildings

42. Section 66 of The Planning (Listed Buildings and Conservation Areas) Act 1990 is engaged. Section 66 requires the decision maker to pay special regard to the desirability of preserving listed buildings, their settings or any features of special architectural or historic interest which they possess. The grade II listed Water Tower situated to the west of the main school building derives its significance through its integral architectural and historic interest. It gains little significance from its setting. Nos 9 and 10 Mount Pleasant Road are late-Victorian houses that gain their historic interest from their inherent architectural value.

43. None of these buildings gains significant significance from their setting, in particular that of the application site. In addition, the proposal would preserve and enhance the character and appearance of the area and would therefore at least preserve the setting of the listed buildings. Overall, the proposal would have a neutral effect on the significance of the assets and on their special architectural and historic interest, which would therefore be preserved.

Sites of Special Scientific Interest

44. The application site lies 3.2 km from the Debden Water Site of Special Scientific Interest (SSSI), 4.6 km from the Hales and Shadwell Woods SSSI, and 5.5 km from the Nunn Wood SSSI. SSSIs are protected under the Wildlife and Countryside Act 1981 from damaging operations, including from development proposals. I am a section 28G authority and have a duty to further the conservation and enhancement of the SSSIs. However, in this regard, given the distance to the SSSIs from the application site it is unlikely that there would be any significant effects on any of these SSSIs, through increased recreation from future residents or any other factor. I am therefore satisfied that the proposal would not result in unacceptable harm to the SSSIs.

Interested parties

45. A number of objections have been received, including from the Saffron Walden Town Council, and joint submissions from approximately 100 nearby households. They raise a number of points that I have discussed above and below. Other factors are also raised, for example the need for a masterplan approach including the wider site and adjacent playing fields. However, I must assess the proposal that is before me rather than theoretical or potential alternative developments. I particularly note that the proposal does not preclude further development on the playing fields site coming forward in the future. Highways safety concerns regarding crossing points on Mount Pleasant Road and the speed of traffic along that and other nearby roads have also been raised. However, the proposal would result in a reduction in traffic compared to the previous use as a school, with a less vulnerable user profile because far fewer children would be accessing the site. The proposal is therefore acceptable in these respects. A preference for the re-use of the site for either a school or other education facility, such as a sixth from college, has also been expressed. As I have stated above, there are no such proposals before me, and I must determine the application on its own merits.

Planning Obligation

46. An engrossed s106 planning agreement, dated 12 September 2022, between UDC and the applicant, has been submitted (the s106). It secures the provision of a community meeting room, MUGA, public open space, swimming pool and changing rooms, and tennis courts, with associated financial viability plans or strategies governing the terms on which they shall be made available for use by the wider community. It also secures the setting up of a management company with powers to raise its own funds and the ability to resource itself to appropriately maintain these facilities. All of these obligations are necessary to ensure that the proposed facilities can be used by the wider community and maintained as appropriate.

47. A Unilateral Undertaking, dated 13 September 2022, has also been submitted (the UU). It secures:

    - an additional contribution towards local infrastructure (combined total caped at £380,000, or 50% of surplus profit, whichever is the lower);
    - an external review of the TVA by UDC 12 months after all pre-commencement conditions have been discharged ie an 'early-stage review';
    - an external review of the TVA by UDC 4 years after all pre-commencement conditions have been discharged ie a 'late-stage review'; and,
    - a travel plan monitoring fee of £1,596 per annum.

48. The proposal would result in increased pressure on public transport, and on increased pedestrian and cycle movements in the locality. ECC's CIL Compliance Statement set out the detailed background and justification for each of the obligations. ECC's request for a contribution toward bus services of £280,000 is justified, providing details of the costs of improving bus services. ECC also provide justification for the request of £100,000 towards cycling and pedestrian facilities, in particular for improvements to Route 13, which links the application site to the employment area at Thaxted Road. A Travel Plan is a

requirement for schemes of the scale proposed. An early and late stage review are required because sensitivity testing undertaken by Gerald Eve as part of the FVA demonstrates that relatively small movements in either costs or sales values could make the proposal viable and enable these contributions towards local infrastructure.

49. I am therefore satisfied that the provisions of the s106 and the UU would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and the tests at paragraph 57 of the Framework.

The Planning Balance

50. The Housing Trajectory and Five-Year Land Supply 2021 document by UDC sets the housing land supply at 3.52 years. There is therefore a substantial shortfall against the Council's requirement to provide a five year supply of housing land, an indicator that the future the needs of local people will not be met. The planled system is embedded in planning law, with the Framework placing great emphasis on the engagement of communities in shaping these development plans. This is intended to provide certainty. However, it also means that to meet community requirements for homes, jobs and other facilities, development plans must be up to date.

51. In situations such as this, where future housing needs are not being met, the Framework sets out that development plan provisions must be balanced against wider social, economic and environmental objectives. Specifically, this means that the presumption in favour of sustainable development set out in the Framework paragraph 11d) is engaged. Below, I carry out an assessment of the planning balance of the proposal in this context.

Positives

52. The proposed 96 dwellings in a mixture of flats and houses and a broad mix of unit sizes with a focus on 1 and 2 bed units and few 4-bed units broadly accords with the identified housing need for the area[5] at 61% 1 and 2-bed dwellings, and with LP Policy H10 and its requirement for the provision of market housing to be tilted towards smaller properties. The provision of a relatively large amount of market housing of a suitable mix is of substantial positive weight.

53. The application site is within Saffron Walden, a main service centre, close to the town centre, and is easily accessible to a range of services and facilities. It is a brownfield site with good access to public transport with bus stops just outside the site on Mount Pleasant Road. This is a significant positive benefit of the proposal.

54. As established above, the proposal would preserve and enhance the character and appearance of the area, including the Saffron Walden Conservation Area. The enhancement would be relatively limited and I therefore place moderate positive weight on this benefit.

55. Nearly 3,500 sq m of public open space is proposed, which would be useable by the wider community as well as the future residents of the proposal. A

[5] Housing for New Communities in Uttlesford and Braintree (ARK Consultancy, June 2020)

relatively large community room is also proposed to the ground floor of the main school building, as is a MUGA, two grass tennis courts, and a swimming pool, all of which would be open to leisure users from outside of the new residents, as secured through the s106. I place moderate positive weight on these factors.

56. The application site has limited ecological interest, being largely either grass, hard standing or buildings. No designated ecological sites are within the site or would be affected by the proposal. A series of reports[6] have confirmed that there are some bat roosts and potential for bat foraging, as well as hedgehogs and birds. Mitigation is required and can be secured by condition(s) for the provision of wildflower grassland, installation of bat and bird boxes, hedgehog gaps, and wildlife-friendly species in the proposed planting. The measures would result in a biodiversity net gain on the site. I also note that ECC and Natural England have no objection to the proposal with regard to biodiversity. Only a relatively modest biodiversity net gain is proposed. This factor is therefore of limited positive weight.

57. The proposed houses would all be provided with private gardens, all of which would be of a useable size and layout, typically running behind the main rear elevation in a terrace style or wrapping around the corner of the property in a semi-detached style. The proposed flats would not have private outside space but this is a function of the layout and architectural nature of the buildings to be retained. Relatively substantial and attractive communal open space totalling 6,213 sq m is proposed for the flats, at over 100 sq m per flat on average. The overall provision of communal amenity space would pass the 'litmus test' set out in paragraph 11.3.8 of the SWNP ie that several people can use it for activities such as flying a kite and throwing a ball for a dog. The proposed outside space would meet minimum standards but would not be significantly in excess of them, either in size or quality. I therefore place limited positive weight on these factors.

Neutral

58. The proposal would result in reduced traffic generation in comparison to the site's previous use as a school, particularly at peak hours, but this is against the background of a site that has not been in use since 2017. The proposal would use the existing 'in-out' crescent from Mount Pleasant Road and upgrade the further existing access from that road. Technical details regarding visibility splays, footway details, turning heads, and other measures, could be controlled by condition(s). The Highways Authority has confirmed it has no objection to the proposal in principle, although it does raise concerns regarding a lack of evidence for waste collection. However, further information on this could be provided and controlled by condition. The application site is large with several vehicular access points, and there is no reason to believe that an acceptable solution could not be found. Overall, the development would have an acceptable effect on highway safety and the free-flow of traffic.

59. The proposed car parking would fall slightly below the Adopted Council Parking Standards for dwellings. However, 24 visitors' spaces would be provided, and the site is in a highly sustainable location, near to the town centre and several

[6] Preliminary Ecological Appraisal December 2018; Ecological Impact Assessment August 2021 as updated February 2022 and June 2022; Biodiversity Validation Checklist April 2022

bus routes. 11 visitors' spaces are also proposed for the swimming pool. The proposed car parking would therefore be acceptable and would meet the likely demand that would be created by the proposal. Cycle parking would also be provided in accordance with the standard of one space per dwelling, and the detail could be controlled by condition.

60. The school is an ACV. However, it has not been in use as a school for five years. There are no plans before me for the re-opening of the school. The proposal would bring back into use the locally listed building, thereby creating a long-term viable use for the building and the wider site. Consequently, despite the loss of the existing use as a school, the proposal would not harm the ACV.

61. The proposal would result in the demolition of a number of buildings including some relatively modern structures. However, it would also bring back into beneficial use one large and two moderately sized existing buildings that currently lie vacant, with relatively minimal refurbishment and extensions. Extensive amounts of existing building fabric would therefore be reused. The overall effect of the proposal with regard to embodied energy and the re-use of existing buildings would therefore be neutral.

62. The proposal would have a neutral effect on the architectural and historic interest and significance of the nearby grade II listed buildings. The proposal would not result in unacceptable harm to the nearby SSSIs. Technical matters relating to noise, fluvial flooding, surface water flooding/drainage, air quality, archaeology, airport safeguarding and contaminated land have all been assessed and accepted that they could be addressed by the use of suitable conditions and/or planning obligations.

63. All of the above factors weigh neutrally in the planning balance.

Negatives

64. As set out above, the proposal would result in harm to the provision of playing fields, partly indirectly through the removal of changing facilities and party directly through the loss of a small amount of designated playing field area that may result in reduced cricket pitch provision. There would also be the loss of a gym and two hard standing tennis courts. However, in all instances the existing facilities were primarily for use of the school, albeit with community use outside of school hours. In addition, they have not been in use since 2017 and there is no prospect of them being put into use without the proposal. This lessens the harm caused by the loss of, and harm to, sports facilities. I therefore place moderate negative weight on this factor.

65. The proposed 96 new homes would put more strain on the local infrastructure, for example demand for school places and local doctors' surgeries. In the absence of financial or other mitigation, this weighs negatively in the planning balance. I place moderate negative weight on this factor.

Conditions

66. A range of conditions were presented initially by UDC and directly by consultees. These were refined through further discussions and were considered under the relevant tests in the Framework, following which I presented then as a draft set to the Hearing for discussion. Several changes to

the conditions have been made following the discussion at the Hearing, and as agreed in principle with the applicant and UDC. These conditions are set out in the schedule below.

67. The Construction Traffic Management Plan, historic building recording, materials, drainage, flooding, biodiversity, landscaping and noise conditions are pre-commencement because a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used. The applicant has agreed to all of the pre-commencement conditions.

Conclusion

68. I have reached my conclusion taking all of the above into account, including the other matters raised. Notwithstanding the conflict with the development plan provisions relating to sports facilities and local infrastructure, the presumption in favour of sustainable development in paragraph 11d) of the Framework is a material consideration. Overall, I find that the adverse effects of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Therefore, material considerations support a decision other than in accordance with the development plan.

69. I therefore conclude that the application should be granted.

O S Woodwards

Appointed Person

Schedule A – Planning Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.

   Reason: As required by section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 21 0037-200L; 201F; 202; 203A; 204; 205A; 206; 207; 208; 209; 210; 211; 216; 230; 231; 232; 233; 234; 235B; 236; 238; 240C; 241C; 242C; 243C; 244; 250; 251; 252; 253; 254; 260A; 270D; 271A; 272; 273; 278D; 279D; 280B; 290D; 291B; 292; 300A; 301; 302A; 303; 304; 305; 306; 307; 308B; 309; 310; 311; 312; 313; 314; 315; 316; 317; 318; 319; 320; 321; 322; 323; 324; 325; 326; 327; 328; 329; 330; 331; 329; 350; 351; 352; 353; 354; 355; 400; 410; 411; 412; 413; 414; 415; 416; 22 0037 203A; 23 0037 204; 24 0037 205A; 25 0037 206; 26 0037 207; 27 0037 208; 28 0037 209; 29 0037 210; 30 0037 211; 31 0037 216; 32 0037 230; 33 0037 231; B21049 101E.

   Reason: To provide certainty.

Pre-commencement

3. Prior to the commencement of development, a detailed Construction Management Plan (CMP) shall have been submitted to, and approved in writing by, the local planning authority. The CMP shall include the following:

   a) the construction programme and phasing;
   b) hours of operation, delivery and storage of materials;
   c) details of any highway works necessary to enable construction to take place;
   d) parking and loading arrangements;
   e) details of hoarding;
   f) control of dust and dirt on the public highway;
   g) details of consultation and complaint management with local businesses and neighbours;
   h) waste management proposals;
   i) mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour; and,
   j) details of any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures.

   All works shall be carried out in accordance with the approved CMP thereafter.

   Reason: To minimise any adverse effects on air quality, in accordance with policy ENV13 of the LP and the Framework.

4.
   a) Prior to commencement of development, including groundworks, a programme of archaeological trial trenching shall have been secured and undertaken in accordance with a Written Scheme of Investigation which shall have been previously submitted to, and approved in writing by, the local planning authority;
   b) A Mitigation Strategy detailing the excavation/preservation measures shall be submitted to the local planning authority following the completion of the relevant work;
   c) No development or preliminary groundworks can commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the Mitigation Strategy, and which shall have previously been submitted to, and approved in writing by, the local planning authority; and,
   d) A post-excavation assessment must be submitted to the local planning authority within three months of the completion of fieldwork. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

   Reason: To ensure the appropriate investigation of archaeological remains, in accordance with policy ENV4 of the LP and the Framework.

5. a) Prior to commencement of development, including demolition, a programme of historic building recording shall have been submitted to, and approved in writing by, the local planning authority, with regard to the locally listed building.

   b) A report detailing the results of the recording programme and confirming the deposition of the archive to an appropriate depository as identified and agreed with the local planning authority shall be provided prior to first occupation of the proposal.

   Reason: To ensure the locally listed building has a record of preservation proportionate to the proposed works, in accordance with paragraph 205 of the Framework.

6. Prior to commencement of development, save for demolition, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, shall have been submitted to, and approved in writing by, the local planning authority. The scheme should include, but not be limited to:

   a) calculations for the conveyance and storage network for the proposed development;
   b) if marginal flooding is predicted then it should be directed away from the building using appropriate site grading;
   c) the appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753;
   d) detailed engineering drawings of each component of the drainage scheme;
   e) a final drainage plan which details exceedance and conveyance routes, Finished Floor Levels and ground levels, and location and sizing of any drainage features; and,

f) a written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to first occupation of the development.

Reason: To ensure an adequate level of surface water and drainage scheme is provided to minimise the risk of on and off-site flooding in accordance with policy GEN3 of the LP and the Framework.

7. Prior to commencement of development, a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and to prevent pollution shall have been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

   Reason: The Framework, paragraphs 167 and 174, state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Also in accordance with policy GEN3 of the LP.

8. Prior to commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to, and approved in writing by, the local planning authority. The CEMP: Biodiversity shall include the following:

   a) risk assessment of potentially damaging construction activities;
   b) identification of **"biodiversity protection zones"**;
   c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) to include measures to protect Bats and other Priority species;
   d) the location and timing of sensitive works to avoid harm to biodiversity features;
   e) the times during construction when specialist ecologists need to be present on site to oversee works;
   f) responsible persons and lines of communication;
   g) confirmation that the development shall be constructed in accordance with the Tree Protection Plan Ref 1642-KC-XX-YTREE-TPP01 Rev A;
   h) the role and responsibilities on site of an ecological clerk of works or similarly competent person; and,
   i) use of protective fences, exclusion barriers and warning signs.

   The CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

   Reason: To conserve protected and priority species and allow the Council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021 and in accordance with policy GEN7 of the LP and the Framework.

9. Prior to commencement of development, a Biodiversity Enhancement Strategy for protected and priority species shall be submitted to, and approved in writing by, the local planning authority. The Strategy shall include the following:

   a) purpose and conservation objectives for the proposed enhancement measures;
   b) detailed designs to achieve stated objectives;
   c) locations of proposed enhancement measures by appropriate maps and plans;
   d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
   e) persons responsible for implementing the enhancement measures; and,
   f) details of initial aftercare and long-term maintenance (where relevant).

   The works shall be implemented in accordance with the approved details prior to first occupation of the development, and shall be retained in that manner thereafter.

   Reason: To enhance protected and priority species & habitats and allow the Council to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with policy GEN7 of the LP and the Framework.

10. Prior to commencement of development above slab level, full details of both hard and soft landscape works shall have been submitted to, and approved in writing by, the local planning authority. The landscaping details shall include:

    a) proposed finished levels;
    b) means of boundary enclosures;
    c) hard surfacing, other hard landscape features and materials;
    d) existing trees, hedges or other soft features to be retained (unless since removed);
    e) planting plans, including specifications of species, sizes, planting centres, number and percentage mix;
    f) details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife;
    g) details of siting and timing of all construction activities to avoid harm to all nature conservation features;
    h) location of service runs; and,
    i) management and maintenance details.

    The works shall be implemented in accordance with the approved details prior to first occupation of the development, and shall be retained in that manner thereafter.

    Reason: The landscaping of this site is required in order to protect and enhance the existing visual character of the area and to reduce the visual and environmental impacts of the development hereby permitted in accordance with policies GEN2 and ENV8 of the LP and the Framework.

11. Prior to commencement of development, a scheme for protecting the proposed dwellings from noise from the swimming pool plant shall have been submitted to, and approved in writing by, the local planning authority. All works which

form part of the scheme shall be completed before first occupation of the dwellings and retained thereafter.

Reason: To ensure future occupiers enjoy a good acoustic environment and to protect their living conditions, in accordance with policy ENV10 of the LP.

Specific trigger

12. Prior to construction of the relevant part of the development, details of all materials to be used in the external finishing of the proposed buildings shall be submitted to, and approved in writing by, the local planning authority. Thereafter the development shall be constructed in accordance with the approved details.

    Reason: To ensure the appearance of the proposed development will reflect with the character of the surrounding locality in accordance with policy GEN2 of the LP.

13. Prior to installation of the relevant works, a lighting design scheme for biodiversity shall be submitted to, and approved in writing by, the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

    All external lighting shall be installed in accordance with the specifications and locations set out in the scheme, and maintained thereafter.

    Reason: To allow the Council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

Pre-occupation

14. Prior to first occupation of the development, a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements, of the surface water drainage system, shall have been submitted to, and approved in writing by, the local planning authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided. The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the local planning authority.

    Reason: To ensure the SuDS are maintained for the lifetime of the development so that they continue to function as intended to ensure mitigation against flood risk, in accordance with policy GEN3 of the LP and the Framework.

15. Prior to first occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall have been submitted to, and approved in writing by, the local planning authority. The LEMP shall include the following:

    a) description and evaluation of features to be managed;
    b) ecological trends and constraints on site that might influence management;
    c) aims and objectives of management;
    d) appropriate management options for achieving aims and objectives;
    e) prescriptions for management actions;
    f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
    g) details of the body or organisation responsible for implementation of the plan; and,
    h) ongoing monitoring and remedial measures.

    The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

    Reason: To allow the Council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

16. The parking area relevant to each proposed dwelling shall be provided prior to first occupation of the relevant dwelling. The parking areas for visitors' spaces shall be provided prior to the first occupation of the relevant part of the development. The parking areas shall thereafter be maintained free of obstruction for the parking of residents and visitors' vehicles.

    Reason: In the interests of highway safety in accordance with policy GEN8 of the LP and the Framework.

17. Prior to first occupation of the relevant dwelling or sports facility, cycle parking shall be provided in accordance with details first to have been submitted to, and agreed in writing by, the local planning authority.

    Reason: To ensure appropriate modes of sustainable transport is achieved in accordance with the adopted Essex County Council Parking Standards (2009), policy GEN8 of the LP and the Framework.

18. Prior to first occupation of the relevant dwelling(s), details demonstrating that appropriate outdoor amenity space is provided for each residential unit shall have been submitted to, and agreed in writing by, the local planning authority.

    Reason: To ensure appropriate amenity is provided for future residents in accordance with the Essex Design Guide, Policy GEN2 of the LP and the Framework.

19. Prior to first occupation of the development, the eastern access onto Mount Pleasant Road shall be provided as shall the southern access onto The Avenue Road. In addition, the following shall also be provided:

    a) for the Mount Pleasant Road access, clear to ground visibility splays with dimensions of 2.4 metres by 43 metres in both directions, which shall be retained clear of obstruction at all times thereafter;
    b) for The Avenue access, clear to ground visibility splays with dimensions of 2.4 metres by 25 metres in both directions, which shall be retained clear of obstruction at all times thereafter;
    c) a 5.5 metre carriageway with a 2 metre wide footway on the western side and appropriate verge/margin on the eastern side to provide intervisibility with pedestrians using the footway adjacent Mount Pleasant Road passing across the eastern access;
    d) any required regrading of the embankment to maximise visibility and the width of the existing footway along Mount Pleasant Road; and,
    e) removal of the school zigzag lines on Mount Pleasant Road and replacement with any necessary parking restrictions, first to have been agreed with the local planning authority.

    Reason: To ensure that vehicles can enter and leave the highway in a controlled manner in a forward gear with adequate inter-visibility between vehicles using the access and those in the existing public highway, in the interests of highway safety in accordance with policy DM1 of the LP.

20. Prior to first occupation of the development, a Residential Travel Plan shall have been submitted to, and approved in writing by, the local planning authority. The Travel Plan shall include a Residential Travel Information Pack for each dwelling, to include six one day travel vouchers for use with the relevant local public transport operator. The Travel Plan shall thereafter be implemented in accordance with the approved details.

    Reason: In the interests of reducing the need to travel by car, and promoting sustainable development and transport in accordance with policies DM9 and DM10 of the LP.

For observation

21. If during any site investigation, excavation, engineering, or construction works evidence of land contamination is identified, the local planning authority shall be notified without delay. Any land contamination identified, shall be remediated to the satisfaction of the local planning authority to ensure that the site is made suitable for its end use.

    Reason: To protect human health and to ensure that no future investigation is required under Part 2A of the Environmental Protection Act 1990 and in accordance with the policy ENV14 of the LP and the Framework.

22. All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Prepared by CSA Environmental (December 2018) and the Ecological Impact Assessment Prepared by CSA Environmental (August 2021).

Reason: To conserve and enhance protected and Priority species and allow the Council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and in accordance with policy GEN7 of the LP and the Framework.

Informatives:

i. In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so the Planning Inspectorate In determining this application no substantial problems arose which required the Planning Inspectorate, on behalf of the Secretary of State, to work with the applicant to seek any solutions.

ii. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning **Act 1990 ("the Act") is final, which means there is no** right to appeal. Under section 288 of the Act, the decision can be challenged only by means of a claim for judicial review. This must be done within the statutory period of time set out in section 288 of the Act (6 weeks from the date of the decision letter).

iii. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: https://www.gov.uk/courts-tribunals/planning-court

iv. The internal layout of the development is unlikely to be adopted by the Highway Authority as it does not conform to the Essex Design Guide.

v. The Highway Authority highlights that the proposal will be subject to The Advance Payments Code, Highways Act, 1980. The Developer will be served with an appropriate Notice within 6 weeks of building regulations approval being granted and prior to the commencement of any development must provide guaranteed deposits which will ensure that the new street is constructed in accordance with acceptable specification sufficient to ensure future maintenance as a public highway.

vi. Any signal equipment, structures and non-standard materials proposed within the existing extent of the public highway or areas to be offered to the Highway Authority for adoption as public highway, will require a contribution (commuted sum) to cover the cost of future maintenance for a period of 15 years following construction. To be provided prior to the issue of the works licence.

vii. All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to SMO2 -Essex Highways, Springfield Highways Depot, Colchester Road, Chelmsford. CM2 5PU.

viii. Prior to any works taking place in public highway or areas to become public highway the developer shall enter into an appropriate legal agreement to regulate the construction of the highway works. This will include the submission of detailed engineering drawings for approval and safety audit.

ix. The applicant should provide for agreement, information regarding their drainage proposals i.e. draining by gravity/soakaways/pump assisted or a combination thereof. If it is intended to drain the new highway into an existing highway drainage system, the Developer will have to prove that the existing system is able to accommodate the additional water.

x. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

xi. Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to suds@essex.gov.uk.

xii. Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in a standing advice note from Essex County Council.

xiii. It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.

xiv. The applicant's attention is drawn to the new procedures for crane and tall equipment notifications, please see: https://www.caa.co.uk/Commercial-industry/Airspace/Event-and-obstacle-notification/Crane-notification/.

xv. Responsibility for ensuring compliance with this Decision Notice rests with Uttlesford District Council, any applications related to the compliance with the conditions must be submitted to the Council.

Schedule B – Documents

Hearing Documents Submitted:

HD1 Statement by Calum Ewing on behalf of adjacent residents
HD2 Councillor Paul Gadd statement on behalf of Saffron Walden Town Council
HD3 Statement by Nicola Edwards, local resident

Documents Submitted After the Hearing:

HD4 Further information on sports fields from the applicant, dated 1 September 2022
HD5 Essex County Council CIL Compliance Statement, dated 8 September 2022
HD6 Historic England Response, dated 8 September 2022
HD7 Letter from Ecology Place Services, dated 12 September 2022
HD8 Saffron Walden Town Council letter, dated 12 September 2022
HD9 Neighbourhood Plan Referendum Results

Neutral Citation Number: [2019] EWHC 1862 (Admin)

Case No: CO/371/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2019

Before:

MR JUSTICE GARNHAM

- -

Between:

Eastleigh Borough Council	**Claimant**
- and -	
Secretary of State for Housing Communities and Local Government	**1st Defendant**
Mr Robert Janaway	**2nd Defendant**
Mr Simon Bull	**3rd Defendant**

- -
- -

Paul Stinchcombe QC (instructed by **Eastleigh Borough Council Legal Services**) for the **Claimant**
Leon Glenister (instructed by Government Legal Department) for the **1st Defendant**
Christopher Boyle QC & Andrew Parkinson (instructed by **Moore Blatch LLP**) for the **2nd & 3rd Defendant**

Hearing dates: 9th & 10th July 2019

- -

Approved Judgment

Mr Justice Garnham :

1. The Claimant Council ("the Council") applies, with the permission of Lang J granted on 19 March 2018, for statutory review of the decision of the First Defendant's Inspector, dated 20 December 2018, to allow the appeal of the Second and Third Defendant ("the Developers") against its decision to refuse planning permission for the development of up to 70 dwellings on land at Satchell Lane, Hamble-le-Rice, in Hampshire ("the Satchell Lane Proposal"),.

2. I had the benefit of detailed written and oral argument from Paul Stinchcombe QC for the Claimants, Leon Glenister for the Secretary of State and Christopher Boyle QC and Andrew Parkinson for the Second and Third Defendant. I am grateful to all counsel for their clear and economically expressed submissions.

Background

3. For several years up until 2018, the Council had a significant shortfall against the requirement in paragraph 47 of the 2012 version of the National Planning Policy Framework ("NPPF") to have a five-year housing land supply ("5YHLS"). At the time of the appeal into the Satchell Lane Proposal, however, the action taken by the Council to address its HLS shortfall (including on occasion granting planning permission for residential development in application of the 'tilted balance') had so boosted the HLS that the Council now had a 7-10YHLS.

4. The Developers applied for planning permission for up to 70 dwellings on a green field site in the Hamble Peninsula, outside the urban edge of Hamble and within the open countryside. The section of Satchell Lane adjoining the appeal site is rural in character (twisting, narrow and tree-lined) and has no footways or lighting in a northerly direction. That northern route provides the shortest, (lawfully available) pedestrian route to a local secondary school, health centre and railway station.

5. The Council refused the application for the following reasons:

> "1. The proposals represent an inappropriate and unjustified form of development which would have an unacceptably urbanising and visually intrusive impact upon the designated countryside, to the detriment of the character, visual amenity, and the quality of the landscape of the locality. The application is therefore contrary to Saved Policies 1.CO, 18.CO, 20.CO of … of the Eastleigh Borough Local Plan Review (2001-2011), and the provisions of the National Planning Policy Framework.
>
> 2. The site is considered to be in an unsustainable and poorly accessible location such that the development will not be adequately served by sustainable modes of travel including public transport, cycling and walking. The application is therefore contrary to the requirements of Saved Policy 100.T of the Eastleigh Borough Local Plan Review 2001-2011 and Paragraphs 17 and 35 of the National Planning Policy Framework."

6. Policy 1.CO provides that planning permission for development in a countryside location would not be granted unless it met at least one of four listed criteria – the Council decided that the proposed development did not meet any of the listed criteria.

7. Policy 18.CO provides that "development which fails to respect, or has an adverse impact on, the intrinsic character of the landscape, will be refused". The Council concluded that developing up to 70 dwellings on any site in the urban countryside, permanently urbanising, it would necessarily have an adverse impact on the intrinsic character of the landscape.

8. Policy 20.CO provides that development which would be detrimental to the quality of the landscape which had been identified for landscape improvements in the Local Plan (as part of the appeal site had) would not be permitted.

9. Policy 100.T provides that for development to be permitted it must meet certain listed criteria which included that it is, or could be, well served by public transport, by cycling and by walking.

The Appeal and the Planning Inspector's decision

10. The Developers appealed the Council's decision and a planning inquiry was held on 16-17 and 23-24 October 2018. The Council's position at the inquiry was that:

- The Developers were proposing a considerable housing development in the countryside contrary to Policy 1.CO of the extant Development Plan;
- The proposal would also permanently urbanise an open field causing harm to an area designated for landscape improvement contrary to Policies 18.CO and 20.CO of the Development Plan;
- The proposal also breached Policy 100.T in that the shortest route (walking) to the secondary school, health centre and railway station was unsafe and that children, the vulnerable and the frail would consequently be at risk;
- It had a considerable surplus above the 5YHLS called for by paragraph 47 NPPF 2012,
- The policies were not out of date by reference to the HLS nor could theybe rendered out of date because they predated the NPPF or because they were in a Plan which was time-expired;
- The countryside policies were all either broadly consistent or completely consistent with the NPPF, and that therefore, consistent with all recent Decision Letters ("DL"s) in Eastleigh, between considerable/significant and full weight had to be attached to the breaches of the countryside policies;
- It was irrelevant that, in the past and on certain sites, it had chosen to permit development in breach of countryside policies in order to secure its 5YHLS;
- So far as Policy 100.T was concerned it was fully aligned with Part 9 of the 2018 NPPF;
- The policies were being breached in circumstances in which the 'tilted balance' could not apply because an Appropriate Assessment was required and therefore the statutory presumption in favour of the Development Plan applied; and
- The appeal should be dismissed by straightforward application of the statutory presumption in favour of the Development Plan.

11. The Inspector allowed the appeal.

12. Under the sub heading “Sustainability/accessibility” in his decision letter, he addressed the possible routes, of which there were three, from the site to various facilities. At paragraph 40 of the decision letter (“DL40”), he said that no reliance could be placed on a route through fields as it did not appear to be legally established, and was unsurfaced, unlit, unattractive, and unwelcoming in inclement weather and in darkness. That conclusion is no longer in issue. There remained available two route to the facilities to the north of the site, notably the school and the healthcare facility, one is northerly along Satchell Lane, the other southerly.

13. The Inspector recorded that the Council’s sole objection was that the northerly route to the school, health centre and railway station was unsafe for pedestrians [DL34]. He noted that the northerly route to the above facilities was the shortest [DL33]. He noted, having undertaken the journey himself, that walking the northerly route to the above facilities along Satchell Lane was neither safe nor acceptable: the road was unlit; possessed no footpaths for most of the route; included a number of tight bends; and in many places there were steep banks which limited the ability of pedestrians to avoid oncoming traffic [DL36].

14. However, he held that there was no policy requirement to use the northern part of Satchell Lane [DL38 and DL42] and there were alternative routes [DL38-39]. He held that the Council’s case omitted the southern walking routes, the part walking and part bus option, and the agreed acceptability of cycling by either route [DL41]. Accordingly, whilst the northern route was unsafe for pedestrians, Policy 100.T was complied with [DL42].

15. Under the headings “Planning policy background and weight”, “Other matters – housing land supply” and “Planning balance and conclusion”, he dealt with the issues that found Ground 2 before me.

16. He said that whilst Policy 1.CO did not impose blanket protection in the countryside, the approach lacked the flexibility and balance enshrined in the NPPF, such that it should be accorded reduced weight [DL15-16]. He said that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight accorded to Development Plan policies [DL18]. It was, however, relevant in this regard that the Council had achieved its HLS in part by greenfield planning permissions outside settlement boundaries, from which it was reasonable to infer that the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations [DL18].

17. Whilst a range, from considerable/significant to full weight, had been attributed to the countryside policies in other cases, given that “they were out of step with national policy” only limited weight should be attributed to them [DL19]. The change from an open field to a housing development would clearly have a permanently urbanising effect and a consequent change in the appreciation of the immediate landscape. This, however, would be the case in relation to any greenfield development proposal; and the conflict would be with policies which themselves have limited weight [DL26].

18. Despite the presence of significantly more than a 5YHLS, the provision of market and affordable housing weighed significantly in favour of the proposal in light of the national policy to significantly boost the supply of homes [DL47].

19. The Proposal had been the subject of Appropriate Assessment, and accordingly the presumption in favour of sustainable development in paragraph 11 of the NPPF did not

apply. The appeal therefore fell to be considered applying the balance provided for by section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA") and in accordance with the Development Plan, unless material considerations indicated otherwise [DL63].

20. As agreed by the Council, the economic and social benefits of the proposal were worthy of significant weight and, given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight [DL64].

21. The proposal met Policy 100.T, which was neutral in the planning balance [DL65].

22. Hence the key factor to be set against the benefits of the proposal was the conflict with the countryside policies. As set out above, limited weight was attached to these matters, and this harm was substantially outweighed by the benefits of the proposal [DL66].

23. For these reasons the appeal was allowed [DL67].

The Grounds

24. The Claimant advances two grounds of challenge:

25. First, it is said that the Inspector erred in law in finding that Policy 100.T was complied with. In particular, it is said that he failed properly to interpret and apply Policy 100.T which required the development to be well served by walking.

26. Second, it is argued that the Inspector erred when weighing the balance between housing land supply and breach of countryside policies.

The Law

27. It is common ground that the principles relevant to a challenge under s288 of the Town and Country Planning Act 1990 are authoritatively set out by Lindblom J (as he then was) in *Bloor Homes East Midlands Ltd v SSCLG,* [2014] EWHC 754 (Admin) at [19]:

> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-

under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, “provided that it does not lapse into Wednesbury irrationality” to give material considerations “whatever weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for [Environment, Transport and the Regions]* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

> (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."

Submissions and Discussion

Ground 1 - Unsafe Pedestrian Route

Submissions

28. In support of the First Ground, Mr Stinchcombe, for the Council, submits that the Inspector erred in law in finding that Policy 100.T was complied with. In particular, it is said that he failed properly to interpret and apply Policy 100.T which required the development to be well served by walking as well as by other modes of non-car transport; he failed to take into account a relevant planning consideration in application of this policy - viz. that schoolchildren residents of the proposed development who walked to the nearest secondary school would likely do so by the relatively short northerly Satchell Lane route (1.1km), which he had found to be unsafe, rather than the much longer southerly route (3.2 to 3.8km); and he gave no intelligible or adequate reasons for permitting a development which put future schoolchildren at this risk.

29. In response to Ground 1, Mr Glenister for the Secretary of State, submits the argument that the Inspector failed to properly interpret and apply Policy 100.T is fundamentally a rationality challenge. He says that the Inspector's conclusions were clear, rational and well-reasoned; that the Inspector did take account of the Council's argument that schoolchildren would be more likely to take the northern route. He noted the northerly route was shorter but unsafe, but still considered that appeal site was "well served". Mr Glenister argued that the Inspector's reasons in respect of accessibility met the requirements of *Dover District Council v CPRE Kent* [2018] 1 WLR 108.

30. Mr Boyle, for the Second and Third Defendants, contends that whether the development was "well served" by walking is quintessentially a matter of planning judgment for the Inspector. The Inspector found it was and that it complied with policy. That judgment was not arguably irrational in a situation where there was no policy requirement to be able to walk to the local secondary school by a particular route, or indeed at all; and in any event where there was a safe alternative route. As there was no policy requirement for a particular walking route to the local school to be available, it was not necessary for the Inspector to make a finding on this point. In any event, he expressly referred to the relative distances between the two alternative routes to the school, and therefore this was plainly taken into account. The Inspector did not permit a development which put future schoolchildren at risk, because an alternative route to the school was available. The reasons why the Inspector found this alternative route was suitable are abundantly clear from the DL.

Discussion

31. In my view, the Inspector did not err in his approach to this issue. The issue in question was the sustainability and accessibility of the site. The Council's refusal of permission, which was under appeal before the Inspector, had concluded that the site is "considered to be in an unsustainable and poorly accessible location such that the development will not be adequately served by sustainable modes of travel including…walking". It was said that the application did not comply with Policy 100.T and the local plan and paragraphs 17 and 35 of the NPPF 2012.

32. Policy 100.T requires that the development "is, or could be, well served by…walking". Paragraph 35 provides that:

> "plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods and people. Therefore, developments should be located and designed where practical to …create safe and secure layouts which minimise conflicts between traffic and…pedestrians…."

33. There was no doubt that there was a safe, sustainable and short walking route from the site to many facilities to the south and west. The problem concerned facilities to the north, notably the school and the healthcare facility. I accept Mr Stinchcombe's submission that the adequacy of the route to the facilities in the north was one of the main issues in dispute before the Inspector; in fact, he describes it (at DL34) as the "Council's sole objection on accessibility/accessibility grounds".

34. However, in my view, on its proper construction, Policy 100.T is concerned with the provision of *means* of sustainable transport. Similarly, the focus of paragraph 35 of the NPPF is on providing *opportunities* for sustainable modes of transport, such as walking. Whilst it is undeniably the case that a development would not properly be regarded as "well served" by a walking route that was unsafe (and the contrary was not suggested before me), and that it is implicit in paragraph 35 that the opportunities to be provided are opportunities for a safe mode of transport, there is nothing, express or implied, in either policy that requires every possible route from the development to be safe. What matters is whether there was *a* safe route, and there was.

35. Nor, in my judgment, is there an obligation on the decision maker to assess whether residents of the development are likely to make use of unsafe routes between the site and particular facilities. It may well be the case that 14-year-old children living on the site would be tempted to use the shorter, northerly route to school, even though, in the Inspector's view, that is unsafe, rather than the markedly longer, but safer, southern route. But that does not mean that the site is not adequately *served* by a perfectly adequate, safe walking route. It is. The southern route is longer but safe. Nor does the existence of an unsafe alternative mean that there are no adequate *opportunities* for sustainable modes of transport, such as walking, which is entirely safe. There are. It just happens that, as regards the school and the health centre, those opportunities involve a longer route. I see no error of interpretation in the Inspector's approach.

36. Whether, on the facts, the site was "well served by …walking" involved a planning judgment. The Inspector clearly had in mind how residents of the development could and would access the relevant facilities from the site. In my view, he was plainly entitled to conclude that it was accessible by walking routes and well served by walking routes. His reasons were required to be "proper, adequate and intelligible but can be briefly stated" (see *R (CPRE Kent) v Dover DC* [2018] 1 WLR 108). In my judgment, they were all of

that. At DL36 and 37, he held that the northern route was not safe. At DL39, however, he held that "there is no necessity to use the northern route to access the school because the southern routes…is (sic) within a reasonable walking distance". At DL42, he concluded that "the appeal site is sustainable in locational terms having regard to the proximity of and accessibility to local services and facilities. It complies with LPR 100.T". In my judgment that reasoning is unimpeachable.

37. Accordingly, I reject this ground of challenge.

Ground 2 - Planning balance – Housing supply and countryside policies

Submissions

38. The Council argues that the Inspector erred when weighing the balance between housing land supply (HLS) and breach of countryside policies. Mr Stinchcombe broke this ground down into four sub-grounds:

    (i) the Inspector wrongly determined that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight which should be accorded to breach of the countryside policies;

    (ii) he wrongly determined that it was relevant to have regard to how such countryside policies had been applied in the past in order to obtain a 5YHLS, when attributing weight to such breaches;

    (iii) he wrongly reduced the weight attached to the breach of countryside policies by reason of their lacking the flexibility enshrined in the NPPF, in that this was contrary to decided authority; and

    (iv) he wrongly took into account that the harm occasioned by permanently urbanising the countryside "would be the case in relation to any greenfield development proposal" which was an irrelevant consideration where there was double the HLS requirement and no need to develop any greenfield site.

39. In relation to Ground 2, the Secretary of State argues that whilst the level of shortfall may be relevant to the weight of development plan policies where there is less than a 5YHLS, there is no duty to consider the level of shortfall when considering the weight of development plan policies where there is a 5YHLS. He says that the Inspector was entitled to consider the past application of the relevant policies in determining their "currency"; such consideration has been given by other inspectors and the relevance was conceded by the Council's witness at the inquiry. He argues that the Inspector complied with the principle identified in *Bloor Homes v SSCLG* [2014] EWHC 754 (Admin) and did not suggest that the lack of internal balance in Policy 1.CO meant that the policy was out of date. The observation that any greenfield development proposal would cause some limited harm to the existing landscape character is a matter of common sense, and the Inspector was entitled to make this observation.

40. The Second and Third Defendants argue that there was no policy requirement to take into account the existence of a 5YHLS when considering the weight to be attached to the relevant policies. As such, there was no legal obligation on the Inspector to take this into account. Whether or not he did so was a matter of planning judgment for him. It was not arguably irrational for him to do so where (i) the reason he found the relevant policies to be out of date had nothing to do with the Claimant's housing supply position and (ii) the existence of a 5YHLS had been achieved by the Claimant through the grant of planning permission in breach of those policies.

41. They say it was not irrational for the Inspector to have regard to the application of the policies in the past in a situation where the Claimant's own planning witness had agreed that this was relevant and previous inspectors had taken this approach. They argue that the Inspector applied, in terms, the approach required by *Bloor Homes*. It is trite law that the fact that a particular policy is not expressly mentioned does not mean that it has been disregarded and the Inspector did give reasons for any departure from previous appeal decisions.

42. Finally, Mr Boyle contends that it was open to the Inspector to conclude that this aspect of landscape harm identified by the Claimant was not site or development specific, but rather would occur any time development took place contrary to Policy 1.CO.

Discussion

43. I address each of the four sub-grounds advanced by Mr Stinchcombe in turn.

Ground 2 (i)

44. Mr Stinchcombe argued that the Inspector wrongly determined that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight which should be accorded to breach of the countryside policies. He said it was plainly relevant and that had been "authoritatively decided".

45. The Council's arguments here did elide somewhat with their arguments as to the overall planning balance, more properly the subject of analysis under the third element of this ground. In my view, it is important to address them discretely if they are properly to be understood.

46. The assertion under challenge, "*…the fact that the authority could clearly demonstrate a five-year housing land supply is not relevant to the weight which should be accorded to development plan policies*" is found in DL18. That paragraph falls in the section of the decision letter dealing with planning policy, background and weight. It relates to the weight to be attached to the countryside policies, policies 1.CO, 18.CO and 20.CO.

47. It is common ground that where there is *no* 5YHLS, the NPPF, in both its 2012 and 2018 forms, deems such policies out of date. Footnote 7 to Paragraph 11 of the NPPF 2018 provides that "…where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73)" the plan is deemed to be out of date. As is again common ground, being out of date has consequences for decision-taking. Paragraph 11 provides that:

> "Plans and decisions should apply a presumption in favour of sustainable development. … For decision-taking this means:
>
> > c) approving development proposals that accord with an up-to-date development plan without delay; or
> >
> > d) where there are no relevant development plan policies, or <u>the policies which are most important for determining the application are out-of-date</u>, granting permission unless:
> >
> > > i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole" (emphasis added).

48. Furthermore, where there is no 5YHLS an inspector is obliged to consider the *extent* of the shortfall (*Hopkins Home v SSCLG* [2016] EWCA Civ 168).

49. However, as Mr Glenister put it, in the context of the NPPF, there is a 'one-way consideration' for 5YHLS. As Mr Boyle submits, there is nothing in statute or policy which expressly or impliedly required the Inspector to take into account *the existence* of a 5YHLS when deciding the weight to be attached to countryside policies. Accordingly, it was for the Inspector to determine the weight to be attached to the fact that there was more than 5YHLS, subject only to a *Wednesbury* challenge.

50. In my judgment, a failure to give weight to the fact that the Council could demonstrate more than a 5YHLS in determining the weight which should be accorded to development plan policies was not irrational. When the Inspector came to consider the overall planning balance, at DL47, he did consider the weight to be attached to the provision of housing. That was the proper place in the analysis for that consideration. I see no basis for saying he should have *increased* the weight, prior to conducting the balancing exercise because of the absence of a negative, namely that there was no shortage of housing land.

Ground 2 (ii)

51. It is argued that the Inspector wrongly determined that it was relevant to have regard to how such countryside policies had been applied in the past in order to obtain a 5YHLS, when attributing weight to such breaches. It is said that it was plainly irrelevant when the Council did have a 5YHLS.

52. This argument did have a superficial attraction. At first blush, it might be thought wrong to compare the position now, when there is an adequate supply of housing land, with the situation earlier when there was not, and when the Council was required to find ways of meeting the shortfall.

53. However, this can only be a rationality challenge. As Mr Boyle correctly submitted the range of considerations capable of being material are broad: any consideration which relates to the use and development of land is capable of being material: see *Stringer v Minister for Housing and Local Government* [1971] 1 WLR 1281 at p 1294G to H. The history of the application of the countryside policies was *capable* in law of being material for planning purposes.

54. As to the rationality of the Inspector's reasons, in my judgment, Mr Glenister has a complete answer. He submits that the Inspector's "consideration of the past application of the policy … revealed that the current compliance with the 5YHLS was achieved "in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps". This indicates that the development plan policies were not consistent with the NPPF, which goes to their "currency". Consideration of this was clearly rational". I agree.

Ground 2 (iii)

55. Mr Stinchcombe argued that the Inspector wrongly reduced the weight attached to the breach of countryside policies by reason of their lacking the flexibility enshrined in the

NPPF. He says he failed to take into account the consistency of those policies with paragraph 170 of the NPPF through recognising the intrinsic character and beauty of the countryside; and he gave no intelligible or adequate reason for disagreeing with previous Eastleigh DLs in this regard and therefore breached the principle of consistency in planning decisions established by case law.

56. Mr Stinchcombe relies on [186] in the judgment of Lindblom J in *Bloor Homes* where he said:

> "186 I do not think Mr Cahill's argument gains anything from Kenneth Parker J's analysis of the particular policies of the development plan that he had to consider in *Colman's* case, in which he compared of those policies with government policy in the NPPF. In any event I do not read Kenneth Parker J's judgment in that case as authority for the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the NPPF, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. That is more than I can see in what Kenneth Parker J said, and more than I think one take from the NPPF itself. The question of whether a particular policy of the relevant development plan is or is not consistent with the NPPF will depend on the specific terms of that policy and of the corresponding parts of the NPPF when both are read in their full context. When this is done it may be obvious that there is an inconsistency between the relevant policies of the plan and the NPPF. But in my view that was not so in this case."

57. That certainly makes good the submission that a policy is not out of date simply because it does not include an internal cost-benefit analysis. Instead, what is required is a comparison of the policy and the relevant parts of the NPPF. That is precisely what the Inspector set out to do at DL14. He said there that "What is important is the degree of consistency of a particular policy or policies with the 2018 Framework. This will depend on the specific terms of the policy/ies and of the corresponding parts of the Framework when both are read in their full context."

58. At DL16, he concluded that 1.CO and related policies lacked "the flexible and balanced approach…enshrined in the Framework" and as a result accorded "reduced weight" to the countryside policies. At DL19, he gave them only limited weight because, in his view, they were out of step with national policy. That was consistent with [213] of NPPF 2012 which states that "due weight" should be given to development plan policies in light of their consistency with the NPPF.

59. It follows that his approach was entirely correct. The test he applied was correct. What remained to him was a matter of planning judgment, which can only be challenged on the grounds of rationality.

60. In my view, the Inspector was entitled to reach the view that there was an inconsistency between Policies 1.CO, 18.CO and 20.CO, on the one hand, and paragraph 170 of the NPPF on the other.

61. Policy 1.CO provided that planning permission would not be granted for development in the open countryside unless it met at least one of four listed criteria. Policy 18.CO provided that "development which fails to respect, or has an adverse impact on, the intrinsic character of the landscape, will be refused." Policy 20.CO provided that development which was detrimental to the quality of that landscape would not be permitted.

62. NPPF 2018 [170] adopts a much more nuanced approach. Instead of the blanket refusal of development subject to limited and specific exceptions, it requires that planning decisions should contribute to and enhance the natural and local environment by meeting a series of objectives. The Inspector rightly described the latter as a "flexible and balanced approach". In my judgment, the Inspector was fully entitled to conclude that this led to reduced weight being attributed to the retained policies.

63. Mr Stinchcombe would quibble with the precise descriptor of the reduction in weight. The Inspector concluded that the countryside policies should attract "limited weight". In other Eastleigh Borough Council decisions inspectors have used different adjectives indicating, perhaps, a lesser weight reduction. Mr Stinchcombe says other inspectors, who recognised a difference between Policy 1.CO and [170] NPPF, still attached "considerable" or "significant" weight to breaches of Policy 1.CO in earlier decision letters. In my judgment, this is classically a matter of planning judgment, involving as it does a subjective judgment of the significance of differences between policies. I detect no error of law here.

Ground 2 (iv)

64. Finally, Mr Stinchcombe argues that the Inspector wrongly took into account (at DL26) that whilst the development would cause landscape harm, this "would be the case in relation to any greenfield development proposal." He says that was an irrelevant consideration where there was a substantial excess of the HLS requirement and no need to develop any greenfield site.

65. As set out above, any consideration which relates to the use and development of land is capable of being material (*Stringer*). This consideration clearly relates to the development of land and accordingly is capable of being material. Accordingly, it was a matter of planning judgment for the Inspector to decide whether this factor was material in this case.

66. In my judgment, all the Inspector was doing was stating that this development, like any other greenfield development, would have an "urbanising" effect. That might not be a very remarkable observation, but it was certainly not an irrational one. As Mr Boyle put it, it was open to the Inspector to conclude that this aspect of landscape harm was not site or development-specific, but rather would occur any time development took place contrary to Policy 1.CO.

Conclusion

67. For all those reasons, this review is dismissed.

WB7

Neutral Citation Number: [2019] EWHC 3158 (Admin)

Case No: CO/1470/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

WOKINGHAM BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
(2) TAYLOR WIMPEY UK LIMITED	
(1) DARRELL JOHN BEASLEY	**Interested Parties**
(2) BEVERLEY ANNE BEASLEY	

- -
- -

Cain Ormondroyd and **Horatio Waller** (instructed by **Select Business Services: Legal Solutions**) for the **Claimant**
Jacqueline Lean (instructed by the **Government Legal Department**) for the **First Defendant**
Morag Ellis QC (instructed by **Eversheds Sutherland**) for the **Second Defendant**
The **Interested Parties** did not appear and were not represented

Hearing date: 6 November 2019

- -

Approved Judgment

Mrs Justice Lang :

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990") to quash the decision of the First Defendant, dated 28 February 2019, in which his Inspector allowed an appeal by the Second Defendant and granted planning permission for residential development on land at Parklands, east of Basingstoke Road, Spencers Wood, Wokingham ("the Site").

2. The issue in the claim was whether the Inspector erred in not affording full weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restricted development outside settlement limits.

3. Permission was given on the papers by Mr John Howell QC, sitting as a Deputy High Court Judge, on 17 May 2019.

Planning history

4. The Site is primarily an area of open pasture land which lies between the villages of Three Mile Cross and Spencers Wood. It adjoins the eastern frontage of Basingstoke Road.

5. The Second Defendant applied for outline planning permission for up to 55 dwellings (with 35% affordable housing), together with all associated parking, landscape and access, and 1.56 ha of Suitable Alternative Natural Greenspace ("SANG"). The proposed development consisted of two areas of residential development, adjoining each village, with a SANG in between.

6. The Second Defendant appealed under section 78 TCPA 1990 against the Claimant's failure to give notice of its decision within the prescribed period.

7. The Claimant relied upon six putative reasons for refusal of permission. Following an agreement under section 106 TCPA 1990, by the date of the Inquiry, only two putative reasons remained, which related to landscape and design.

8. The Inspector (Mr Nick Palmer BA (Hons) BPI MRTPI) held an Inquiry between 8 and 11 January 2019, and attended a Site visit on 11 January 2019.

9. The Inspector's conclusions were set out in his Decision Letter ("DL"), as follows:

> "**Overall**
>
> 51. I have found that the proposal, including the mitigation measures, would not adversely affect the integrity of the SPA. On this basis the presumption in favour of sustainable development applies. I note that Policy CC01 of the LP has similar wording to the previous Framework in terms of the presumption, which has now been superseded.
>
> 52. The parties agree that the housing numbers set out in Policy CP17 of the CS are out-of-date as they were based on the South East Plan which has been revoked. Where strategic policies are

more than 5 years old, as is the case here, the Framework requires that local housing need is calculated using the standard methodology. Using the 2014-based household projections the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum (dpa). This delivery rate significantly exceeds that which is specified in Policy CP17 at 723 dpa. There is a 6.83 years' supply of deliverable housing sites and paragraph 11 (d) of the Framework is not engaged on the basis of housing land supply.

53. Part of this supply has, however been achieved by using land outside the development limits. In the Lambs Lane appeal [APP/X0360/W/18/3199728] the Inspector noted the use of land outside development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits. Nonetheless she concluded that this did not support attributing the aims of the policies limited weight.

54. In the Stanbury House appeal [APP/X0360/W/15/3097721], the parties had agreed the annual rate to deliver the objectively assessed need to be 876 dpa. The Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17. The housing need of over 907 dpa is higher still than the figure used in that appeal.

55. I take the view that the development limits are out-of-date because they are based on an outdated housing requirement, but that the aims of Policies CP11, CP9 and CC02 are generally consistent with national policy. It is important to look at the underlying aims of those policies in deciding the weight to be given to the conflict with them. Those aims are to protect the identities of separate settlements, to maintain the quality of the environment and to locate development where there is good accessibility to services and facilities. For the reasons given above, the proposal would maintain the separation of the settlements and their separate identities. There would be a high degree of accessibility to services and facilities. Although there would be limited harm to the character and appearance of the area, the SANG would be designed to maintain the quality of the environment. For these reasons the proposal would be in accordance with the underlying aims of the policies to a significant extent.

56. Because the development limits are out-of-date, Policies CP11, CP9 and CC02 are not fully up-to-date. This does not mean, however that those policies are out-of-date such that the tilted balance in paragraph 11 (d) of the Framework would be engaged. Nonetheless because the policies are not fully up-to-date the conflict with them does not attract full weight. I also take into account the significant degree of consistency between

> the proposal and their underlying aims. Having regard to all of these factors I give significant weight to the policy conflict. I have also given great weight to the harm to the setting of the listed building and moderate weight to the harm to the character and appearance of the area.
>
> 57. On the other hand, I have given substantial weight to the benefit of the SANG. I also give significant weights to the benefits of the affordable housing, the accessible location and to the enhancement to the setting of the listed building in terms of improved public access. There would also be economic benefits arising from the construction of the development and from the expenditure of its residents and I give further limited weight in this regard. The improvement to the footpath linking to Oakbank School would primarily be required to address the needs of the development but would also be of wider benefit. The planting within the SANG would aim for biodiversity gain. I give further limited weights to these benefits.
>
> 58. The substantial, three significant and three limited weights that I have identified in favour of the proposal would be enough to outweigh the great, significant and moderate weights that I attach to the harms and policy conflicts. The material considerations are of enough weight to indicate that my decision should be otherwise than in accordance with the development plan. This balancing exercise demonstrates that the benefits would outweigh the impacts and the proposal would accord with Policy 1 of the NP in this respect."

Grounds of challenge

10. The Claimant submitted that the Inspector erred in law by affording 'significant' rather than 'full' weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restrict development outside settlement limits.

11. In particular, the Claimant submitted that:

    i) The Inspector failed to give adequate reasons for his conclusion.

    ii) If the Inspector's reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.

    iii) The Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.

    iv) The Inspector acted unfairly in relying upon the fact that some of the sites in the Council's five year housing land supply fell outside settlement boundaries,

without requesting evidence and/or submissions on this matter from the Council.

12. The First and Second Defendants resisted the Claimant's challenge, submitting that the weight to be accorded to policies CP9, CP11 and CC02, and the wider balancing exercise, were quintessentially matters of planning judgment for the Inspector. There was no proper basis for interfering with the Inspector's exercise of planning judgment in this case.

13. In particular, the Defendants submitted:

i) The reasons were intelligible and adequate, when read fairly as part of the decision as a whole.

ii) The undisputed evidence was that the development limits were set by reference to the out-of-date housing requirements in CP17. This was a material consideration and it was rational for the Inspector to have regard to it. On a fair reading of the decision, the Inspector did not reach his conclusion simply on the basis that CP17 was out-of-date.

iii) The Inspector was well aware of the evidence in respect of the Claimant's housing land supply, and the Claimant's submission at the Inquiry that this was "a powerful material consideration pointing to the giving of full weight to the settlement boundary policies" (paragraph 50 of the Claimant's closing submissions). It did not follow that the Inspector was therefore required to conclude that the conflict with the policies should be given full weight. It was no part of the Inspector's role to consider whether the development limits in the development plan were appropriate – that was a matter for consideration on examination of the emerging Local Plan.

iv) The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, in the light of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this point, and both parties made submissions on it. The Claimant was given a fair opportunity to address this matter.

Legal and policy framework

14. The parties relied upon the "seven familiar principles" set out by Lindblom J. in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at [19].

(i) Applications under section 288 TCPA 1990

15. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

16. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

17. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

18. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court warned, at paragraph 23, against over-legalisation of the planning process. At [24] to [26], he gave guidance that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Inspectors are akin to expert tribunals who have been accorded primary responsibility for resolving planning disputes and the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. But issues of interpretation, appropriate for judicial analysis, should not be elided with issues of judgment in the application of that policy.

19. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

20. Two citations from the authorities listed above are of particular relevance to the disputed issues in this case.

    a) *South Somerset District Council*, per Hoffmann LJ at 84:

    > "...as Forbes J. said in *City of Westminster v Haymarket Publishing Ltd*:
    >
    > > "It is no part of the court's duty to subject the decision maker to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute. Because the letter is addressed to parties who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not

> necessary to rehearse every argument relating to each matter in every paragraph."

> The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy."

b) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

> "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

21. An inspector is under a statutory duty to give reasons for his decision, pursuant to rule 19 of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

22. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be

> read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

23. Whilst reasons may be "briefly stated", depending on the context, they must not give rise to substantial doubt as to whether the decision-maker misunderstood some relevant policy or other important matter or failed to reach a rational decision on relevant grounds. As Lord Carnwath confirmed in *Dover DC v CPRE (Kent)* [2018] 1 WLR 108, the essence of the duty is that the information provided must not leave "genuine doubt…as to what [the Inspector] has decided and why" (at [42]).

(ii) Decision-making

24. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

25. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters……
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is helpful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.
>
> Moreover the section has not touched the well-established distinction in principle between those matters which are

properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in *Loup v Secretary of State for the Environment* (1995) 71 P & C.R. 175, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

…..

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to

> take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

26. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].

(iii) The Framework

27. The National Planning Policy Framework ("the Framework") is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].

28. Although the July 2018 edition of the Framework was still in force at the date of the Inquiry, the February 2019 edition had come into force by the date of the Inspector's decision. For the purposes of this appeal, there was no material change.

29. Paragraph 11 applies a presumption in favour of sustainable development. For decision-taking, where there are no relevant development plan policies, or the policies which are most important for determining are out-of-date, permission should be granted unless:

    i) Framework policies that protect areas or assets of particular importance provide a clear reason for refusal; or

    ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (often described as the "tilted balance").

30. Footnote 7 to paragraph 11 amplifies the term "out-of-date", stating:

> "This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1."

31. Section 5 of the Framework is headed "Delivering a sufficient supply of homes", and it begins, at paragraph 59, with its overarching objective, namely:

> "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is

> needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."

32. Ensuring a sufficient number and range of homes is identified as an element of the social dimension of sustainable development in paragraph 8(b) of the Framework.

33. Paragraph 73 provides:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old *[Footnote 37: Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.]*. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
>
> a) 5% to ensure choice and competition in the market for land; or
>
> b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan; or
>
> c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."

34. Annex 1 to the Framework, headed "Implementation", gives guidance on out-of-date policies, at paragraph 213:

> "However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

35. This guidance (which has essentially remained the same since 2012, despite some re-casting of the paragraphs) was considered in *Peel Investments (North) v Secretary of*

State for Communities and Local Government [2019] EWHC 2143 (Admin), per Dove J. at [58]:

> "….. there is nothing in the relevant provisions of the Framework to suggest that the expiration of a plan period requires that its policies should be treated as out-of-date…It will be a question of fact or in some cases fact and judgment. The expiration of the end date of the plan may be relevant to that exercise but it is not dispositive of it."

36. In *Gladman Developments Limited v Daventry District Council and Secretary of State for Communities and Local Government* [2016] EWCA Civ 1146, Sales LJ considered the approach to be taken to the older development plan policies in issue in the appeal, at [40] – [44]:

> "40. I would formulate the position in this way:
>
> i) Since old policies of the kind illustrated by policies HS22 and HS24 in this case are part of the development plan, the starting point, for the purposes of decision-making, remains section 38(6) of the 2004 Act. This requires that decisions must be made in accordance with the development plan — and, therefore, in accordance with those policies and any others contained in the plan — unless material considerations indicate otherwise. The mere age of a policy does not cause it to cease to be part of the development plan; see also para. 211 of the NPPF, set out above. The policy continues to be entitled to have priority given to it in the manner explained by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, HL, at 1458C-1459G.
>
> ii) The weight to be given to particular policies in a development plan, and hence the ease with which it may be possible to find that they are outweighed by other material considerations, may vary as circumstances change over time, in particular if there is a significant change in other relevant planning policies or guidance dealing with the same topic. As Lord Clyde explained:
>
>> "If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance" (p.1458E).
>
> iii) The NPPF and the policies it sets out may, depending on the subject-matter and context, constitute significant material considerations. Paragraph 215 sets out the

approach to be adopted in relation to old policies such as policies HS22 and HS24 in this case, and as explained above requires an assessment to be made regarding their consistency with the policies in the NPPF. The fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the NPPF.

iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF, at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all. In the present case, it is of significance that the Secretary of State himself decided to save the Local Plan policies in 2007 because he thought that continuity and coherence of approach remained important considerations pending development of appropriate up-to-date policies.

v) Paragraph 49 of the NPPF creates a special category of deemed out-of-date policies, i.e. relevant policies for the supply of housing where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The mere fact that housing policies are not *deemed* to be out of date under para. 49 does not mean that they cannot be out of date according to the general approach referred to above.

41. In the particular circumstances of this case Mr Kimblin submitted (i) that the facts that policies HS22 and HS24 appeared in a Local Plan for the period 1991–2006, long in the past, and were tied into the Structure Plan (in particular, in relation to policy HS24, as set out in the explanatory text at para. 4.97 of the Local Plan), which is now defunct, meant that very reduced weight should be accorded to them; (ii) that the Local Plan policies in relation to housing supply, which include policies HS22 and HS24, are "broken" and so again should be accorded little weight; and (iii) that policies HS22 and HS24 have been superseded by more recent guidance, in the form of para. 47 of the NPPF, and so should be regarded as being outdated in the manner explained by Lord Clyde in *City of Edinburgh Council*. I do not accept these submissions.

42. As to (i), policies HS22 and HS24 were saved in 2007 as part of a coherent set of Local Plan policies judged to be appropriate for the Council's area pending work to develop new and up-to-date policies. There was nothing odd or new-fangled in the inclusion of those policies in the Local Plan as originally adopted in 1997. It is a regular feature of development plans to seek to encourage residential development in appropriate centres and to preserve the openness of the countryside, and policies HS22 and HS24 were adopted to promote those objectives. Those objectives remained relevant and appropriate when the policies were saved in 2007 and in general terms one would expect that they remain relevant and appropriate today. At any rate, that is something which needs to be considered by the planning inspector when the case is remitted, along with the question of the consistency of those policies with the range of policies in the NPPF under the exercise required by para. 215 of the NPPF. The fact that the explanatory text for policy HS24 refers to the Structure Plan does not detract from this. It is likely that the Structure Plan itself was formulated to promote those underlying general objectives and the fact that it has now been superseded does not mean that those underlying objectives have suddenly ceased to exist. As the judge observed at [49], "some planning policies by their very nature continue and are not 'time-limited', as they are re-stated in each iteration of planning policy, at both national and local levels."

43. As to (ii), the metaphor of a plan being "broken" is not a helpful one. It is a distraction from examination of the issues regarding the continuing relevance of policies HS22 and HS24 and their consistency with the policies in the NPPF. As Mr Kimblin developed this submission, it emerged that what he meant was that it appears that the Council has granted planning permission for some other residential developments in open countryside, i.e. treating policy HS24 as outweighed by other material circumstances in those cases, and that it relies on those sites with planning permission, among others, in order to show that it has a five year supply of deliverable residential sites for the purposes of para. 47 (second bullet point) and para. 49 of the NPPF. Mr Kimblin says that this shows that the saved policies of the Local Plan, if applied with full rigour and without exceptions, would lead the Council to fail properly to meet housing need in its area, according to the standard laid down in paras. 47 and 49 of the NPPF. Therefore, he says, no or very reduced weight should be accorded to policies HS22 and HS24.

44. In my view, this argument is unsustainable. We were shown nothing by Mr Kimblin to enable us to understand why the Council had decided to grant planning permission for

> development of these other sites. So far as I can tell, the Council granted planning permission in these other cases in an entirely conventional way, being persuaded on the particular facts that it would be appropriate to treat material considerations as sufficiently strong to outweigh policy HS24 in those specific cases. Having done so, there is no reason why the Council should not bring the contribution from those sites into account to show that it has the requisite five year supply of sites for housing when examining whether planning permission should be granted on Gladman's application for the site in the present case. The fact that the Council is able to show that with current saved housing policies in place it has the requisite five year supply tends to show that there is no compelling pressure by reason of unmet housing need which requires those policies to be overridden in the present case; or – to use Mr Kimblin's metaphor – it tends positively to indicate that the current policies are *not* "broken" as things stand at the moment, since they can be applied in this case without jeopardising the five year housing supply objective. In any event, an assessment of the extent of the consistency of policies HS22 and HS24 with the range of policies in the NPPF is required, as set out in para. 215 of the NPPF, before any conclusion can be drawn whether those policies should be departed from in the present case."

37. In *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council* [2019] EWHC 127 (Admin), Dove J observed, at [19], that paragraph 44 of Sales LJ's judgment in the *Daventry District Council* case, which I have set out above, was *obiter dicta* and he added, at [37]:

> "… all that Sales LJ was suggesting was that the fact that the council had granted planning permission for some of the sites in the five-year housing land supply on sites in breach of policy HS 24 would not in and of itself justify a conclusion that that policy was out of date. That was an issue which would require, again, careful evaluation against the background of the terms of the policy, the available evidence as to its performance and scrutiny of its consistency with the Framework. That will inevitably be a case-sensitive exercise…."

38. In *Telford and Wrekin BC v Secretary of State for Communities and Local Government* [2016] EWHC 3073 (Admin), the Council submitted that an inspector erred in law in treating its grant of planning permission outside the settlement boundary as a factor supporting his conclusion that the policies on settlement boundaries were out-of-date. I held, at [25], that the inspector was entitled to have regard to other grants of planning permission as it was plainly a relevant consideration supporting the contention that current housing needs could not be adequately met within the settlement boundaries identified in the policies. The weight to be given to this consideration was a matter of planning judgment for the inspector, not the court.

Conclusions

Ground 1

39. In my judgment, the Inspector's reasons for concluding that the conflict with policies CP9, CP11 and CCO2 should be afforded 'significant' rather than 'full weight' were both intelligible and adequate, when read fairly, in the context of the decision as a whole.

40. In the decision, the Inspector gave detailed consideration to the relevant policies, and the extent to which the proposed development would be in conflict with them.

41. At DL9, he had regard to the fact that the Site is within a Strategic Development Location which is designated in the Core Strategy (adopted in 2010). Following adoption of a Supplementary Planning Document in 2014, the pre-existing development limits were extended. Policy CP19 provides for mixed use development in this area, including around 2,500 dwellings by 2026.

42. At DL9 and 10, the Inspector found that the housing element of the proposed development would not accord with CP11 or CC02, as it is outside the development limits in those policies. However, the SANG proposal would be in accordance with CP11.

43. At DL11 and 12, the Inspector found that the affordable housing element of the proposed development would accord with CP9, which permitted affordable housing adjoining the development limits, but that the market housing element would not be in accordance with CP9. The proposed development would meet the aims of CP9 because the location is accessible by sustainable means, and has good services and facilities. The Inspector identified that many of the services and facilities were new; the Second Defendant relied on the fact that these post-dated the settlement limits.

44. At DL13, the Inspector referred to the Shinfield Parish Neighbourhood Plan, made in February 2017, which supports development within the development limits. It only supports development adjacent to those limits where the benefits of the development outweigh its adverse impacts.

45. Under the heading 'Character and Appearance', the Inspector identified the 'less than substantial harm' to the heritage asset, by the reduction of its open setting, to which he gave weight. As required by the Framework, he went on to consider the public benefits to be weighed against the harm, namely, the SANG and the proposed affordable housing. He said, at DL27:

> "27. I give further significant weight to the benefit of the proposed affordable housing because of the acute need for such housing in the area.There are over 1,800 households on the Council's housing register awaiting rented accommodation and at least 1,500 households on the shared ownership register. It is evident that although the Council is taking action to deliver the 441 affordable homes needed annually, as revealed by the Berkshire Strategic Housing Market Assessment (2015),

> through its housing company, the past record of delivery has fallen short of that figure."

46. The Inspector found, at DL36, that there would be "some harm to the character and appearance of the area in terms of the extension of built frontage along the road, the reduction of the gap between the settlements and the additional development close to the ridge". He found that the extent of the harm would be limited, but nonetheless it would "introduce built development outside of the currently defined development limits and into open countryside" contrary to CP9, CP11 and CC02. However, the SANG provision would maintain or enhance the high quality of the environment, as required by CP1.

47. At DL52, the Inspector referred to the agreement between the parties that the housing numbers set out in CP17 were out-of-date, as they were based on the South East Plan which had been revoked. He explained, applying the Framework, that the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum ("dpa"), which significantly exceeds the 723 dpa specified in CP17.

48. The Claimant's evidence to the Inquiry was that it was currently in the process of updating its Local Plan, with consultation due to take place in Autumn 2019.

49. At DL55, the Inspector found that the development limits in CP9, CP11 and CC02 were out-of-date because they were based on the outdated housing requirement in CP17. The Second Defendant's evidence at the Inquiry, given by Mr Paterson-Neild, was that "the settlement boundaries for the [Strategic Development Location] were predicated on the now out-of-date Core Strategy housing requirement as acknowledged in the Settlement Separation and Development Limit Boundaries report prepared for the Claimant by David Lock Associates …". The Lock report, dated June 2012, was in evidence at the Inquiry, and stated:

> "4.11 The new proposed boundaries do not allow more development than that which is set by the Core Strategy, nor do they allow less SANG than is required according to the formula set out in the Core Strategy."

I do not consider that the Inspector was required to set out this evidence in support of his conclusion, since there was no evidence to the contrary, and the link between the housing requirements and the development limits was not disputed by the Claimant.

50. In support of his conclusion, the Inspector referred, at DL54, to the Stanbury House appeal in which "the Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17". He observed that the housing need in the instant appeal was even higher than the figure in the Stanbury appeal. The parties would have been aware that the Stanbury appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.

51. The Inspector found, at DL52, that the Claimant had a 6.83 years supply of deliverable housing sites, and therefore the tilted balance in paragraph 11(d) of the Framework was not engaged on the basis of housing land supply. It was agreed

between the parties at the Inquiry that the Claimant met the minimum five year housing land supply specified in the Framework.

52. However, at DL53, the Inspector found that part of the 6.83 years housing land supply had been achieved by using land outside the development limits. Submissions were made on this issue at the Inquiry, and some evidence was adduced, which I refer to later on this judgment. The supporting evidence referred to by the Inspector was the decision in the recent Lambs Lane appeal where "the Inspector noted the use of land outside the development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits", though not to the aims of the policies. The Stanbury appeal inspector made a similar distinction between the development limits and the aims of the policies. The parties would have been aware that the Lambs Lane appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.

53. At DL55, the Inspector reached a similar conclusion to the inspectors in the Stanbury and Lambs Lane appeals, namely, that the development limits were out of date because they were based on an outdated housing requirement, but the aims of CP9, CP11 and CC02 were generally consistent with national policy. He correctly directed himself that it was important to look at the underlying aims of the policy in deciding the weight to be given to the conflict with them. He summarised the ways in which the proposed development was in accordance with underlying policy aims, having addressed these matters addressed more fully earlier in the decision.

54. At DL56, the Inspector concluded that because the development limits were out-of-date, policies CP9, CP11 and CC02 were not fully up-to-date. He did not consider that the tilted balance in paragraph 11(d) of the Framework was engaged. However, he found that the conflict with them did not attract full weight. Applying paragraph 213 of the Framework, he took into account the significant degree of consistency between the proposal and the underlying aims. In the light of all these factors, he gave significant rather than full weight to the policy conflict. In my view, the Inspector's application of the Framework to his findings would have been understood by the parties at the Inquiry.

55. The weight to be given to the policies was an important issue in the appeal, as the Second Defendant contended before the Inspector that the development limits in the policies were out-of-date, whereas the Claimant argued that they should be afforded full weight. It is apparent that the Inspector did not accept the Council's submissions.

56. In my judgment, the Inspector's reasons met the standards set out by Lord Brown in *South Buckinghamshire District Council v Porter* (No 2) and by Lord Carnwath in *Dover DC v CPRE (Kent).* They explained his conclusions on the weight to be afforded to the policies, and I cannot accept that the Claimant did not understand his reasoning. I agree with Ms Lean's submission, on behalf of the First Defendant, that, in reality, the Claimant's complaint was that the Inspector's reasons were not rational.

57. In *South Buckinghamshire District Council*, Lord Brown said that a reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision. No such prejudice has been demonstrated in this case.

58. For these reasons, Ground 1 does not succeed.

Ground 2

59. The Claimant submitted that, if the Inspector's reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.

60. As I have shown in my analysis of the Inspector's reasoning under Ground 1, his reasons were more extensive than the Claimant suggested, and they were based on a careful assessment by him, in accordance with the case law cited above. In my judgment, the fact that the development limits in the policies were derived from the out-of-date housing requirements in CP17 was clearly a relevant factor for the Inspector to take into account, and the Inspector's conclusion was a rational one which he was entitled to make. It was not analogous to deciding that the policies were out-of-date merely on the basis of their chronological age; there was an issue of real substance here. As Lindblom J. said in *Bloor Homes*, at [19]:

> "The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court."

61. For these reasons, Ground 2 does not succeed.

Ground 3

62. The Claimant submitted that the Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.

63. The Claimant relied upon Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council [2019] EWHC 127 (Admin) and Telford and Wrekin BC v Secretary of State for Communities and Local Government [2016] EWHC 3073 (Admin), which I have referred to above. In my judgment, these cases turned on their own particular facts, and the challenge made to the inspectors' decisions. I do not accept the Claimant's submission that these cases establish a binding principle that a grant of planning permission outside settlement boundaries can only be accorded weight in so far as it indicates that the strict application of settlement boundaries would prevent the area's five year housing land supply being met. An inspector must decide in the context of the facts and circumstances of each case whether, and to what extent, the grant of planning permission outside settlement boundaries is a material consideration, and if so, how much weight to accord to that factor. In principle, an inspector is entitled to have regard to the area's housing needs and housing land supply beyond the five year minimum requirement, as significantly boosting the supply of a sufficient number and variety of homes is a key policy objective of the Framework (paragraphs 59 and 8b).

64. On my reading of the decision, the Inspector was clearly aware that the Council had a 6.83 years supply of housing, which was in excess of the minimum five year requirement in the Framework. At DL53, he found that part of the supply was

achieved by using land outside the development limits. He did not seek to specify precisely how much of the supply was achieved through sites outside the development limits.

65. In my judgment, the evidence adduced by the parties at the Inquiry was unsatisfactory, and prevented the Inspector from carrying out a more detailed analysis of the number of sites outside the development limits. Mr Church, Team Manager (Senior Specialist) in the Council's Growth and Delivery Team, gave extensive evidence on the Council's housing needs and supply, but only briefly touched on the development which had taken place outside development limits. He was asked by the Council's counsel whether the Council "had abandoned settlement boundaries in Strategic Development Locations" and he was asked about some specific sites outside development limits. He said that the Council had not abandoned settlement boundaries. He mentioned grants of permission at Shinfield, and at Bell Lane (128 dwellings) and Keephatch Beech (up to 300 dwellings) outside the settlement boundary, which were referenced in the Core Documents for the Inquiry, and confirmed that the Council would still have a five year housing land supply without these dwellings.

66. However, in his statement for the hearing in the High Court, Mr Church gave much more detailed evidence on this matter. He concluded that 1,113 dwellings across 8 sites are located outside settlement boundaries, of which 840 are included in the Council's five year housing land supply. The remaining 273 dwellings are anticipated to be delivered from 1 April 2023 onwards (paragraph 13). This material was not provided to the Inspector by the Council, apparently on the grounds that it had not been identified as an issue in the appeal.

67. The Second Defendant took issue with this evidence, and its planning consultant claimed in evidence that around 1,400 dwellings were derived from sites outside settlement boundaries, though this figure was subsequently reduced to 1,203 dwellings in the Second Defendant's draft closing submissions, prior to final amendment. A table setting out the evidence in detail was submitted, but the Claimant objected to its admission on the grounds that it had been produced too late for it to have a fair opportunity to respond. The Inspector upheld the Claimant's objection and refused to admit the evidence.

68. In their closing statements, the Claimant and the Second Defendant made competing submissions. The Second Defendant criticised the reliability of Mr Church's evidence, submitting that "a number" of the projected dwellings to be delivered in the years up to 2026 related to permissions on land outside development limits, so the claim of a significant boost to housing being achieved solely within current limits was not accepted. It could not specify the number as its table of evidence had been excluded. The Second Defendant also emphasised the serious failure to deliver sufficient affordable housing, within the overall supply.

69. In response, the Claimant submitted in its closing statement that the Second Defendant had misunderstood Mr Church's evidence, and summarised the reasons for grant of permission in the three major developments referred to by Mr Church. It concluded, at paragraph 51:

> "The grant of such permissions in the past does not demonstrate that reduced weight should now be given to settlement boundary policies Firstly, because they represent the normal working of the planning system and the flexibility of the strategy of the plan, rather than some general indictment of the policies in the plan. Secondly, because even if (as in the case of a former lack of 5 year housing land supply) they do relate to historic problems of housing delivery, however caused, that is no reason to give reduced weight to settlement boundary policies *now*. They are not preventing any obstacle to delivery *now*."

70. In my view, the unsatisfactory way in which the parties conducted their respective cases (as described above) placed the Inspector in a difficult position, as he was faced with conflicting evidence and submissions as to the number of sites outside development boundaries, in relation to the housing land supply, but he did not have sufficient evidence before him to make a detailed assessment. The parties did not present the relevant evidence to him fully, and in accordance with the timetable. He reasonably decided it was unfair to the Council to admit the Second Defendant's evidence at such a late stage, when the Council had not presented detailed evidence on this matter. In those circumstances, I consider the Inspector was entitled simply to rely upon the unchallenged conclusions of the inspector in the recent Lambs Lane decision, at the same village (Spencers Wood), who "noted the use of land outside development limits in achieving the housing land supply and considered that this would reduce the weight to be given to those limits", in support of his conclusion that part of the housing land supply of 6.83 years had been achieved by using land outside the development limits (DL53). The Inspector did the best he could in the circumstances in which he found himself, which were not of his making.

71. I do not consider that the Inspector failed to have regard to the brief evidence of Mr Church, and the Council's closing statement; rather, that in the unusual circumstances of this Inquiry, he could not resolve the dispute on the figures.

72. In my view, the Council misunderstood the witness statement made by the Inspector in which he said, at paragraph 7, that he was not presented with any evidence during the course of the inquiry as to whether the development limits were preventing the achievement of a five year housing land supply. I accept the First Defendant's submission that the Inspector was responding, in paragraph 7, to a different point, namely, the controversial pleading in the Council's Statement of Facts and Grounds, at paragraph 28, that the Inspector was "apparently not concerned with the relevant question of whether the Development Limits remained appropriate in light of current needs". Both Defendants firmly submitted that it was neither appropriate nor possible for an Inspector hearing an individual appeal to determine whether development limits in a local plan were appropriate in light of current needs. That was a matter which ought properly to be assessed and determined when a proposed local plan was considered (which was already under way in this local planning authority's area). I agree with the Defendants' submission on this point.

73. For the reasons set out above, Ground 3 does not succeed.

Ground 4

74. The Claimant submitted that the Inspector acted unfairly in relying upon the fact that some of the sites in the Claimant's five year housing land supply fell outside settlement boundaries without requesting evidence and/or submissions on this matter from the Claimant.

75. I repeat paragraphs 64 to 71 of my judgment which describes events at the Inquiry. In my judgment, the Inspector did not act unfairly. The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, not least because of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this matter in its evidence in chief, and made submissions on it. The Claimant was given a fair opportunity to address this matter and chose not to do so in any detail. The Inspector acceded to the Claimant's submission that the table of evidence produced by the Second Defendant was to be excluded because the Claimant had not had an opportunity to respond to it. If the Claimant wished the Inspector to take an alternative course (e.g. adjourning the Inquiry to give the Claimant time to adduce further evidence), it could have requested the Inspector to do so.

76. For these reasons, Ground 4 does not succeed.

Final conclusion

77. For the reasons I have given above, the claim is dismissed. Therefore, the question of whether or not to grant relief does not arise.

WB8

The Planning Inspectorate

Appeal Decision

Inquiry held on 18, 19, 24, 25, 26 & 28 July 2017

Site visit made on 28 July 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 06 October 2017

Appeal Ref: APP/N1730/W/17/3167135
Land North of Netherhouse Copse, Fleet, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an outline application for planning permission.
- The appeal is made by Berkeley Strategic Land Limited against Hart District Council.
- The application Ref 16/01651/OUT, is dated 24 June 2016.
- The development proposed is outline application for up to 423 residential dwellings and a community facility. Associated vehicular, pedestrian and cycle access, drainage and landscape works, including the provision of public open space and sports pitches. Provision of country park/Suitable Alternative Natural Greenspace (SANG) as an extension to Edenbrook Country Park.

Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 423 residential dwellings and a community facility; associated vehicular, pedestrian and cycle access, drainage and landscape works, including the provision of public open space and sports pitches; and provision of country park/Suitable Alternative Natural Greenspace (SANG) as an extension to Edenbrook Country Park at Land North of Netherhouse Copse, Fleet, Hampshire in accordance with the terms of the application Ref 16/01651/OUT dated 24 June 2016, subject to the conditions in the schedule at the end of the decision.

Procedural Matters

2. The appeal was made on the basis of the Council's failure to determine the application within the prescribed period. Following the lodging of the appeal the Council indicated that they would have refused planning permission had they been in a position to determine the application. Seven putative reasons for refusal were identified with the first two relating to the location of the proposed development within a designated local gap and highway safety. In a Statement of Common Ground (SoCG) between the Council and the appellant it was agreed that putative reasons for refusal 3-7 were capable of being overcome through suitable legal obligations.

3. The application was submitted in outline, with only access for determination at this stage. All other matters are reserved for future consideration. Except for those plans referred to in Condition 4, I have treated any submitted details concerning layout, appearance, scale and landscaping as being illustrative only.

4. A draft agreement made pursuant to Section 106 of the Town and Country Planning Act, 1990 was discussed at the inquiry and a signed and dated agreement was provided following the inquiry. This contains obligations in respect of affordable housing, transport and highways works including a travel plan, educational contributions, play space and open space, a SANG and a community facility. There is also an obligation not to develop on land to the south of Netherhouse Copse. I shall return to these matters later in my decision.

5. Prior to the inquiry the appellant also submitted a SoCG which it had agreed with Hampshire County Council as highway authority.

Main Issues

6. In the light of the evidence presented at the inquiry I have modified the main issues as outlined at the start of the inquiry, which I now present as:

- The effect of the proposed development on the Local Gap between Fleet, Church Crookham and Crookham Village, in physical and visual terms and its effect on the character and setting of the countryside and on public footpaths;
- The effect of the proposed access on highway safety, with particular reference to the proposed southern site access roundabout; and
- Whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

Reasons

Planning Policy

7. The development plan includes the saved policies of the Hart District Local Plan (Replacement) 1996-2006 and the First Alterations to the Hart District Local Plan (Replacement) 1996-2006 (the LP). Policy RUR1 of the LP defines the areas covered by Rural Economy and Countryside (RUR) Policies. These include the open countryside outside of settlement boundaries.

8. Policy RUR2 of the LP establishes an in-principle restriction on development in the open countryside outside the defined settlement boundaries and restricts development unless it is specifically provided for by other policies of the LP. In addition, new development will not be permitted if it has a significant detrimental effect on the character and setting of the countryside. Policy RUR3 states that developments in the countryside which are provided for by other policies of the plan will be permitted where they meet a number of specified criteria.

9. The appeal site was identified as part of the West Fleet Strategic Location in the now withdrawn Local Plan: Core Strategy, 2011-2029. More recently the site was identified as part of a West of Fleet potential strategic site as part of the early consultation on the emerging Local Plan but is not allocated in the draft Hart District Local Plan, 2011-2032. The Council and the appellant agree that only very limited weight can be attached to the emerging Local Plan at this stage, a view I share.

10. Policy RUR1 provides the context for Policies RUR2 and RUR3 but, as acknowledged by the Council and the appellant, it is not in itself capable of being breached. As the appeal site is outside of the settlement boundaries of Fleet and therefore within the open countryside the proposed development would be contrary to Policy RUR2. It is also contrary to Policy RUR3 as it is not covered by the criteria of that policy.

Local Gap

11. The appeal site comprises predominantly agricultural land, grassland, hedgerows and woodland. It consists of two separate parcels of land to the west and east side of Hitches Lane. Hitches Lane links the northern part of Fleet with Crookham Village, to the south of the appeal site.

12. There are two public footpaths which cross the site. Footpath No. 6 runs in a southerly direction from Fleet to Crookham Village whilst Footpath No. 7 runs east-west extending beyond Hitches Lane. Footpath 502 passes along the eastern edge of the appeal site.

13. Policy CON21 of the LP states that development which would lead to the coalescence of, or damage the separate identity of, neighbouring settlements will not be permitted within identified Local Gaps. The eastern site lies within a defined Local Gap between Fleet and Crookham Village.

14. The appellant indicated that in 1998 when the LP Inspector considered the Local Gap he came to the view that it need only extend northwards as far as Netherhouse Copse to secure the separation between Fleet and Church Crookham. Nevertheless, in adopting the LP the Council confirmed the gap as denoted on the Proposals Map which includes the appeal site.

15. Policy CON21 is not breached by development within a Local Gap in itself. However, it is necessary to consider whether, as a consequence of the proposed development, the diminution of the Local Gap would result in the coalescence of, or harm to, the identity of neighbouring settlements. This judgment is concerned with the spatial relationship between places rather than the quality of the landscape.

16. The Council's assessment to determine the value of the gap identified a number of criteria beginning with distance. The existing gap extends approximately 1.25km north to south with the walk time between Fleet to the north and Crookham Village to the south estimated to be approximately eight minutes. The remnant gap between Netherhouse Copse and Crookham Village if the development were to take place would be approximately 400m and approximately 205m along Hitches Lane with housing occupying the central third of the gap. In terms of topography The Tump, which currently provides a distinctive landscape feature, would be re-profiled, while new housing would obscure much of the remaining form.

17. With open countryside replaced by built development the landscape character of the central part of the gap would change drastically whilst the character of Hitches Lane which borders the gap would become more urbanised with the introduction of additional street furniture. Roadside trees would also be removed to accommodate visibility splays and new accesses. New housing would incorporate the routes of footpaths across the site, changing their character. Moreover, the new housing edge would be more visually prominent

than the existing western edge of Fleet, at least until the new planting matures sufficiently to provide screening.

18. Currently it is not possible to see the northern edge of Crookham Village from the western edge of Fleet, at least in summer. However, there would be potential for the new housing to be seen from the edge of the village, across the gap at Hitches Lane, particularly in winter, notwithstanding the filtering effect of Netherhouse Copse. Currently there are very limited opportunities to see both edges of the settlements from a single point, but the proposed development would make this possible from Hitches Lane and from Footpaths 7a and 6.

19. The existing gap along Hitches Lane serves to create the perception of leaving one settlement before entering another. A strong sense of countryside is experienced, reinforced by the agricultural use. This sense of entering or leaving Crookham Village or Fleet would change as a result of the proposed development. The gap would be considerably reduced with a walk time of approximately two minutes and new housing would affect the character of Footpath 7b and the northern part of Footpath 6.

20. The proposals would result in development occupying approximately one third of the existing Local Gap. The remaining area would comprise an undeveloped northern part occupied by open space and the southern gap between Netherhouse Copse and Crookham Village. Notwithstanding the changes to the gap the absence of development between Netherhouse Copse and Crookham Village would result in no direct coalescence of these settlements.

21. At present views into the eastern site are possible from a number of locations on Hitches Lane. Furthermore, Netherhouse Copse with trees of varying heights and thickness, would not provide an impenetrable screen to prevent views of the proposed development from the south, because it does not extend across the full width of the gap. However, Netherhouse Copse and proposed vegetation between the village and the new housing would provide significant mitigation resulting in limited visibility between the proposed development and Crookham Village, including during the winter months.

22. Crookham Village derives its identity from being a settlement of rural character and appearance, largely surrounded by open agricultural land. It has numerous historic buildings, many of which are timber framed and part of the village is a conservation area.

23. The Council argued that even if the remnant gap did not result in direct coalescence, the separate identity of the village would be materially damaged. But as the identity of Crookham Village derives in part from its physical separation from Fleet I find that there would be no material harm to the separate identity of Crookham Village as a result of the proposed development. For these reasons I do not consider that Crookham Village would lose its sense of place or distinctive character notwithstanding the physical diminution of the Local Gap.

24. Through a planning obligation the appellant has committed for the land between Crookham Village and the development to be subject to restrictive controls. This would prevent further development within the remnant gap and would further ensure that Policy CON21 was not breached, notwithstanding that development in this location would be subject to planning controls.

Nevertheless, this proposed obligation would add further limited weight to the protection of the remnant Local Gap.

25. Consequently, whilst the proposed development would be within the Local Gap it would not result in the physical and visual coalescence of settlements or the loss of individual identities and therefore I find no conflict with Policy CON21.

26. Policy CON22 of the LP aims to prevent development which would adversely affect the character or setting of a settlement or lead to the loss of important areas of the development of open land around settlements. Development will not be permitted where it would have a serious adverse effect on the character or setting of the settlement. The supporting text to the policy also indicates that land immediately outside settlement boundaries may be important to the form and character of a settlement in providing opportunities for views.

27. The visual impact of the proposed development would be experienced within the appeal site and its immediate surroundings but also from further afield, including from viewpoints to the west of Hitches Lane and from Pilcot Road. Landscape mitigation, particularly over the longer term, would in my judgment soften the negative impacts whilst not completely eliminating views of new development. Nevertheless, these adverse impacts need to be considered in the context of views of existing buildings in the area which form part of the landscape character.

28. Whilst there will be glimpsed views of the proposed development when using Footpath 6, south of Netherhouse Copse and from Hitches Lane, I regard the appeal site as being largely outside of the setting of Crookham Village. This is because the visual envelope of Crookham Village extends as far as Netherhouse Copse but not beyond. From within the appeal site, Crookham Village is not experienced to any great degree and it is only when one moves south from the appeal site beyond Netherhouse Copse that the village setting is experienced. Proposed mitigation along Hitches Lane and to the south of Netherhouse Copse would add to the existing planting to reduce the urban character of development and preserve the setting and character of Crookham Village.

29. Indicative drawings show The Tump, being developed for housing and regraded to reduce the impact of development. Even with this change views from the west of the development of the upper slopes of The Tump would still be apparent above roadside trees along Hitches Lane. Nevertheless, the effect of this change on the character of the landscape would be limited largely to the immediate surrounds or views from the west, where housing within trees is characteristic of the wider area. As a result there would be no serious adverse effect on the rural composition of existing views or the setting of Crookham Village.

30. Paragraph 109 of the National Planning Policy Framework (the Framework) states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The appeal site does not lie within a designated landscape but case law[1] indicates that a landscape does not have to be designated for it to be a valued landscape. Nevertheless, it does need to have characteristics which make it more than ordinary countryside. I heard during the inquiry how local people

[1] Stroud DC v Secretary of State for Communities and Local Government [2015] EWHC 488 Admin

value the area north of Netherhouse Copse for recreational and amenity value and as a special landscape, with The Tump providing a distinctive local landform.

31. The Council undertook an assessment of the landscape value of the site based on criteria set out in ***Guidelines for Landscape and Visual Impact Assessment Third Edition*** (GLVIA3). This confirmed that in landscape quality terms the appeal site is characterised by woodland and field boundary vegetation patterns which are intact and of reasonable condition, including rare ancient woodland, a range of conservation interests and a high recreational value. The assessment also found a high scenic quality provided by the woodland and tree cover and the distinctive form of the knoll and a sense of tranquillity. Taken together I consider that these elements establish the eastern site as a valued landscape. Nevertheless the main elements which contribute to its value, namely the woodland, vegetation and recreational use, would be protected and enhanced by the development to some extent.

32. The appellant sought to argue that as set out in paragraph 113 of the Framework a distinction may be drawn between designated sites so that protection should be commensurate with their status and appropriate weight should be given to their importance. As a result, the appeal site was described as **'off the bottom of the scale'.** However, such an argument seems to me to suggest that sites with no designation cannot have value, which is contrary to the view in the Stroud case[2].

33. The Hart Landscape Assessment, 1997 identified the site as being within a Category C landscape which is the lowest category. This assessment was based on a methodology which has now been superseded by the GLVIA3 criteria and also failed to recognise recreational value. Accordingly I attach limited weight to its findings.

34. The much more recent Hart Landscape Capacity Study, 2016 identified a wide area to the west of Fleet (FL-01) including the appeal site as having a low capacity for development with a medium visual sensitivity, a medium to high landscape sensitivity and a high landscape value. The study acknowledged that the precise location and extent of development would depend on a closer study and evaluation and that the upper/middle section of Hitches Lane had urban characteristics following urban fringe development. I was also referred to the Strategic Housing Land Availability Assessment, 2016 which recognised the constraint provided by the knoll, but did not suggest that the landscape itself was a constraint.

35. The disagreement between the Council and the appellant about the effect of the scheme in landscape terms depends to some extent on the scope of the assessment. Focusing on the site itself, the effect on character would be major adverse according to the Council but considered in a wider setting the appellant assessed the effect as minor negative with those elements of higher value, including the adjacent ancient woodland retained and enhanced. I consider both of these assessments are reasonable. Nevertheless, the localised nature of the landscape impacts would reduce any harm to a limited effect.

36. The key test of Policy CON22 in this case is that development should not have a serious adverse effect on the character or setting of the settlement.

[2] Stroud DC v Secretary of State for Communities and Local Government [2015] EWHC 488 Admin

Notwithstanding t**he Council's assessment of the** capacity of the appeal site for development, its visual and landscape sensitivities and landscape value there would not be a seriously adverse effect on the character or setting of Crookham Village. I therefore find that the proposal would not conflict with Policy CON22. Nevertheless, there would be limited conflict with the advice in paragraph 17 of the Framework, which states that planning should seek to conserve and enhance the natural environment, and limited harm to the character of the appeal site, which I consider to be valued in terms of paragraph 109 of the Framework.

37. Policy CON23 of the LP states that development will not be permitted which would seriously detract from the amenity and consequent recreational value of well-used footpaths in the countryside close to main settlements by reducing their rural character and detracting from significant views.

38. The illustrative plans indicate that there would be no change to the alignment of any public footpaths but clearly their character would change as a result of the proposed development from rural routes passing through or on the edge of countryside. In addition the perception of users of the footpaths would change. Consequently, although the impact would be localised, limited in extent and mitigated as far as possible, I conclude that there would be a breach of the policy tests such that the extent of the change would seriously detract from the amenity and recreational value. Consequently there would be conflict with Policy CON23.

39. For these reasons I conclude that the proposed development would not result in the physical or visual coalescence of neighbouring settlements or damage their separate identities by development within the Local Gap between Fleet/Church Crookham and Crookham Village. As a result I find there would be no conflict with Policy CON21 of the LP. The impact of development in landscape and visual terms would be localised and limited and would not have a serious adverse effect on the character or setting of settlements such that Policy CON22 would be breached, although I have found that there would be limited conflict with paragraphs 17 and 109 of the Framework. Additionally there would be some adverse impact on the amenity and recreational value of local footpaths which would seriously detract from those qualities resulting in conflict with Policy CON23 of the LP.

Highway Safety

40. The proposed access arrangements to the eastern site would comprise a priority junction at the north-western corner and a roundabout at the south-western corner. Each is proposed with 120m visibility splays which is representative of a Stopping Sight Distance for a 40 mph design speed as set out in the ***Design Manual for Roads and Bridges*** (DMRB). An additional access to the western site from the western side of Hitches Lane would serve the proposed country park. The proposals envisage the introduction of a 40 mph speed limit on Hitches Lane where the current speed limit is 60 mph. Approval for the revised speed limit would be sought separately through a Traffic Regulation Order.

41. The southern access is proposed as a 22m Inscribed Circle Diameter (ICD) compact roundabout which was confirmed as acceptable in the SoCG with the highways authority. However, that SoCG also commented that a larger 28m

ICD, with the same visibility sight lines would provide a more robust solution to the access onto Hitches Lane.

42. By the end of the inquiry, the difference between the Council and the appellant concerned the design of the proposed access arrangements rather than whether safe access could be achieved. This largely related to two matters, namely visibility sight lines and roundabout size.

43. The Council identified that Hitches Lane is a classified 'C' road with 85% of vehicles travelling at greater than 37.5 mph. Consequently, it argued that as set out in the ***Hampshire Companion Document to the Manual for Streets***, the appropriate design standard was provided through DMRB. However, as Hitches Lane is neither a trunk road nor a strategic road, based on the guidance in ***Manual for Streets 2*** (MfS2) and as confirmed by the highway authority, regard should be had to local circumstances.

44. With regard to visibility sight lines, the highways authority confirmed that a 120m splay would be acceptable whilst the Council's position was that 160m splays were required. The ***Department for Transport Circular 01/2013*** indicates that mean speeds and 85th percentile speeds are commonly used measures of actual traffic speed but mean speeds should be used as the basis for determining local speed limits. Moreover, as Hitches Lane will primarily serve as a local access road, in such situations Circular 01/2013 considers 40 mph speed limits to be appropriate.

45. From the traffic surveys undertaken by the appellant and the Council, based on the existing 85th percentile speed of 47.2 mph southbound and 50.7 mph northbound a design speed of 85 kph was identified by the Council leading to a requirement for a forward visibility of 160m. It was also justified by the Council on the basis that the introduction of a reduced speed limit of 40 mph could not be guaranteed and existing speeds indicated that it would not be self-enforcing.

46. The Council also argued that a 120m visibility splay when considered against the existing speed limit corresponded to two steps below the desirable minimum standard which represented a departure from the applicable standard in TD16/07 ***Geometric Design of Roundabouts*** which forms part of DMRB.

47. However, the Council's traffic survey indicated that for northbound and southbound traffic 74% of the total flow was travelling below 45 mph with the mean northbound speed being 41.7 mph and the southbound mean being 41.9 mph. Taking account of three proposed access points in a relatively short stretch of road between two 30 mph sections, the associated road markings and signage, the entry width of the roundabout and single lane entry compact format, it appears likely to me that speeds would be predominantly below 40 mph in the future.

48. The Council sought the introduction of a package of traffic calming features on Hitches Lane to achieve a satisfactory reduction of speeds and ensure that the 40 mph speed limit would be self-enforcing. However, having found that the speeds would be likely to reduce to below 40 mph and noting that the highway authority has not considered such a package to be necessary, I too conclude that such measures are not required.

49. Whilst it is for the appellant to pursue the formal 40 mph speed limit I consider that, on the basis that speeds would be reduced such that the 40mph limit would be largely self-enforcing, 120m visibility splays would be appropriate for both the northern access and the southern roundabout.

50. MfS2 emphasises that the guidance in TD16/07 is written specifically for trunk roads and where used in other situations should not be applied uncritically. MfS2 also advises that the recommended approach to the design of roundabouts is to make the overall diameter of the junction as compact as possible. The issue of the size of the proposed roundabout is determined in part by the relevant 'design vehicle' using Hitches Lane. In this case the design vehicle was determined through TD18/07 as a 15.5m articulated vehicle with single rear axle.

51. TD16/07 requires compact roundabout to have a minimum 28m ICD, being the smallest roundabout that can accommodate the swept path of the design vehicle. The traffic survey data recording the number of vehicles within the classification of the design vehicle is inconclusive but it is clear that, although the number is low, it could include daily movements. The numbers are likely to be supressed because of the lack of such vehicles currently in use, the existing 7.5 tonne weight restrictions in the vicinity of the appeal site and the limited numbers of HGV vehicles using Hitches Lane.

52. MfS indicates that junctions should accommodate vehicles which regularly negotiate the junction rather than always designing for the largest legal articulated vehicle. The appellant demonstrated that the 22m ICD design can accommodate through movements of the design vehicle. However, the Council's evidence did indicate that the 22m ICD roundabout leaves no margin for driver error and the likelihood of drivers taking up the optimum position to achieve the through movement would be limited particularly because of the reverse curve nature of the manoeuvre and therefore there would be a risk of conflict with other road users.

53. The Council's preferred access solution would be a 36m ICD roundabout but this size of roundabout would not be required in terms of capacity. Moreover, a full standard roundabout with two entry lanes could lead to drivers not observing the deflection with the result that speeds would increase leading to other safety issues.

54. The Council also argued in favour of the 36m ICD roundabout on the basis of route consistency given that other roundabouts in Hitches Lane are larger. TD16/07 indicates that where several roundabouts are to be installed on the same route they should be of similar design in the interests of route consistency and hence safety. Roundabouts on Hitches Lane which might justify consistency are some distance away, were designed to have two lane entry approaches, have four arms and serve different levels of traffic, one having a dual carriageway entry and exit. Consequently a similar design approach would not be appropriate for the proposed roundabout and I see no reason for a 36m ICD roundabout. Accordingly, for the reasons given, I find that it is appropriate for the southern access to be configured as a 28m ICD roundabout.

55. Concern was raised by the Council that the entry path radius of the roundabout of 102m for northbound vehicles was excessive and would lead to inappropriate speeds through the roundabout. TD16/07 indicates that for a compact

roundabout within a 40 mph speed limit the entry path radius must not exceed 70m. Amendments to the design indicate that a 69m deflection is achievable for either the 22m or 28m ICD roundabouts and therefore the standard can be met. In addition the Council suggested that the northern approach alignment to the roundabout could result in swerving manoeuvres but based on the design proposed with warning signage, road markings and speeds of 40 mph I consider appropriate measures would be in place to limit such manoeuvres.

56. With regard to pedestrian movements, existing Footpaths 7a and 7b are located to the south of the proposed roundabout where there is no change in the alignment of Hitches Lane. The proposed roundabout would assist walkers to cross the road because vehicles speeds at the crossing would be low. Consequently, as the development will not materially change the safety or acceptability of the existing crossing point which is over 70m south of the proposed roundabout and no changes to pedestrian routes have been requested by the highway authority there is no need to introduce additional pedestrian crossing measures.

57. The second putative reason for refusal made reference to the absence of a Stage 1 Road Safety Audit. Whilst not submitted with the original application the appeal documentation did include safety audits. These demonstrated that there are no outstanding safety matters to be addressed. Nevertheless, further refinements of the design, including further safety audits would be undertaken as part of the highways agreement process.

58. In terms of entry angles, the Council's position was that the design is essentially a four-arm roundabout with a missing arm rather than a balanced three-arm roundabout accommodating the minimal realignment of Hitches Lane. However, based on the alternative approach angles put forward by the Council and the appellant and the lack of applicable standards governing such matters, I find no reason to conclude that the roundabout configuration should change.

59. For these reasons I find that the site can be accessed appropriately in terms of highway safety. Consequently I find that the proposed development would not conflict with Policy T14 of the LP which requires development proposals to make adequate provision for highway safety and access or Policy T15 which states that development requiring new access will not be permitted if it would adversely affect the safety and character of the non-strategic road network. Additionally I find no conflict with paragraph 32 of the Framework which requires decisions to take account of whether safe and suitable access to the site can be achieved for all people.

The Weight to be Attached to Development Plan Policies

60. The settlement boundaries associated with Policy RUR1 were based on development needs derived from the former Hampshire Structure Plan. The LP covered the period 1996-2006, was adopted in 2002 and therefore considerably pre-dated the Framework.

61. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework thereby establishing whether or not policies are out-of-date. The Council suggested that the judgment about whether a plan or policy is up-to-date or out-of-date is determined by whether, in the context of a particular

planning proposal, the plan or its relevant policies remain fit for purpose, allowing the acceptability of the development to be assessed, having regard to the planning circumstances at the time of the decision. Among the relevant tests would be whether the policies in question are consistent with the Framework, whether they still serve a planning purpose and, if constraint policies, whether they preclude the meeting of needs that current circumstances require to be met.

62. Paragraph 211 of the Framework states that policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. The fact that the development plan covered the period 1996-2006 does not in itself render it out-of-date notwithstanding that the development strategy and allocations were to accommodate anticipated development within the plan period.

63. Nevertheless, as the Supreme Court held in the case of Suffolk Coastal[3], the weight to be given to restrictive policies can be reduced where they are derived from settlement boundaries that in turn reflect out-of-date housing requirements. In that case the Inspector's finding was consequential upon there being no five year housing land supply and on the basis that the Council could not deliver the housing to meet current needs. In the current appeal the Council argued that it can provide five years supply of housing land. However, this is a reflection of the Council granting a number of permissions for housing development outside of settlement boundaries identified in the LP in breach of Policies RUR2 and RUR3 in order to meet market and affordable housing needs and maintain a rolling five year land supply. Consequently it is not meeting current housing needs on the basis of the settlement boundaries in the development plan. I therefore find that Policy RUR1 is out-of-date and carries only moderate weight.

64. Policy RUR2 is similarly dependent upon the out-of-date settlement boundaries of RUR1. Notwithstanding the Council's revised assessment that Policy RUR2 has a high degree of consistency with the Framework, and irrespective that it is negatively expressed, it relates to out-of-date settlement boundaries established by Policy RUR1 and therefore is also out-of-date. Policy RUR3 also relies on the out-of-date settlement boundaries associated with Policy RUR1 and therefore I attached moderate weight to these policies too.

65. For similar reasons I attach moderate weight to Policy CON21. In addition, it is out-of-date because it specifically recognises that Local Gaps will be the subject of review and protected only for the lifetime of the plan, that is up to 2006.

66. Policy CON22 adopts a blanket approach to landscape protection and does not comply with the hierarchical approach of paragraph 113 of the Framework or the valued landscape approach of paragraph 109. Consequently, notwithstanding the Council's revised assessment of the policy for consistency with the Framework, which changed its status from medium to high, the weight to be attached to the policy is also limited. In contrast I find that Policy CON23 of the LP has a high degree of consistency with paragraph 75 of the Framework which states that planning policies should seek to protect and enhance public rights of way.

[3] Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes [2017] UKSC 37

67. The fourth bullet point of paragraph 14 of the Framework indicates that where relevant policies of the development plan are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, or specific policies indicate development should be restricted. Having found that policies RUR1, RUR2, RUR3, CON21 and CON22 cannot be considered up to date, paragraph 14 is engaged in this case, notwithstanding that the policies serve various planning purposes.

68. The appellant also argued that the policies were out of date because of a claimed lack of a five year housing land supply, a point disputed by the Council. However, even if I were to conclude that the Council does have a five year supply of housing sites, my conclusion in respect of the applicability of paragraph 14 would not be different. It is not necessary for a plan to be in conflict with paragraph 49 of the Framework in order for paragraph 14 to be engaged as the Supreme Court held in the case of Suffolk Coastal[4]. Moreover, the existence of a five year supply of housing and the potential identification of a longer term housing supply does not mean that settlement boundaries cannot be out-of-date. Consequently, I have not considered the question of the housing land supply further.

Other Matters

69. Concern was expressed by many residents about the impact of the proposal in terms of traffic generation and highway capacity. Traffic data was provided by interested parties and the appropriateness of the appellant's transport modelling was questioned. Notwithstanding the suggestion that the highway authority had been inconsistent with regard to earlier advice relating to west Fleet, Hampshire County Council did not object to the proposed development subject to the imposition of appropriate conditions and an appropriate package of mitigation measures being secured.

70. Hart's transport consultant when asked to review the appellant's Transport Assessment to determine whether there was a reason to refuse the application on traffic generation grounds concluded that the vehicle trip rates were acceptable. Moreover, the Transport Assessment considered all committed development in the area as well as future year growth to 2022 and demonstrated that the traffic impact on local roads would not be significant and that predicted flows could be accommodated without adverse impact. The suggestion that the junction modelling of two roundabouts to the north of Hitches Land should have been modelled as one junction is addressed by the highway authority's acknowledgment that the capacity related to the proximity of the roundabouts, a view I accept.

71. The issue of car parking can be addressed at reserved matters stage whilst the provision of transport facilities as an alternative to the private car would be addressed through the implementation of a Travel Plan. Consequently I find that there is no reason to dismiss the appeal based on these further transport matters.

72. The Habitat Regulations 2010 require an assessment to be undertaken as to whether a proposal would be likely to have a significant effect on the interest

[4] Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes [2017] UKSC 37

features of a protected site. The Thames Basin Heaths Special Protection Area (SPA) is such a protected site.

73. The assessment is required to ensure that development does not result in a likely significant effect upon designated sites. Taking account of the Habitat Regulations and Policies CON1 and CON2 of the LP it is necessary to demonstrate that all development either individually or in combination with other development which would increase the use of the Thames Basin Heath SPA for recreational and other purposes would not have a damaging impact on wildlife habitats or other natural features of importance. Policy NRM6 of the saved South East Plan requires adequate measures to avoid or mitigate any potential adverse effects on the SPA.

74. Natural England has indicated that on sites within 5km of the SPA, which includes the appeal site, additional residential development will have a significant effect on the SPA without adequate mitigation. Consequently, any such unmitigated proposal would be contrary to the Habitats Regulations. The Thames Basin Heath Delivery Framework enables the delivery of housing in the vicinity of the SPA without a significant effect on the SPA as a whole through avoidance measures which take the form of areas of Suitable Alternative Natural Greenspace (SANG).

75. The proposed development includes the creation of a SANG on the western part of the site as an extension to Edenbrook Country Park, which is an existing SANG. Natural England had reviewed the proposal and confirmed that, on the basis of the provision of SANG land, compliance with the SANG Management Plan to ensure its on-going management and maintenance in perpetuity and the making of appropriate Strategic Access Management and Monitoring (SAMM) contributions which would be secured through the Section 106 agreement, they do not object to the proposed development.

76. I heard from local residents that the proposed expansion of the Edenbrook Country Park to accommodate the SANG would fail to provide a suitable alternative to the existing countryside footpaths close to Crookham Village. It was suggested that the proposal would cause significant adverse effects on the SPA and that the condition of the existing SANG leads people to visit the SPA resulting in an adverse impact. However, based on the evidence before me including the SANG Management Plan I find that the proposed mitigation would adequately address the impacts of development and that the SANG is likely to be effective.

77. The proposal is therefore in accordance with the Council's Thames Basin Heath Avoidance Strategy, LP Policies CON1 and CON2 and Policy NRM6 of the South East Plan. Consequently I am of the view that the proposal would not have an adverse effect on the integrity of the SPA, either alone or in combination with other projects, and therefore would not be contrary to the Habitat Regulations.

78. Concerns were also raised about the effect of the proposal on ecology within the eastern site but the evidence before me indicates that the site does not have any particular significance in ecological terms. Furthermore, whilst the Framework states that the planning system should minimise impacts on biodiversity and provide net gains in biodiversity where possible, the lack of net biodiversity gain would not be a reason to dismiss the appeal because there is no necessity to secure a net gain.

79. Although the character of the footpaths within the appeal site would change they would still be available and I have no evidence that the mechanisms to create and manage the extended Country Park would not provide a suitable recreational facility. A number of other concerns raised relating to noise, disturbance and construction impacts as well as the effect of street lighting pollution are matters which can be addressed through conditions or at the reserved matters stage.

80. The risk of flooding and the tendency of Edenbrook Country Park to flood were also raised as concerns but I note that the Environment Agency has not objected to the proposal subject to the inclusion of a condition that development is carried out in accordance with the submitted Flood Risk Assessment. Comments about the design and layout of the proposed development can be addressed at the reserved matters stage.

81. It was suggested that the scheme would put a strain on local services but I consider that the site is well located in terms of access to local facilities and services which are available within Fleet town centre, less than a mile to the north east of the site. Furthermore, with the proposed contributions to community infrastructure the proposed development would not give rise to a material impact on community facilities and services. The effect of the proposed development on the Crookham Village and Dogmersfield Conservation Areas was highlighted whilst Ms ten Kate identified the possibility of traffic adversely affecting her Grade II listed building on Crondall Road. However, since I have found that the proposal would not adversely affect the setting of the village and I have no detailed evidence relating to the impact of the development on these heritage assets I find no harm in this respect.

82. The proposed development would contribute economic benefits to the local area both during construction and in the longer term as residents provide custom for existing shops and services. The Council accepted that such benefits would result from the scheme whilst acknowledging that they would apply in any location in the District where development of that scale took place. On that basis the Council apportioned moderate weight to them. However, on the basis of the scale of the benefits as described by the appellant, I afford them significant weight.

Planning Obligations

83. In the Section 106 agreement the appellant has undertaken to provide 169 units of affordable housing, out of a total of up to 423 units on site, with the remainder of the 40% contribution (0.2%) as a financial contribution of £24,500. This obligation is in line with the requirement of paragraph 50 of the Framework which supports the delivery of a wide choice of high quality homes and Policy ALT GEN13 of the LP which seeks the provision of 40% of new housing to be affordable.

84. The appellant has undertaken to provide land within the appeal site to the Council and to make a contribution of £501,207 towards the development of a community facility building. This would be provided as part of a wider contribution to provide leisure and open space facilities. It is also proposed to mitigate the demand for open play space through the provision of Local Areas of Play, Locally Equipped Areas of Play, a Neighbourhood Equipped Area of Play and a Trim Trail, together with a contribution towards their maintenance. Provision is also made for landscape and ecological buffers and southern

boundary planting and there is a commitment not to develop the land between the appeal site and Crookham Village. Such measures are in line with Policy GEN1 of the LP which addresses the need for infrastructure improvements.

85. Mitigation to address the potential effects of the development on the Thames Basin Heaths SPA comprises the creation of a SANG, including the transfer of land and associated contributions, as an extension to the Edenbrook Country Park. This would be in line with Policies CON1 and CON2 of the LP and Policy NRM6 of the South East Plan. The size and scale of the SANG and the SAMM contribution is fairly and reasonably related in scale and kind to the development site as it seeks to mitigate the additional impact of the development proposal on the SPA.

86. The agreement also makes provision for a financial contribution towards primary and secondary education including the transfer of land for the expansion of Calthorpe School. The appellant has undertaken to make a contribution of £4,287,810 which is the sum requested as part of an earlier application in 2014 plus £100,000 to reflect an increase in prices. This does not provide the full amount indicated by the County Council guidance ***Developers Contributions Towards Children's Services Facilities***. However, the District Council considered that in the context of the overall contribution this amount was acceptable, a view which I share, and both the County and District Councils are signatories to the agreement.

87. A contribution of £1,429,284 would be provided to mitigate the transport impact of the development through a number of improvement schemes comprising junction improvements, improvements to cycle routes, pedestrian crossings and bus infrastructure. The agreement also makes provision for various off-site junction improvements which are required to ensure that the site can be safely accessed and for the implementation of a Travel Plan. The transport and highways provisions are in accordance with Policies T1, T14 and T16 of the LP which collectively support improvements to local transport infrastructure including developing a choice of transport modes.

88. I am satisfied that all of the provisions are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development and therefore consistent with Regulations 122 and 123 of the Community Infrastructure Regulations, 2010. I have therefore taken account of them in reaching my decision.

Planning Balance

89. Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 requires applications for planning permission to be determined in accordance with the development plan unless other material considerations indicate otherwise. I find that because the appeal site is outside of the settlement boundary for Fleet the proposals are not in accordance with the development plan as a whole.

90. Nevertheless, the fourth bullet point of paragraph 14 of the Framework is relevant where the development plan is absent, silent or relevant policies are out-of-date. In this case I have found that Policies RUR1, RUR2, RUR3, CON21 and CON22 are out-of-date and I attach little weight to these policies. In such circumstances, paragraph 14 states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as

a whole, or specific policies in the Framework indicated that development should be restricted. No such restrictive policies apply in this case, bearing in mind my findings in respect of the SPA.

91. I have found that there would be some harm from development in the countryside and some harm to the valued landscape of the appeal site contrary to paragraph 109 of the Framework. In addition, harm would occur to the amenity and recreational value of footpaths crossing the site, contrary to Policy CON23 of the LP, to which I attach modest weight.

92. Balanced against the conflict with the development plan is the contribution to the supply of housing which the provision of up to 423 homes would make. This carries significant weight in the context of paragraph 47 of the Framework which states that local planning authorities should boost significantly the supply of housing to meet the needs for market and affordable housing.

93. The provision of 40% affordable homes would be in accordance with Policy ALT GEN13 of the LP and because of the substantial under delivery of affordable housing within the district over a number of years the provision of up to 169 new affordable homes carries significant weight. Other suggested social benefits including the promotion of sustainable transport, the provision of healthy communities and securing good design are generally requirements of local and national policies and therefore have a neutral effect.

94. I have attached significant weight to the economic benefits which the proposal would achieve. Other environmental benefits which the appellant highlighted, including meeting the challenge of climate change and conserving and enhancing the natural environment also have a neutral effect.

95. Taking all of this into account, including all other material considerations, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole and that the proposal represents sustainable development. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

Conditions

96. Planning conditions were discussed with the Council and the appellant at the inquiry. In considering conditions I have had regard to both the Framework and Planning Practice Guidance (PPG) in respect of the need for individual conditions and their precise wording.

97. Conditions relating to the submission of reserved matters and the timing of commencement are needed due to the outline nature of the application (Conditions 1, 2 and 3). I have imposed a condition specifying the relevant drawings with which the scheme should comply as this provides certainty (4). This specifies a number of parameter plans which it is necessary for the scheme to comply with to ensure a satisfactory development notwithstanding the provisions of the reserved matters. It is particularly important to address these matters now given my findings in terms of the impact of the scheme on the landscape. I have considered an alternative condition regarding access which was discussed at the inquiry but I conclude that it is not necessary in order to secure the accesses which I have found to be required.

98. A condition requiring a phasing plan to be prepared and for development to be undertaken in accordance with the approved plan is appropriate in order to ensure that the proposed development proceeds in a planned and phased manner (5). In order to protect the interests of nearby residents and in the interests of highway safety a condition requiring the submission and approval of a Construction Method Statement (CMS) is imposed (6).

99. Notwithstanding the provision of reserved matters I have imposed a condition requiring details of existing and proposed ground or floor levels to be approved prior to construction in order to ensure that the development does not have an overbearing impact on the landscape (7). Similarly conditions are imposed to require the submission of highways infrastructure (8) and access and parking arrangements (9) to ensure that satisfactory access to the development is provided. A condition requiring the provision of cycle parking is necessary in the interests of providing a choice of transport modes in support of sustainable transport aims (10) whilst a condition specifying how spoil or arisings generated by the development will be managed is necessary to protect the living conditions of local residents (11).

100. Conditions are required to ensure the satisfactory alleviation of flood risk (12) and in order to address the possible effects of land contamination on site (13). It is also necessary to impose conditions to ensure that there are no adverse impacts on protected species (14) and to ensure that the SANG is available for use prior to the occupation of the proposed dwellings (15) to avoid any significant effect on the SPA. Conditions are required to protect trees and other vegetation to benefit the appearance of the development and its surroundings (16) and to address the potential archaeological significance of the site (17 and 18).

101. A separate condition limiting the hours of construction is not necessary as this can be addressed as part of the CMS under condition 4. Similarly, it is not necessary to impose conditions requiring details and samples of external surfaces or landscaping at this stage due to the outline nature of the proposal. As I have found that 120m visibility splays would be acceptable based on a self-enforcing 40 mph speed limit it is not necessary to impose a condition to undertake traffic surveys to ascertain whether the introduction of traffic calming measures is required. Similarly, 'Condition 3' (ID30) is not necessary because I have found visibility splays of 120m to be appropriate.

102. I have considered the suggestion that a condition should be imposed to secure net biodiversity gain and this was discussed with the main parties. Whilst acknowledging the appellant's corporate objective to meet this requirement, because a condition to achieve this objective does not have the support of the Council and I am not convinced that such a condition would meet all of the tests in the Framework I have not imposed it.

103. PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In this respect it is necessary for conditions 5, 6, 7, 8, 11 and 16 to be pre-commencement conditions because they are fundamental to the development permitted.

Conclusion

104. For the reasons set out above, and having taken into account all matters presented in evidence and raised at the inquiry, I conclude the appeal should be allowed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Michael Bedford QC,	Instructed by the Joint Head of Legal of Hart and Basingstoke Councils.
He called:	
Christopher Cobbold MA MBA MRICS	Director, Wessex Economics Limited
Christopher Blamey BSc (Hons) MSc (Eng) MCIHT	Director Russell Giles Partnership
Jane Jarvis BSc (Hons) DipLD MA CMLI	Principal Landscape Architect SLR Consulting Limited
Christine Tetlow MA MRTPI	Development Management Team Leader Hart District Council

FOR THE APPELLANT

Christopher Boyle QC,	Instructed by Jonathan Lambert, MRTPI of Berkeley Strategic Land Limited
He called:	
Andrew Smith BSc (Hons) MSC CMLI	fabrik Limited,
David Wiseman BA (Hons) MRTPI	Director Stuart Michael Associates
Matthew Spry BSc (Hons) Dip TP (Dist) MRTPI MIED FRSA	Senior Director, Lichfields

INTERESTED PERSONS

Max Clark	Co-Chairman, Face-It
Kerry ten Kate	Local Resident
Tony Gower-Jones	Co-Chairman, Face-It
Ed Dane	Local Resident
Michelle Hulse	Local Resident

Richard Hellier	Local Resident
Brian Whyatt	Crookham Village Speedwatch Co-ordinator
Cllr. Julia Ambler	Crookham Parish Council.

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1. Section: Viewpoint F to Housing on Knoll, submitted by the Council.

ID2. Planning Application Representations, submitted by the Council.

ID3. Opening Statement on behalf of the Council.

ID4. Summary of Traffic Data for Crookham Village, submitted by Mr Whyatt.

ID5. Vehicle Classifications, submitted by the Council.

ID6. DRMB TD9/93, submitted by the Council.

ID7. Notice of Appeal, submitted by the Council.

ID8. Minutes of the Committee Meeting 14 December 2016, submitted by the Council.

ID9. Traffic Survey 19 April – 27 April 2016, submitted by the Appellant.

ID10. Amendment to ID1, submitted by the Appellant.

ID11. Extracts from the Inspector's Report into the Hart (Replacement) Local Plan, submitted by the Council.

ID12. Speaking Notes submitted by Mr. Clark.

ID13. Comments by Ms ten Kate.

ID14. Area of 7.5 Tonne (Except for Access) Restriction submitted by the Council.

ID15. Roundabout Approach Angles submitted by the Council.

ID16. Speaking Notes submitted by Mr Gower-Jones.

ID17. Comments on the Site Visit Route, submitted by Mr Clark.

ID18. Southern Roundabout Site Access Approach Lanes, submitted by the Council.

ID19. Southern Roundabout Site Access Autotrack Swept Paths, submitted by the Appellant.

ID20. Notes on Vehicle Classifications, submitted by the Appellant.

ID21. Response to Comments on the Site Visit Route, submitted by the Appellant.

ID22. Comments by Mr Hellier.

ID23. Southern Roundabout Site Access Footpath Positions, submitted by the Appellant.

ID24. Response to Third Party Highway Concerns, submitted by the Appellant.

ID25. Draft Conditions, submitted by the Appellant.

ID26. Draft Section 106 Agreement, submitted by the Appellant.

ID27. Section 106 CIL Compliancy, submitted by the Council.

ID28. Revised Southern Roundabout Access Drawings, submitted by the Appellant.

ID29. Presentation by Councillor Ambler.

ID30. 'Condition 3', submitted by the Appellant.

ID31. Closing Submissions on behalf of Hart District Council.

ID32. Closing Submissions on behalf of the Appellants.

DOCUMENT SUBMITTED FOLLOWING THE INQUIRY

ID33. Signed Section 106 Agreement

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

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

4. The development hereby permitted shall be carried out in accordance with the following approved plans: 13109/S101, 13109/C01S, 13109/C02S, 13109/C03S, 13109/C04S, 13109/C05S, 13109/C06S, 5463.051, 5463.053, 13109/C07S, 5463.017, 5463.018, 5463.019, 5463.020, 5463.021, 5463.022, 5463.030 and 5463.031.

5. Prior to the commencement of the development hereby approved, a phasing plan identifying all phases of development shall be submitted to and approved in writing by the Local Planning Authority. All phases of the development shall be completed and carried out in accordance with the phasing plan unless otherwise agreed with the Local Planning Authority.

6. Prior to the commencement of development a Construction Method Statement shall be submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include details of:

   i) The parking of vehicles of site operatives and visitors;
   ii) Loading and unloading of plant and materials;
   iii) Storage of plant and materials used in constructing the development;
   iv) The erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
   v) Wheel washing facilities and the dispersal of water;
   vi) Measures to control the emission of dust and dirt during construction;
   vii) Details of the site office / compound;
   viii) A construction traffic management plan, to include details of how the site will be accessed and from which point(s), any works required to provide new access or upgrading of existing access routes, construction traffic routes, haul roads, parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a programme for construction;
   ix) Site waste management; and
   x) Details of the control measures for air quality, biodiversity, waste management and lighting.

7. No development in any phase shall commence until plans showing details of the existing and proposed ground levels, proposed finished floor levels,

levels of any paths, drives, garages and parking areas and the height of any retaining walls within the application site have been submitted to and approved, in writing, by the Local Planning Authority for that part of the site. The development shall be completed and retained in accordance with the details so approved.

8. No development in any phase shall commence until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water from highways, and details of a programme for the making up of roads and footways for that part of the site have been submitted to and approved by the Local Planning Authority in writing before development in any phase commences. The development shall be completed in accordance with the details so approved.

9. No dwelling shall be occupied in any phase until all proposed vehicular accesses, driveways, parking and turning areas serving that dwelling in that phase have been constructed in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.

10. No dwelling shall be occupied until the approved cycle parking serving that dwelling has been provided on site. The cycle parking shall be retained thereafter for its intended purpose.

11. No development shall take place in any phase until details of how it is intended to relocate any spoil or arisings caused by the development of that part of the site, either on or off site, have been submitted to and approved in writing by the Local Planning Authority. The works shall take place in accordance with the approved details.

12. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment & Drainage Statement (FRA) June 2016, 5463/FRA&DS Issue 01, produced by Stuart Michael Associates Limited and the following mitigation measures detailed within these documents:

    a) No residential development will be located within Flood Zones 2 or 3.
    b) There will be no net loss of floodplain storage within the SANG/Country Park.

    The mitigation measure(s) in relation to each phase shall be fully implemented prior to occupation of that phase and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

13. Development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1-4 of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that

part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part 4 has been complied with in relation to that contamination.

1. Site Characterisation
An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The developer shall submit the written report to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The report of the findings must include:
a survey of the extent, scale and nature of contamination;
an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment **Agency's 'Model Procedures for the Management** of Land Contamination, **CLR 11'.**

2. Submission of Remediation Scheme.
A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared. The developer shall submit the detailed remediation scheme in writing to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme
The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination.
In the event that contamination is found at any time when carrying out the approved development that was not previously identified the developer shall undertake an investigation and risk assessment in accordance with the requirements of part 1. Where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part 2, which the developer shall submit in writing to the Local Planning Authority for approval and works shall not continue until approval has been received.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be submitted to and approved in writing by the Local Planning Authority in accordance with part 3 of this condition.

14. The development hereby approved shall be carried out for each phase in accordance with the methodology and mitigation measures in relation to that phase detailed in Chapter 9 (Ecology and Nature Conservation) of the submitted Environmental Statement (June 2016).

15. The Suitable Alternative Natural Greenspace (SANG) which shall serve the development hereby permitted will be made available for public use prior to the first occupation of the residential development hereby permitted and shall be maintained thereafter in accordance with the approved Management Plan.

16. Prior to the commencement of development in any phase details of the means of protection, including method statements where appropriate, for all trees, hedges, hedgerows and shrubs in that phase, unless indicated as being removed, shall be submitted to, and approved in writing by the Local Planning Authority. The trees, hedges, hedgerows and shrubs shall be retained and protected in accordance with the approved details for the duration of works on the site and retained for at least five years following occupation of the approved development. Any such vegetation immediately adjoining the site shall be protected on the site in a similar manner for the duration of works on the site. Any vegetation within the site which is removed without the Local Planning Authority's consent, or which dies or becomes, in the Authority's opinion, seriously damaged or otherwise defective during such period shall be replaced and/or shall receive remedial action as required by the Local Planning Authority. Such works shall be implemented as soon as is reasonably practicable and, in any case, replacement planting shall be implemented by not later than the end of the following planting season, with others of the same size, species, numbers and positions unless the Local Planning Authority gives consent in writing to any variation.

17. No works shall take place on land to which reserved matters relate in any phase until the applicant has secured the implementation of a programme of archaeological assessment in accordance with a Written Scheme of Investigation that has been submitted to and approved by the Local Planning Authority for that part of the site. As set out in paragraph 11.9.2 of Chapter 11 of the submitted Environmental Statement, the first phase of evaluation should consist of geophysical survey(s), followed by trial

trench investigations. The works shall thereafter take place in accordance with the approved details.

18. Following completion of archaeological fieldwork a report shall be prepared in accordance with an approved programme including where appropriate post-excavation assessment, specialist analysis and reports, publications and public engagement. The report shall be submitted in writing to the Local Planning Authority.

WB9

The Planning Inspectorate

Appeal Decision

Inquiry opened on 10 March 2020

Site visits made on 9 (unaccompanied) and 10 (accompanied) March 2020

by Jonathan Manning BSc (Hons) MA MRTPI

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

Decision date: 25th August 2020

Appeal Ref: APP/X0360/W/19/3235572
Land East of Finchampstead Road, Wokingham, RG40 3JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Limited against the decision of Wokingham Borough Council.
- The application ref: 190286, dated 31 January 2019, was refused by notice dated 25 April 2019.
- The development proposed is up to 216 dwellings (including 40% affordable housing), landscaping, public open space, playing field and equipped play areas, surface water flood mitigation and attenuation, vehicular access from Finchampstead Road, pedestrian access from Luckley Road and associated ancillary works.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It came to my attention before the Inquiry was due to open on 11 December 2019 that there was disagreement between the main parties over the proposed emergency access arrangements for the site. Having regard to the views of the main parties on this matter and the documentation supporting the proposal, I found that whilst I was content that the proposed emergency access arrangements through the neighbouring Luckley House School was always intended by the appellant, this was somewhat unclear in the planning application documentation. This had led to confusion and a misunderstanding of the proposed arrangements by the Council. I considered that this may also have been the case for other interested parties.

3. Given the circumstances, I considered that the most appropriate route forward, was to allow the appellant to undertake additional consultation akin to the original planning application. I am content that this was undertaken appropriately, and I have had regard to all of the comments provided by interested parties to the additional consultation and therefore no prejudice has been caused. The additional consultation resulted in the adjournment of the start of the Inquiry from 11 December 2019 to 10 March 2020.

4. The Inquiry formally opened on 10 March 2020 sitting for four of the scheduled seven days. On the morning of Tuesday 17 March, shortly before the Inquiry was due to resume, it was necessary to adjourn the Inquiry due to government advice, given on the evening of Monday 16 March 2020, setting

out that large events should not take place due to the Covid-19 pandemic. Consequently, it was agreed with the main parties that, as the accompanied site visit had already taken place on 10 March 2020 and the Inquiry had heard from all interested parties who had informed me that they wished to speak, a change of procedure to an enhanced written representation process would be appropriate to conclude the case.

5. The enhanced written process involved the main parties providing an additional written statement addressing matters that had arisen during the first four days of the Inquiry. Interested parties were provided with the opportunity to comment upon these and have therefore not been prejudiced. Further, I provided a list of written questions to the main parties, based on the outstanding subjects not already covered at the Inquiry and the additional written statements provided by the main parties. The Inquiry was closed in writing on 23 July 2020 following the receipt of written closing submissions and an agreed and executed Section 106 Agreement.

6. For the avoidance of any doubt, I have had regard to all comments provided during the Council's determination of the planning application, the appeal consultation, the additional appeal consultation associated with the emergency access arrangements and those provided to the enhanced written representation procedure following the adjournment of the Inquiry due to the Covid-19 pandemic.

7. The application has been made in outline, with full details in relation to access. Layout, scale, appearance and landscaping are to be considered at a later date, as reserved matters.

8. The additional consultation on the emergency access arrangements resulted in some revisions to the plans. As these were consulted upon, I am not of the view that any party has been prejudiced through their acceptance.

9. Further, at the same time some minor amendments were proposed by the appellant to the main site access through proposed drawing 19-286-009 Rev A. The Council did not raise any concerns with regard to this plan and I considered that it did not materially alter the scheme to an extent that would prejudice interested parties in terms of requiring additional consultation. At this time some further landscape plans were also provided, however, as landscape is a reserved matter, I have treated these as indicative. Nonetheless, interested parties were given the opportunity to consider these plans at the Inquiry.

10. In support of the appellant's proof of evidence on arboricultural matters some additional indicative tree retention plans were also included to provide clarity, although I have also treated these as indicative. For the avoidance of doubt, I have determined the appeal based on the following plans, as discussed at the opening of the Inquiry:

- 6221-L-04 Rev D – Location Plan
- 19-286-009 Rev A – Proposed Development Access on Finchampstead Road
- 19-286-002 Rev D – Proposed Footway/Cycleway/Emergency Access to Luckley Road (Sheet 1)
- 19-286-003 Rev E - Proposed Footway/Cycleway/Emergency Access to Luckley Road (Sheet 2)

11. I have also had regard to the following indicative plans:

- 6221-L-02 Rev K - Development Framework Plan
- 6221-L-08 Rev A - Existing Situation Access Proposals (Vegetation)
- 6221-L-09 Rev B - Proposed Landscaping Scheme Access Proposals
- 6221-A-08 Rev D - Tree Retention Plan Main Access (November 2019)
- 6221-A-09 Rev K - Tree Retention Plan Emergency Access (February 2020)
- 6221-A-10 Rev K - Tree Retention Plan Emergency Access (February 2020)
- 6221-L-10 - Proposed Tree Planting for Access Proposals

12. On 21 July 2020, the appellant provided a copy of a Secretary of State decision letter granting permission for appeal Ref APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529 at Land off Adlem Road/Broad Lane, Stapeley, Nantwich and Land off Peter De Stapeleigh Way, Stapeley, Nantwich respectively. I have added the decision letter to the Inquiry Documents list and allowed the Council the opportunity to comment and I have taken their response and the final comments from the appellant into account in reaching my decision.

13. I have received copies of an agreed and executed Section 106 Agreement (S106) dated 16 July 2020. I allowed this to be signed in counterpart due to difficulties in getting signatures, due to the Covid-19 pandemic, which constitute exceptional circumstances, in accordance with Paragraph N.5.5 of the Planning Appeals - Procedural Guide (July 2020). I am satisfied that certified copies of all the individually signed documents have been provided and therefore the S106 has been entered into by all relevant parties.

14. The S106 makes provision for: affordable housing; Thames Basin Heaths Special Protection Area (SPA) mitigation contribution; a bus service contribution; an employment skills plan contribution; on-site open space and play area along with their management; the layout, management and transfer of the separately permitted Suitable Alternative Natural Greenspace (SANG); and covenants associated with the proposed emergency access.

15. I am satisfied that the obligations meet the three tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) (2010). As a result, I have taken the S106 into account. I therefore consider that reasons for refusal 6, 7 and 8 that relate to securing affordable housing, securing an employment skills plan and providing appropriate mitigation for any potential harm to the Thames Basin Heaths SPA, have been overcome and I have not considered these matters any further in my decision.

Main Issues

16. As a result of the evidence before me and matters set out above, I consider that the main issues of the appeal are:

- whether the most important policies for determining the application are out-of-date;
- the effect of the proposed development on the character and appearance of the area;
- whether oak trees T1, T2, T7, T11 and T15 should be classed as veterans;

- the effect of the proposal on highway and pedestrian safety;
- whether the scheme would provide for a realistic choice in sustainable transport modes;
- whether the Council can demonstrate a five-year supply of housing land; and
- the weight to be afforded to the benefits of the proposal in the planning balance.

Reasons

Planning policy and its context

17. The parties agree that the development plan consists of: the Wokingham Borough Core Strategy Development Plan Document, 2010 (the CS); the Managing Development Delivery Local Plan, 2014 (the MDD LP); and Saved Policy NMR6 of the South East Plan, 2009 that relates to the Thames Basin Heaths SPA. Whilst there is an emerging Local Plan, this is at a relatively early stage of preparation and therefore can only be afforded little weight.

Most important policies

18. Paragraph 11 d) of the Framework sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

19. The Framework does not provide a definition of what constitutes 'most important'. However, the wording makes clear that it is the policies most important to determining the application rather than the appeal that needs to be considered. Further, the word important rather than relevant is also significant. Relevant caselaw has established that the decision maker must consider whether the basket of most important policies as a whole is out-of-date.

20. The appellant and the Council are not in agreement over the extent of the most important policies. Both parties agree that Policies CP9 and CP11 of the CS and Policies CC01 and CC02 of the MDD LP are most important. The appellant also considers Policy CP17 to be most important. In addition, the Council consider that: Policies CP1, CP3, CP5, CP7 and CP8 of the CS; Policies CC03, TB05, TB08, TB21 and TB23 of the MDD LP; and Saved Policy NRM6 of the South East Plan are most important.

21. The difference between the parties is largely as a result of the appellant's view that a policy should only be considered most important if there is demonstrable conflict with that policy. However, to my mind, the most important policies for determining a planning application will depend on a number of factors, including: the nature of the scheme itself; its location; and the site's characteristics and constraints.

22. The appellant has set out that their view is supported by the manner in which the Nine Mile Ride Inspector[1] approached this matter, particularly coming to a view whether the basket of policies, as a whole, was out-of-date at the end of the decision in the planning balance. However, firstly, the Inspector in that case had already identified what the most important policies were at the start of the decision and secondly, whether or not the scheme conflicts with a policy does not affect whether it is consistent or otherwise with the Framework. Consequently, I am not persuaded by this suggestion.

23. Turning to the most important policies for this case, the scheme is located outside of any settlement boundary, so policies that relate to this matter are clearly important (Policies CP9, CP11 and CC02), as agreed by the parties. However, it is clear from these policies that there are several underlying reasons for seeking to limit development to within settlement boundaries. These include: the protection of the countryside; protecting the separate identifies of settlements; and steering development to the most sustainable locations where there are accessible facilities and services. Consequently, I consider policies that address these matters are also most important to the determination of the application (CP1, CP3 and CP6 of the CS and Policies CC03 and TB21 of the MDD LP).

24. The appeal site is located within proximity to the Thames Basin Heaths SPA. Given the clear requirement for the decision maker to be able to conclude that there would be no significant adverse impacts on a site of European importance, this is clearly an important consideration for the scheme. Therefore, I consider that Policy CP8 of the CS and Policy NRM6 of the South East Plan are most important. In addition, the appeal site accommodates an area of Priority Habitat and would result in the removal of a significant level of trees and other vegetation. Consequently, I consider Policies CP7 of the CS and Policy TB23 of the MDD, which both relate to biodiversity, are also most important policies.

25. Finally, the proposal is for a considerable number of residential dwellings. Consequently, I agree with the Council that Policies CP5 of the CS (Affordable Housing) and Policies TB05 (Housing Mix) and TB08 (Open Space) of the MDD LP are also most important policies.

26. There is dispute whether Policy CP17 of the CS should be considered as most important. Policy CP17 sets out the housing requirement, which both parties agree is out-of-date, as it is based on the now revoked South East Plan. I am not of the view that this is a development control/management policy that plays a notable role in determining planning applications. Therefore, despite its obvious relevance to this scheme, I consider that it is not one of the most important policies. The Inspector's in the Nine Mile Ride and Hurst[2] appeal decisions both share my view, and this adds weight to my findings.

27. Having regard to all of the above, I consider that the most important policies to the determination of the application are: Policies CP1, CP3, CP5, CP6, CP7, CP8, CP9 and CP11 of the CS; Policies CC01, CC02, CC03, TB05, TB08, TB21 and TB23 of the MDD LP and Policy NRM6 of the South East Plan.

[1] Appeal Decision APP/X0360/W/19/3238048.
[2] Appeal Decision APP/X0360/W/18/3194044.

Whether the most important policies are out-of-date

28. Dealing firstly with Policies CP9 and CP11 of the CS and Policy CC02 of the MDD LP, I agree with the Nine Mile Ride Inspector that although not being one of the most important policies, Policy CP17 of the CS, nonetheless, has a bearing on whether these other policies should be considered out-of-date. As set out above, the housing requirement in Policy CP17 reflects that of the revoked South East Plan, which in itself makes it out-of-date. Further, given that the CS was adopted over 5 years ago, the Framework advises that the standard methodology for calculating Local Housing Need (LHN) should be used. This results in a need for some 844 dwellings per annum, which is markedly over the housing requirement of 723 dwellings per annum identified in Policy CP17.

29. I have found later in my decision that the Council can demonstrate a five-year housing land supply. However, despite the views of the Council, it does rely on supply that falls outside of the currently set settlement boundaries. It is therefore clear to me that delivering a sufficient supply of housing cannot be done, whilst also meeting the requirements set out in Policies CP9, CP11 of the CS and CC02 of the MDD LP. They are therefore out-of-date.

30. Policy CP5 of the CS sets out that residential proposals of at least 5 dwellings should provide 50% affordable housing where viable. This is not consistent with Paragraph 63 of the Framework and therefore is out-of-date.

31. Policy CC01 of the MDD LP sets out the presumption in favour of sustainable development. However, this does not reflect the wording in the latest version of the Framework. As a result, it is not consistent with the Framework and is out-of-date.

32. I have also had regard to whether Policies CP1, CP3, CP6, CP7 and CP8 of the CS; Policies CC03, TB05, TB08, TB21 and TB23 of the MDD LP and Policy NRM6 of the South East Plan are consistent with the Framework. Whilst there may be some minor inconsistencies, in their wording, including Policy CP3 in terms of ecology, on balance, when these policies are considered in their entirety, I am content that they are consistent with the Framework and not out-of-date.

Overall conclusion

33. I have found that 5 of the 16 most important policies to the application are out-of-date. It is therefore clear that the majority of most important policies are not out-of-date. As a result of this, I conclude that the basket of policies, as a whole, is not out-of-date.

Character and appearance

34. The appeal site is located on the southern edge of Wokingham and is approximately 15 hectares in size. There is adjoining housing to the west and school playing fields, including an area of woodland, and residential dwellings to the north. There is woodland on the southern boundary that would form part of the separately permitted SANG, with a golf course beyond. Finally, to the east there is an open area of land that would also form part of the SANG, with a railway line and open countryside beyond. A long narrow parcel of land also extends north from the main bulk of the appeal site that would form the emergency access and a foot/cycle path.

35. The appeal site itself is largely open in nature, with a mature hedgerow running through its centre. Despite this, it has enclosing boundaries due to existing development and mature vegetation, including areas of woodland. Once within the site, I observed that this creates a fairly contained character.

36. The appeal site is located adjacent to the settlement boundary of Wokingham and therefore, in policy terms, it is within the open countryside. Policies CP9, CP11 of the CS and Policy CC02 of MDD LP seek to restrict development outside settlement boundaries other than in a few limited circumstances. The scheme does not fall within any of these.

Landscape

37. The appeal site has no national, regional or local landscape designations and it is common ground that it is not within a valued landscape. The 2019 Landscape Character Assessment (LCA) identifies the appeal site as lying within Character Area N1: Holme Green Pastoral Sandy Lowland. This describes the overall landscape condition as of moderate value.

38. I consider that this is the case for the appeal site. Whilst the appeal site has an open and tranquil character being set back from the busy Finchampstead Road behind residential dwellings, there is none the less an urban influence within the site, with the long run of residential properties on the western boundary and visible built development to the north from properties in Luckley Wood and Luckley House School. It is, in my view, a clear transition point between the urban edge of Wokingham and open countryside to the south and east. The site therefore forms part of the rural setting of Wokingham.

39. The scheme would result in the removal of a significant number of protected trees, largely associated with providing the main vehicular access and the emergency access to the site, some of which represent good quality specimens that contribute positively to the character of the area. Whilst new planting is proposed by the appellant, which can be secured through reserved matters, in many cases it will take a considerable period of time to replace those that would be lost in terms of their amenity value.

40. The emergency access and foot/cycle path would run through an area of woodland. This would necessitate the loss of protected trees. However, in the large, the canopy of the woodland would remain and, in my view, the scheme would not materially alter the external appearance of the woodland.

41. The LCA sets out that the rural setting of Wokingham should be conserved. The development of the appeal site for a substantial residential development would cause harm to the rural setting of Wokingham at this point. However, the contained nature of the appeal site in the wider landscape should not be ignored. I consider that this softens the impact of the proposal on the wider landscape.

Visual impacts

42. There are no Public Rights of Way either within the appeal site or in close proximity to it. The proposal would only be visible from residential properties that are adjacent to the appeal site on Finchampstead Road, Hart Dyke Close and Luckley Wood. There will undoubtedly be visual impacts on these receptors who's views of the open and rural appeal site with further

countryside beyond would be replaced by a significant level of built development.

43. The properties on Finchampstead Road that border the site all have very long gardens with some having mature boundary vegetation that screen views. However, I observed on my site visit that some do have a more open relationship with the appeal site and views are freely available. Due to the depth of the gardens, I consider that the visual impact on these properties would be moderate adverse in significance.

44. Turning to the properties on Hart Dyke Close, there are numerous properties who have close range views over the appeal site, with some having fairly open boundaries and clear views. On this basis, I consider that the visual impact on these properties would be major adverse in significance.

45. In terms of the properties within Luckley Wood, the indicative masterplan shows an area of open space adjoining these properties. However, views across the built development of the proposal would be plain to see and therefore I consider the impact would be moderate to major adverse in significance.

46. The appellant has suggested that a landscaping scheme that would be secured at reserved matters could lessen the impact on residential receptors. However, having regard to the indicative development framework, built development is shown up to the boundaries with numerous properties along Finchampstead Road and Hart Dyke Close. The scope for additional planting appears to therefore be relatively limited and even taking into account that the gardens of the new dwellings would back onto those of the existing dwellings, the identified harm would not be reduced by any significant degree.

47. There would be some adverse visual impacts from the proposed main vehicular access on residential receptors on the western side of Finchampstead Road and the users of the road itself. The main proposed access, with its associated footways would be significantly wider than the existing access to the golf course that it would replace. This along with its lighting and loss of mature oak trees, would create a much more urban environment at this location. Despite the proposed planting along Finchampstead Road this would, in my view, result in visual adverse impacts of moderate significance. The impact of the proposed main access on the Green Route is considered further below.

48. The route of the emergency access and foot/cycle way would run adjacent to the grounds of Luckley House School. I observed on my site visit that the emergency access would be visible from within the school grounds. The scheme would introduce a significant urban feature that would be between 2 metres to 3.8 metres wide and would span a considerable distance. Along with the associated fencing and lighting this would change the internal character of the woodland considerably and would result in visual harm of moderate to major significance to the users of the school. The emergency footpath would not be largely visible from the properties that would back onto it along Luckley Wood due to the trees that would remain and the existing boundary treatments. Therefore, any visual impacts on these properties would be minor.

49. The appellant considers that any impacts on the users of the golf course would be minor in significance and I share this view, due to the considerable amount of vegetation that separates the two.

50. The proposal would also be visible to future users of the area of permitted SANG that would be delivered alongside the proposal to provide mitigation for potential impacts on the Thames Basin Heaths SPA. Whilst there would be some visual impacts, I am mindful that the SANG is not an existing receptor and delivery of the SANG does largely depend on this proposal being delivered. Further, the Council has not suggested that any visual impacts would result in the SANG being unable to fulfil its function in diverting recreational pressure away from the Thames Basin Heaths SPA. On this basis, I consider that any visual harm to the future occupants of the SANG would be minor.

Impact of the proposed main access on the Green Route

51. Finchampstead Road is identified as a Green Route in the MDD LP. These are defined as '*Roads into settlements that are lined with trees and other vegetation which make a significant contribution to character and environment of the area and contribute to the Borough's network of wildlife corridors'*. Policy CC03 of the MDD LP, amongst other things, sets out that proposals affecting such routes should protect and retain existing trees, hedges and landscape features.

52. It was evident from my site visit that, within the proximity of the appeal site, Finchampstead Road has a largely enclosed character with many large mature oak trees immediately adjacent to the road and its footpaths, whose canopies overhang the road creating a tunnel effect in numerous places.

53. When looking down the proposed main site access from Finchampstead Road, the proposed access would, at its closest part to Finchampstead Road, be 7.30 metres wide and flanked by a 3 metre footway/cycleway to the north and a 2 metre footway to the south. The proposed access would therefore be considerably wider than the existing access into the golf course that would be replaced. Further, it would include street lighting and this, along with its considerably greater width, would appear much more urban than the existing golf course entrance it would replace.

54. To ensure that suitable visibility splays and footpaths can be provided, three large oak trees (Ref T1, T2 and T7) would be removed, all Category A specimens, along with a smaller oak (T8) (Category B) and a stretch of existing hedgerow each side of the proposed main site access. To mitigate this loss the appellant has put forward an indicative planting scheme (Drawing 6221-L-09 Rev B) that would include the provision of 8 semi mature oak trees of approximately 5 metres in height adjacent to Finchampstead Road. It is also proposed to plant a new hedgerow each side of the proposed access to replace that which would be lost.

55. Whilst the new planting is acknowledged, I consider that it will take a considerable period of time for the semi-mature oak trees to provide the same visual amenity (particularly in terms of their canopy coverage) than would be lost from the removal of the existing oak trees (T1, T2, T7 and T8). Further, to accommodate wider footpaths and visibility splays the replacement trees and hedgerows on Finchampstead Road would be set further back than the

majority of the existing trees within the proximity of the proposed site entrance. I consider that this would not achieve the same level of enclosure that currently exists. Whilst I am mindful that further oak trees are proposed along the first stretch of the access, these would be located further away from Finchampstead Road and would not, in my view, alleviate the concerns raised above.

56. The scheme would also likely remove a section of the existing deep ditch to accommodate the proposed 2 metre pavement around the proposed main site access. This is a notable feature of the Green Route on the eastern side of Finchampstead Road and would add to the harm identified above.

57. Despite my findings above, it must also be borne in mind that the proposal would affect only a relatively small section of the Green Route along Finchampstead Road.

Separation of settlements

58. The appeal site is located on the eastern side of Finchampstead Road. There is already a continuous line of development along the western side of Finchampstead Road that joins Wokingham and Finchampstead North. The proposal would not extend built development any further south than the existing built development on the eastern side of Finchampstead Road. Further, due to existing vegetation to the south of the appeal site and that located in the permitted SANG area, there would be no or very little intervisibility between the proposed development and Finchampstead North. Consequently, I consider that there will not be any impact on the separate identities of Wokingham and Finchampstead North.

Overall conclusion

59. The scheme would result in harm to the landscape, including the rural setting of Wokingham and would result in numerous visual impacts, some of which would be moderate and major adverse. There would also be harm caused to the Green Route along Finchampstead Road, due to the increased urban appearance of the proposed main access and the loss of several protected mature oak trees. This harm would, however, be largely localised to the area immediately surrounding the appeal site. Overall, I consider that there would be a moderate level of harm caused to the character and appearance of the area.

60. The scheme therefore conflicts with Policies CP1, CP3, CP9 and CP11 of the CS, Policies CC02, CC03 and TB21 of the MDD LP and would not recognise the intrinsic character and beauty of the countryside as required by Paragraph 170 b) of the Framework.

Trees

61. I have taken into account the effect of tree loss within my findings above, in terms of the effect this would have on the character and appearance of the area. However, there are several other matters associated with trees that are of relevance to the appeal. There is dispute between the parties whether several protected trees (referenced as T1, T2, T7, T11 and T15) that would be removed by the scheme are veteran oaks and therefore benefit from the protection of Paragraph 175 c) of the Framework.

62. As set out above, several oak trees (including T1, T2 and T7) would need to be removed to facilitate the provision of the main vehicular access. These trees are listed in the Wokingham District Veteran Tree Association records (WDVTA). I understand that as such, they are also automatically listed in the Woodland Trust's Ancient Tree Inventory. However, I consider that it must be borne in mind that the entries into the inventory for these trees were in 2008, which was before the most recent guidance on this issue, namely '*Ancient and other veteran trees: further guidance on management*' by Lonsdale, 2013. I agree with the appellant that this offers the most comprehensive publication available on the subject and was produced collaboratively with contributions from relevant experts and bodies.

63. In addition, I understand that entries into the WDVTA are largely undertaken by volunteers, who although may have received training, are not qualified arboriculturists. Notwithstanding all of this, I have considered the merits of each relevant tree based on the evidence that is before me and against the most recent and relevant guidance.

64. The Framework defines ancient or veteran trees as: '*A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage'*.

65. *Ancient and other veteran trees: further guidance on management* by Lonsdale, 2013 (Section 2.2), advises that when seeking to recognise veteran or ancient oak tree surveyors should look for:

- a girth that is very large for the species, allowing for the local growing conditions;
- extensive decay or hollowing in exposed parts of the central wood;
- a crown structure that, for the species concerned, is characteristic of the latter stages of life; and
- a crown that has undergone retrenchment, i.e. it has become smaller (owing to dieback and breakage) since maturity.

66. It is also advised that other key attributes (the more a tree has, the stronger the indication that it is a veteran) are: major trunk cavities or progressive hollowing; naturally forming water pools; decay holes; physical damage to trunk; bark loss; large quantity of dead wood in the canopy; Sap runs; crevices in the bark, under branches or on the rootplate sheltered from direct rainfall; fungal fruiting bodies (e.g. from heart-rotting species); high number of interdependent wildlife species; epiphytic plants (if these are abundant or include rare species); an old look; and high aesthetic interest. Attributes that can also apply are: a pollard form or other form indicating previous management; cultural/historic value; and a prominent position in the landscape.

67. In relation to girth, there was particular discussion about Fig 1.3 of '*Ancient and other veteran trees: further guidance on management*' by Lonsdale, 2013 and how it should be interpreted. The appellant is of the view that an oak tree with a girth of 4.7 metres or more is likely to be a veteran based on this guidance. However, the WDVTA disagree and consider that Fig 1.3 should be

interpreted in way that a girth of 3.7 metres results in an oak tree being considered a veteran. I accept that there is some ambiguity in Fig 1.3. However, when the guidance is read as a whole, particularly Page 27, which sets out that oak trees with a girth of 4.7 metres or more are especially valuable with respect to conservation, as opposed to girths of 3.2 metres being potentially interesting, I am more persuaded by the appellant's view.

68. Whilst I understand that David Lonsdale has seen the note provided by the WDVTA, I have not seen clear evidence that David Lonsdale fully endorses WDVTA's view on the interpretation of Fig 1.3.

69. None of the oak trees in question have girth sizes over 4.7 metres. It was, however, agreed at the Inquiry that trees T1, T2, T7, T11 and T15 are of an age and size that make them 'locally notable' and therefore could be considered as veterans depending on the condition and features of the tree itself.

70. In terms of T1 and T7, based on my observations on the site visits, I accept the appellant's assessment that these show very little features of a veteran tree, other than the presence of ivy. In relation to T2, whilst there is a knot hole that could be suitable for a bat roost identified in the Ecology Appraisal, I observed that it displays little in the way of any other veteran tree features, other than accommodating ivy. On this basis, T1, T2 and T7 are not, in my view, veterans.

71. I observed that T11 did have some crown dieback and larger quantities of dead wood in the crown than T1, T2 and T7. Further, the Ecology Appraisal does record a large branch tear out and overlapping branch cavities, although these did not appear to be major. However, in my view, it does not strongly exhibit any of the other veteran features as identified above, other than the presence of ivy. Further, the appellant has noted that T11 is located immediately opposite T14 which is sited on the western side of the golf course access road and that T14 is a dead early mature oak. I accept the appellant's view that it is plausible that both T11 and T14 were damaged sometime in the past, possibly due to construction of or modification to the golf course access which has contributed to their premature decline. For these reasons, I am also not of the view that T11 is a veteran.

72. Turning finally to T15, this does accommodate two entrances at ground level forming small basal cavities. Nonetheless, these did not appear to be significant from my own observations and not of such significance to be considered as major trunk cavities or extensive hollowing, nor do the branch socket cavities or woodpecker holes. I did observe a notable amount of deadwood in the canopy, some light ivy and some delaminating bark on the main stem at the base. However, overall, given the above and the lack of other common veteran features, I am not of the view that T15 is a veteran.

73. It should also be noted that I am not of the view that T1, T2, T7, T11 or T15 possess cultural/historic value or sit within such a prominent location in the landscape that is of sufficient significance to alter my conclusions set out above.

74. There has been dispute whether the loss of oak trees T11 and T15 has already been established by the permission for the associated SANG. It is clear from the appeal decision that no reference to the loss of these trees was made and

consequently, there remains significant doubt. On this basis, I have taken into account their loss within this decision. However, I have not found that either T11 or T15 is a veteran and therefore even if I was wrong to do so, it would not materially alter the overall outcome of the appeal.

75. Turning to other related matters, there has been some dispute in relation to whether oak tree T3, which lies along Finchampstead Road adjacent to T2 could be retained. The appellant has provided additional drawings to show that engineering works to facilitate the main site access would only encroach into the Root Protection Area (RPA) of T3 to a very limited degree (in the region of 1% of the RPA). Consequently, even if T3 was to be considered a veteran, I am satisfied that T3 would not be unacceptably affected by the scheme.

76. The appellant is proposing to construct the emergency access with low impact methods. I am content that this would ensure the retained trees and their RPAs would not be adversely harmed by the proposal, despite the minor changes in levels along its route. Further, I am also suitably satisfied that fencing and lighting posts can be placed at locations that would have minimal effect on the retained trees and their RPAs.

Highway and pedestrian safety

Modelling

77. The application was supported by a Transport Assessment (the TA), dated January 2019. The TA utilises the Wokingham Strategic Transport Model 3 (WSTM3) to model the increased traffic from the development on the surrounding local highway network. However, WSTM3 was replaced in July 2018 by the Wokingham Strategic Transport Model 4 (WSTM4). This provided updated assumptions on growth and traffic flows. The Council confirmed at the roundtable discussion that this includes updated assumptions on the traffic flows from the Strategic Development Locations (SDLs), which are significant developments.

78. The appellant has set out that there was not enough time to re-run the TA based on WSTM4 before the Inquiry was due to commence. I consider that there was a considerable period of time from the refusal of the application to the commencement of the Inquiry on 10 March 2020. This included a significant adjournment for the additional consultation set out above. It is therefore clear that the evidence in support of this appeal is not the most up-to-date available and this brings with it, significant doubts in relation to whether the impacts of the proposal on the local highway network have been appropriately assessed.

79. I acknowledge that the appellant has undertaken a 5% sensitivity test of the proposed mitigation at the Finchampstead Road / Sandhurst Road junction. However, I consider that there can be no guarantees that there would only be a 5% difference in traffic flows at the junctions between that modelled in WSTM3 and WSTM4. Further, this has only been done for one junction. The TA identifies on Page 31 that there are 3 junctions that operate above capacity, but the impact of the development is considered to be minimal. It is unclear what impact a 5% increase in traffic flows would have on these junctions and whether this might necessitate the need for junction mitigation.

80. The appellant has suggested that as a result of the Covid-19 pandemic there is a likelihood that more people will work from home and road congestion could decrease. However, at this stage, I consider that there is no firm evidence to suggest this will be the case.

Junction improvements

81. The TA proposes a junction improvement at the Finchampstead Road / Sandhurst Road junction, as set out in Appendix 9 of the TA. However, this is not supported by a Stage 1 Road Safety Audit (RSA) and therefore, I cannot be sure that the proposed mitigation would function safely or that a viable solution is available at this junction to mitigate the impacts of the development.

82. The appellant in setting out its case for the appeal, subsequently considered that mitigation is also required at another junction. This relates to the **Finchampstead Road / Evendon's Lane** junction. Whilst swept path analysis has been provided, a Stage 1 RSA has not and again, I cannot be sure that the proposed mitigation would function safely or that a viable solution is available at this junction to mitigate the impacts of the development.

83. It is clear that the impact of the proposal on the local highway network is an important one for local residents. Having regard to these concerns, at the roundtable discussion, I raised a matter with regard to the findings of the TA for the junction at Finchampstead Road/Molly Millars Lane. On the Finchampstead Road South arm the modelling on Page 26 of the TA shows an increase in queues of 28 vehicles (increase to 291 from 263) in the am peak as a result of the scheme. Further, for the Finchampstead Road North arm of the junction there would be an increase in queues of 24 vehicles (increase to 109 from 85) in the pm peak as a result of the scheme.

84. Given the high level of existing congestion at this junction, I consider these impacts to be material and not minimal as suggested in the TA. As a result, I am unable to conclude that without mitigation there would not be unacceptable impacts on this junction. The appellant noted that the modelling can be come unstable when queue lengths are so large. Whilst this is noted, it is nonetheless the best data that is before the Inquiry.

Access arrangements

85. The access arrangements for the scheme include a main vehicular access from Finchampstead Road for future residents of the proposed dwellings, along with users of the SANG and the golf course. Further, an emergency access would be provided from the northern part of the appeal site into the car park of the adjacent Luckley House School. This would also be used as a foot/cycle path, which would then also extend up to Luckley Road.

86. Living Streets - Highways Guide for D**eveloper's in Wokingham, 2019 at Table** A1 (Page 48) sets out a street hierarchy. I consider the proposed loop arrangement (that would connect to the emergency access) within the appeal site would constitute a tertiary street. This is defined as access to dwellings with no through movements. The maximum number of houses set out in the Table A1 is 200 (or 100 max cul de sac for emergency access). Given a separate emergency access is provided, the guide suggests that a maximum

figure of 200 dwellings would be acceptable in the arrangement proposed by this scheme.

87. Whilst the proposal would be over this at 216 dwellings, I accept the appellant's view that the document is a guide and 16 additional units is unlikely to result in any harm to highway safety. This is particularly the case as the TA shows the main access junction would operate well within capacity with an RFC value of 0.58 and very minimal queues. It is also still likely to do so, even if there was a material increase in traffic flows as a result of the more recent modelling in WSTM4. Consequently, I consider the principle of the access arrangements of the scheme to be acceptable.

Main vehicular access

88. As part of this appeal the appellant has provided a revised drawing that amends the proposed main vehicular access junction. Namely, it narrows each lane of traffic and the right-hand turn lane to 3 metres from the initial 3.5 metres. This was done to try and avoid the removal or any adverse impacts on oak tree T3. This raised concerns with regard to traffic being pushed closer to the footpaths and bus stops along the road. Whilst I accept that vehicles would travel marginally closer to the edges of the road, I am not of the view that this would result in highway or pedestrian safety concerns. The appellant has also provided evidence that shows the changes would not affect the findings of the Stage 1 RSA that was conducted on the original junction layout.

89. Interested parties have raised concerns with regard to the adequacy of the visibility splays provided at the main vehicular access. At the roundtable discussion, it was raised that the speed survey data was missing from the TA. This was subsequently provided. Whilst there was some disagreement over the exact distance that should be provided, based on the evidence before me and having regard to Drawing 19-286-009 Rev A, I am content that appropriate visibility splays can be provided at the junction, without unacceptable impacts on oak tree T3 or the need to remove any other significant vegetation. This could have been secured by a planning condition if I had been minded to allow the appeal.

90. The appellant is of the view that the existing golf course access is a simple priority junction and that, as a result of the scheme, right turning vehicles will be provided with a facility to execute that manoeuvre more safely and this results in an enhancement to highway safety. However, the main vehicular access would need to serve the considerable number of future residents of the scheme, which the current golf course entrance does not. I am therefore not of the view that this represents enhancement and is not a benefit of the scheme.

Emergency access and foot/cycle way

91. The adequacy of the emergency access has received much concern, both from the Council and interested parties. The emergency access would for the most part be 3.8 metres in width, in accordance with Manual for Streets and Living Streets - Highways Guide for Developer's in Wokingham, 2019. However, there would be a section that would be 3 metres in width that would conflict with the guidance in the above documents. The appellant has provided swept path analysis that illustrates that an emergency vehicle (fire engine) would

still be able to use the 3 metre section. Therefore, whilst I accept that the 3 metre section would not meet the above guidance, this would not in my view, result in adverse highway safety impacts.

92. Given the relatively straight alignment of the emergency access route, I am satisfied that there would be sufficient visibility for any pedestrians or cyclists using the emergency access route and an emergency vehicle to see each other, avoiding safety issues. Further, it is clear from the emergency access drawings that there would be sufficient room, in the majority of places, between the hardstanding and fence/bollards for pedestrians and cyclists to step a side to let an emergency vehicle through if necessary.

93. The emergency access would also run through the neighbouring Luckley House School car park. During the accompanied site visit, we visited the school at pick-up, one of the busiest times of the day. There was nothing to suggest that inappropriate parking was commonplace and would lead to conflicts with emergency vehicles trying to access the appeal site. Further, the school has entered into a S106 Agreement, which binds them to maintain a clear path of access, free from development and obstruction for emergency vehicles at all times, along the length of the route. This also includes providing means of unlocking the gates along this route. Whilst there could be three locked gates when the school is closed, with suitable means to open these, I am not of the view that this would delay emergency vehicles to an unacceptable degree.

94. I acknowledge the concerns of potential conflicts between pupils at the school and emergency vehicles. However, it must be borne in mind that the use of the emergency access would be dependent on the main site access being obstructed. Therefore, on the vast amount of occasions emergency vehicles would not need to use the emergency route. Consequently, the emergency access route is only likely to be used on incredibly rare occasions. Further, for there to be the potential for conflict, an emergency would need to occur during times where pupils would be within the car park, which would be drop-off or pick-up and to a lesser degree, lunchtime. The chances of this occurring are remote. Even if this was to occur, I observed that pick-up time was well organised and there were not significant numbers of children along the route that would be taken by an emergency vehicle through the car park. Further, emergency operatives are trained to recognise hazards. Given all of this and my observations on the accompanied site visit, I am not of the view that there would be an unacceptable risk to pedestrian safety within the school car park.

95. Interested parties have raised concerns with regard to local people buying master keys that emergency departments use on locked gates and therefore being able to access the emergency route into the school. However, I consider that this can be suitably overcome should any concerns arise, through the changing of locks or through other arrangements. Further, I do not consider that the arrangements would lead to safeguarding issues for the children and access can be gained to the school car park during the day from the main school entrances in any event.

96. Given all of the above, I am satisfied that in terms of allowing access for emergency vehicles to the appeal site, the proposed emergency access is acceptable.

97. There is also a 2-metre wide section of foot/cycle path that leads up to Luckley Road. This would only be used by pedestrians and cyclists. I accept the Council's view that this width is inadequate for cyclists and this was picked up in the Stage 1 RSA and has not been disputed by the appellant. The solution proposed is to have signage requiring cyclists to dismount for the 2-metre section of the foot/cycle path. However, this section of the route spans a considerable distance (in the region of 80 metres) and I have significant doubts whether all cyclists would regularly dismount and given that there would be insufficient room to safely pass one another, this could result in conflicts.

98. To add to my concern, there is a section of the path close to Luckley Road that traverses through several large trees and this results in a small 'chicane' in the foot/cycle path. This would affect forward visibility for both cyclists (who have not dismounted) and pedestrians either side of this section and could result in the potential for accidents. For these reasons, I consider that there could be feasible safety conflicts between pedestrians and cyclists.

Overall conclusion

99. Based on the evidence in the TA and that in support of the appeal, I have found that it has not been suitably demonstrated that the scheme will have no significant and severe adverse impacts on the local highway network. Further, whilst I have found that the emergency access and its arrangements would provide suitable access for emergency vehicles, the 2-metre section of the route could, in my view, feasibly lead to safety conflicts between pedestrians and cyclists.

100. The scheme therefore runs contrary to Policies CP1, CP3 and CP6 of the CS. The proposal also conflicts with Paragraphs 109 and 110 c) of the Framework. The Council's reason for refusal on this matter refers to Policy CC04 of the MDD LP, however, this appears to be of limited relevance to this matter.

Whether the scheme would provide for a realistic choice in sustainable transport modes

101. The CS sets out that the Borough has one of the highest rates of car ownership in England. There are several policies in the CS that relate to this matter. Policy CP1 sets out that development should demonstrate how it would reduce the need to travel, particularly by car. Policy CP3 notes that proposals should be accessible, safe, secure and adaptable. Finally, Policy CP6 requires development to be located where there are, or will be, available modal choices to minimise the distance people need to travel. The Framework at Section 9 also seeks to promote sustainable transport and opportunities to promote walking, cycling and public transport. Of relevance is the Framework's distinction between opportunities in urban and rural areas. Whilst, the appeal site is in policy terms in the open countryside, it is not, in my view, in an isolated countryside setting. I consider that this is important when considering what opportunities are available to maximise sustainable transport options.

Walking

102. The evidence of the parties includes various references to applicable guidance on acceptable walking distances. Manual for Streets notes that walking offers

the greatest potential to replace short car journeys, particularly those under 2 km. In addition, it suggests that walkable neighbourhoods are generally those where there are a range of facilities within a 10-minute walk from home, which equates to a distance of around 800 metres (although this is not an upper limit). I am mindful that similar guidance is provided in the National Design Guide.

103. The Institute of Highways & Transportation Guidelines for Providing Journeys on Foot (IHTC) takes the view that an acceptable walking distance is 800 metres with a preferred maximum of 1.2 km. Living Streets - Highways Guide for Developer's in Wokingham, 2019 also provides relevant guidance and includes Table 1 on Page 10, which sets out the distances for various local services and facilities by which the Council will consider whether there is high, medium or low accessibility. This in broad terms follows the IHTC guidance.

104. I consider that it is important to recognise that such distances are advisory, and I accept that there is likely to be residential dwellings in the surrounding area that are located further away from some services and facilities than the guidance suggests. Of particular relevance, is the IHTC guidance, which sets out that acceptability in terms of travel distance will depend on a range of considerations, including: the quality of the experience, the safety of the route; the mobility and fitness of the individual; the purpose of the journey; and the convenience of other options. I also accept the point raised by the appellant that a longer walk to a destination where the range of facilities is extensive could be preferable to a shorter walk to a small local shop with a limited offer.

105. Turning to firstly the distances to local services and facilities, it was agreed between the parties at the roundtable discussion that Evendon Primary School is located 1.1 km from the centre of the appeal site and the Two Poplars Public House is located 1 km away.

106. The Wokingham Family Golf Course is located some 550 metres from the appeal site and the Wokingham Equestrian Centre is within approximately 1 km of the appeal site. However, I consider that these are likely to appeal to a limited number of the future residents of the site and I am not convinced that many of the future residents of the appeal site would walk to the golf course carrying or pushing their golf clubs.

107. Luckley House School is located approximately 550 metres away. Although this is a private school. There is also a theatre within the school grounds that is open to the public, although I would not class this as a day to day facility.

108. Given the above, there are limited local services and facilities that future residents would rely on, on a day to day basis available within 1.2 km of the appeal site. In addition, the nearest secondary schools are both over 3 km away.

109. The closest shop is a Tesco superstore, which was agreed to be located 1.3 km from the centre of the appeal site. I accept that this offers an attractive destination, with a large selection of goods, along with a range of other facilities within it, including a pharmacy, mobile shop, travel money, Timpson, Costa, Krispy Kreme, Photoprint (plus wifi, cash machine and toilet facilities). I do not therefore consider that the distance itself would be a deterrent to walking to this location for future residents to fulfil their day to day

convenience needs. In addition, close to the Tesco superstore is the Molly Millar Lane Industrial/Employment area, which is also approximately 1.3 km from the appeal site at its closest point. Whilst I accept that this may offer future residents potential employment opportunities, these are not likely to be particularly significant.

110. Notwithstanding the above, the nature of the walking route must also be considered. As previously set out, the scheme would provide an emergency access to the north of the site which would also be used as a foot/cycle path linking to Luckley Road. This would be through an area of existing woodland. Whilst the route would be lit, it would be relatively narrow, particularly the 2-metre section closest to Luckley Road. There would also be bollards or some sort of fencing each side of the path that, along with the canopy of trees would, in my view, create a 'hemmed in' and claustrophobic atmosphere for large parts of the route.

111. There would not be any natural surveillance of substance, due to the woodland and existing boundary treatments of the properties that back onto it. It is also important to note that the foot/cycle path is of considerable length. Numerous local residents have set out that they would not feel safe or would have a perception of feeling unsafe using the proposed path and I accept and share this concern, particularly during the hours of darkness, which in the winter includes times where future residents could be going to or returning from work. Thames Valley Police also raised concerns with regard to the safety of the path.

112. Further, I have found above that the 2-metre width of the foot/cycleway section could feasibly lead to conflicts between pedestrians and cyclists, I consider that this is a further matter that could deter its use.

113. Given all of the above, I consider that the proposed emergency access and foot/cycle path would not be an attractive environment that would encourage future residents to walk to local services and facilities.

114. The alternative route to access the local services and facilities would be to utilise the main vehicular access and walk along Finchampstead Road. The main access road into the site would have footpaths on each side and would be lit. However, it would also pass through a large area of woodland and there would be no natural surveillance. I do not consider it would be an attractive walking environment that would feel safe, again particularly during the hours of darkness. In addition, I observed that Finchampstead Road is a very busy road and is heavily trafficked. In places the footpath is narrow, with vehicles passing in close proximity. There is also only patchy lighting. It is not an attractive walking environment.

115. Consequently, I consider that neither route offers an attractive walking environment to the local services and facilities, including the local schools.

116. Given the distance to the train station (2.4 km) and the town centre, I am not of the view that walking is likely to be an attractive option, particularly given my findings above in relation to the nature of the available routes.

117. The appellant has set out that at the point at which the emergency access route and foot/cycle path meets Luckley Road, the natural desire line of walking to the north and particularly to Tesco, would be via Tangley Drive. I

accept that this would be a more convenient, quieter and much more attractive route for pedestrians than Finchampstead Road which runs broadly parallel with it. However, it does not negate the need to first utilise the emergency access and foot/cycle path.

118. Having regard to all of the above findings, I consider that the scheme is highly unlikely to create a modal shift away from the use of a private car by future residents through walking. Further, I consider that the walking environments created by the main vehicular access and the emergency access and foot/cycle path do not represent good design.

Cycling

119. The use of a bicycle would, in solely distance terms, provide access to a much larger range of local services and facilities than on foot, including the secondary schools, the town centre, which provides parking facilities for bicycles and the train station, which also includes such facilities. The Tesco superstore would also be a 5 minute journey on a bicycle.

120. However, again the nature of the cycling environment to such facilities must be considered. I observed on my site visits, along with my journeys to and from the Inquiry, that Finchampstead Road and the roads leading into the town centre and train station are heavily trafficked at peak times, with significant congestion. For this reason, I consider that cycling to these services and facilities would only likely to be a real and feasible option for very experienced cyclists.

121. I accept that cyclists would have an alternative route via the emergency access and foot/cycle path. However, the fact that cyclists would have to dismount for an 80 metre stretch of the route would affect its convenience. The potential conflict between cyclists and pedestrians due to the narrow 2 metre section is also likely to affect the attractiveness of the route for cyclists. Further, to access the town centre and train station the use of Finchampstead Road cannot be entirely avoided, nor can the other congested roads leading into the town centre and train station.

122. The appellant is of the view that the proposal could offer a more pleasant cycling environment and allow cyclists travelling along Finchampstead Road to avoid the traffic by diverting through the appeal site. However, this would represent a sizeable detour and given the need to dismount for the 80 metre section, I consider such a scenario to be very unlikely.

Bus stops and their accessibility

123. There are bus stops located on Finchampstead Road. According to the appellant's evidence these are approximately 480 metres in distance via the main vehicular access and 580 metres via the emergency access route. IHTC guidance and the Council's Living Streets - Highways Guide for Developer's in Wokingham, 2019 both set out that 400 metres should be considered a maximum.

124. The appellant has provided an extract of a study 'How far do people walk?' by White Young Green, dated 2015. This concludes that outside of London the mean distance that people walked to a bus stop was 580 metres, and the 85th percentile walking distance was 800 metres. Whilst this is noted, the nature

of the walking route is also an important factor, along with the nature and siting of the bus stops themselves.

125. I have already found above that the walking environments of both routes that would be utilised to access the bus stops are unattractive. The bus stops at present do not have shelters and are located very close to the road on a narrow footpath southbound and a narrow verge northbound, with a large volume of passing traffic in close proximity, particularly at peak times. Both bus stops do not currently provide a pleasant place to wait for a bus.

126. During the roundtable discussion the appellant set out that shelters and improved lighting could be added to the bus stops to make them a more attractive and pleasant facility when waiting and that this could be secured by a planning condition. However, given the very narrow verge and footpath where the bus stops would be located, together with potential landownership constraints, I am not convinced that a meaningful shelter could be provided. Even if one could be, it is highly likely to still be in very close proximity to the busy road and not represent a particularly pleasant place to wait. Further, I am mindful that Finchampstead Road is a Green Route and I observed on my visit that having prominent street features such as bus shelters close to the road, would not be characteristic of the Green Route in this location.

127. The scheme would introduce a crossing point across Finchampstead Road to allow pedestrians to more easily access the northbound bus stop, which would be a welcome addition. Notwithstanding this, I consider that the unattractive nature of the walking routes and bus stops is likely to deter future residents from utilising the available bus service on Finchampstead Road.

Bus services and improvement contribution

128. The bus stops closest to the appeal site are served by the existing 125 bus service which runs between Wokingham and Crowthorne via the Finchampstead Road corridor. This currently provides two peak hour services and then two-hourly services throughout the day finishing in the early evening Monday to Friday. There is also a limited service on Saturday and no service on Sundays.

129. The CS sets out that a good public transport service is one that has 30 minute intervals during peak times, hourly intervals during off-peak hours and a service on Sundays. The existing 125 service therefore does not at the existing time constitute a good service in accordance with the CS and is not one that I consider would persuade residents to give up the use of a private motor vehicle.

130. The scheme includes a financial contribution of £500,000, secured through the S106 Agreement to improve the existing 125 service. It is anticipated that this would secure an additional hourly service, supported by the existing service at peak times for a period of up to 5 years. I am also aware that there is good potential for improvements to the bus service along Finchampstead Road as a result of the Arborfield SDL Public Transport Strategy. Although the extent of the potential improvements remains somewhat unknown.

131. The appellant's proposed improvements, as discussed with the operator, would include: a 30 minute frequency service during am and pm peak periods

(Monday to Friday); an hourly service during off peak periods Monday to Saturday finishing at 20.00 each evening, including a Saturday morning from 07.00; and an hourly service on a Sunday between 10.00 – 19.00.

132. However, there would not be a 30 minute service during the peak period on a Saturday between 07.00 and 09.00 and between 16.00 and 19.00. There would also not be a Monday to Saturday hourly service after 20.00 until 22.00. The service would not therefore meet the definition of good, as set out in the CS. However, I accept that it would come close and would be a considerable improvement on the existing 125 service.

133. The Council are of the view that it would not be appropriate to withdraw the service after 5 years and raised concerns about the longer-term viability of such improvements. However, even giving the benefit of the doubt to the appellant that this would be an appropriate amount of time and the improvements would remain viable in the long-term, including through increased usage by existing residents in the area, my concerns with regard to the nature of the walking environment to the bus stops and the nature of the bus stops themselves remain. I consider that these matters are significant deterrents to the use of the bus service by the future residents of the scheme, even if the proposed improvements are delivered to the existing bus service as proposed.

Train services

134. There are good train links available at Wokingham, with direct services to Reading and London, Waterloo. As set out above, I am not convinced that walking and cycling are attractive options to access the rail station, particularly during peak periods. The bus service is available to the train station. Again, I have already found that the walking route to the bus stops and the nature of the bus stops themselves are unlikely to be attractive to future residents.

135. There are car parking facilities available at the train station. Given this and the above, along with the increased flexibility the use of a car would have in terms of travel times, I consider that this is likely to be a much more attractive option than using the bus, even if the proposed improvements in terms of frequency were delivered and despite the costs of parking.

Other related matters

136. The appellant has noted that the lack of parking and its cost in the town centre is likely to put residents off the use of a private motor vehicle. However, this assumption is supported only by reference to an article and petition about saving one car park in the town centre. I am not of the view that this represents substantive evidence to support the view that there is a fundamental lack of parking or that it is unreasonably expensive. I am also mindful that this focuses solely on the town centre and it is important to look at the accessibility to local services and facilities as a whole.

137. I acknowledge that a Travel Plan has been provided in support of the planning application and a final version could be secured through a planning condition. This includes measures to encourage future residents of the scheme to utilise sustainable modes of transport, including the potential for subsidised public transport tickets and season tickets. However, having regard to all of my

findings above, I am not satisfied that the Travel Plan would overcome my concerns or would in itself secure a meaningful modal shift.

Overall conclusion

138. For all of the reasons above, I conclude that the scheme would not provide genuine travel alternatives to the use of a private motor vehicle to the future residents of the scheme for the majority of their journeys. As a result, the proposal runs contrary to Policies CP1, CP3 and CP6 of the CS and Section 9 of the Framework.

Five-year housing land supply

139. The housing requirement in Policy C17 of the CS was adopted more than 5 years ago and therefore the Framework establishes that housing need should be calculated using the standard method set out in national policy. The LHN for Wokingham is 4,022 dwellings. The Housing Delivery Test (HDT) shows that over the past 3 years against this requirement the Council's completions stand at 175%, resulting in the HDT being met. A 5% buffer therefore applies, resulting in an overall figure of 4,223 dwellings over the five-year period.

140. The parties agree that the relevant 5-year period is 1 April 2019 to 31 March 2024. The Council consider that it can demonstrate the delivery of 5,398 dwellings, a housing land supply of 6.39 years. In contrast, the Appellant's initial case was that the Council could only demonstrate a supply of 4.75 years.

141. I am mindful at this point that there is a highly relevant appeal decision for a proposal at Land north of Nine Mile Ride, Finchampstead[3]. In that Inquiry, the same witnesses were called and relied on the same or at the very least, substantially the same evidence as is before me. The Inspector in the Nine Mile appeal decision considered each aspect of the disputed supply in detail and found that notwithstanding any potential impacts of the Covid-19 pandemic, the Council's supply stood at 5.43 years. I have reviewed the findings of the Inspector in that case carefully and despite the concerns of the Council, in terms of the Nine Mile Ride Inspector's interpretation of deliverable, I see no reason to disagree with her findings.

142. The appellant in its response to my written questions following the change of procedure to enhanced written representations has accepted that, putting aside any potential impacts of the Covid-19 pandemic, the Council can demonstrate a 5.43 year housing land supply, in line with the findings of the Nine Mile Ride Inspector. However, a paper was also provided by the appellant's housing land supply witness Mr Good that considered the impacts of the Covid-19 pandemic afresh. This concluded that 404 dwellings should be removed from the supply, resulting in a housing land supply of 4.95 years.

143. Whilst noting the detailed reasons provided in the note from Mr Good, I am of the view that it is still very difficult at this stage in time to draw any firm conclusions on the potential impacts of the Covid-19 pandemic on housing land supply. This view is shared by the Nine Mile Ride Inspector and the

[3] Appeal Ref: APP/X0360/W/19/3238048.

Inspector of an appeal decision at Land to the South of Lee Lane, Royston, Barnsley[4], which has been referred to by the Council.

144. I am of the view that there can be little doubt that the Covid-19 pandemic is having, and will continue to have, an effect on housing land supply in the short term. However, I am mindful that the effects are likely to be time limited and we must look over a five-year period. It may be that some sites due to deliver in the next 6-12 months may deliver slightly later in the five-year period, but they are likely to still deliver nonetheless. Further, there is still a reasonable amount of time for sites anticipated to deliver towards the end of the five-year period to recover. As pointed out by the Nine Mile Ride Inspector (Paragraph 110) it is '…*possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so*'.

145. The Council has also provided evidence to show that this could well be the case, with numerous construction sites associated with the SDLs now back open and operational and sales and marketing suits open. I am therefore not sufficiently convinced that the effects on supply will be as severe as set out by the appellant.

146. Given the uncertainties set out above, it is very difficult for me to establish a precise figure in terms of the Council's housing land supply. However, for the reasons given above, I consider that in all likelihood it is somewhere between 5 years and 5.43 years. As a result, I conclude that the Council can demonstrate a five-year housing land supply.

147. There was some debate whether the Council can demonstrate a five-year housing land supply without relying on sites located outside of settlement boundaries. Given the evidenced before me and my findings above, it is clear that the Council is dependent on sites located outside of existing settlement boundaries to deliver a sufficient supply of housing.

Other matters

148. Luckley Wood is identified as deciduous woodland, a priority habitat listed under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 as being of principal importance for the purpose of conserving biodiversity in England. At the roundtable discussion on trees, the Council raised concerns about the potential impacts of the emergency access and foot/cycle path on Luckley Wood.

149. The scheme would result in a notable number of trees being removed to facilitate the provision of the emergency access and foot/cycle path. However, in many cases these are non-native species and the native species that would be removed, could be replaced in the wider appeal site. Further, I accept that some minor clearing of the canopy could provide opportunity for glade establishment and by allowing additional light to penetrate the ground, it is possible that further species could colonise the area around the emergency access and foot/cycle path.

150. The emergency access route would be constructed via a low impact method, along an existing path which has been heavily compacted and is largely

[4] Appeal Ref: APP/R4408/W/19/3242646.

devoid of vegetation. Whilst the emergency access and foot/cycle path would be wider, I consider that the impact on ground flora would be fairly limited.

151. I accept the appellant's view that low level directional lighting could be used to minimise potential impacts on existing fauna. In terms of disturbance, I am mindful that Luckly House School currently utilise the woodland for learning activities and I observed several tracks through the woodland on my site visit. Consequently, there is already a notable degree of disturbance within the woodland.

152. It must also be borne in mind that the emergency access and foot/cycle path would run along the very eastern edge of Luckley Wood and would therefore only affect a limited coverage of the woodland as a whole.

153. Overall, I consider that the scheme would not have any unacceptable impacts on the priority habitat or its nature conservation importance. The scheme therefore complies with Policy CP7 of the CS.

154. Interested parties have raised a large number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning Balance

155. I have found that the Council can demonstrate a five-year housing land supply and that the basket of most important policies for the determination of the application is not out-of-date. Therefore, the 'tilted balance' set out in Paragraph 11 d) of the Framework is not engaged.

Identified harm

156. The appeal site is located outside of any settlement boundary and consequently, the scheme conflicts with Policies CP9 and CP11 of the CS and Policy CC02 of the MDD LP. I have, however, found that these policies are out-of-date. The key reason for this was that a sufficient supply of housing cannot be demonstrated whilst meeting the requirements of these policies. However, on the other hand, the Council do not need the appeal scheme to demonstrate a 5-year housing land supply. I therefore afford the conflict with these policies significant weight. This view was also taken by the Nine Mile Ride Inspector and adds weight to my findings.

157. I have also found that the scheme would cause harm to the character and appearance of the area and this carries a moderate level of weight against the scheme. I am unable to rule out that the proposal would cause significant and severe impacts on the local highway network, resulting in highway safety concerns. I have also found that there is the potential for conflicts between pedestrians and cyclists along the foot/cycle path. I consider that these together carry a significant level of weight against the proposal.

158. In addition, I consider that the scheme would not create feasible opportunities to create a modal shift away from the use of a private motor vehicle that future residents of the scheme are likely to be very reliant upon for most of their journeys. This also weighs significantly against the scheme.

159. Overall, the level of harm that would result from the scheme is very substantial.

Benefits of the scheme

160. The appeal scheme would deliver a considerable number of new market houses. The appellant has provided several appeal decisions, including some determined by the Secretary of State himself, where significant weight has been afforded to the provision of market housing even where the Council can demonstrate a 5-year housing land supply. However, I consider that it cannot be ignored that the scheme is not plan-led and notwithstanding the reliance on other sites outside of settlement boundaries, the Council are meeting their housing needs with a 5% buffer, without the need for this proposal. As a result, I afford a moderate level of weight to the benefits of the market housing.

161. The appellant has produced clear evidence to demonstrate an acute need for affordable housing. The scheme would make an important contribution to such needs that would be at the upper end of the requirement of Policy CP5 of the CS and is appropriately secured in the S106 Agreement. Whilst noting the efforts being made by the Council to address the need for affordable housing, I consider this benefit should carry very significant weight.

162. The scheme would generate some economic benefits in the form of construction jobs and expenditure from new residents that would support local jobs and businesses. I consider that these benefits carry moderate weight.

163. The appeal proposal would ensure the delivery of the separately permitted SANG adjacent to the appeal site. This would be open to existing residents as well as those that would live within the proposed dwellings. Whilst this is a benefit of the scheme, its fundamental purpose is to mitigate the impacts of the development on the Thames Basin Heaths SPA. Further, as acknowledged by the appellant, the SANG could be brought forward without the appeal scheme to offset the impacts of other new development in the area. Given this, I afford this benefit limited weight.

164. There would likely be some biodiversity enhancements within the appeal site to ensure a net gain, which carry a limited level of weight in favour of the scheme.

165. The appeal scheme would provide for on-site open space **and a children's play** area. However, this would be largely to serve the needs of future residents. Therefore, this benefit carries limited weight. The scheme would also provide an area of land for the adjacent Luckley House School to utilise as a playing field. However, the school is private and this would only be of benefit to a relatively limited number of people. Consequently, I afford limited weight to this benefit.

The balance

166. The scheme would conflict with numerous development plan policies, but it would also conform to many others. However, when looked at holistically, I consider that the scheme conflicts with the development plan.

167. I conclude that the benefits of the scheme do not outweigh the harm identified and the associated development plan conflict. Consequently, there

are not any material considerations that warrant a decision other than in accordance with the development plan.

168. Given that I am dismissing the appeal, there is no need to undertake an Appropriate Assessment. Nonetheless, it should be noted that a positive finding would not affect the overall planning balance or my overall conclusion.

Conclusion

169. For the reasons set out above and having regard to all other matters raised, I conclude that the proposal does not comply with the development plan as a whole and does not represent sustainable development in terms of the Framework. There are no material considerations which would warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Jonathan Manning

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sasha White QC & Anjoli Foster of Counsel	Instructed by Emma Jane Brewerton of Wokingham Borough Council

They called:

Mark Croucher	Wokingham Borough Council (Planning)
Gordon Adam	Wokingham Borough Council (Transport)
Chris Hannington	Wokingham Borough Council (Landscape, Visual Impact and Arboriculture)
Ian Church	Wokingham Borough Council (Affordable Housing, Housing Land Supply and Policy)

FOR THE APPELLANT:

John Barrett of Counsel	Instructed by Kevin Waters of Gladman Developments Ltd

He called:

Kevin Waters	Gladman Developments Ltd (Planning)
Simon Blinkhorne	Odyssey (Transport)
Helen Kirk	FPCR Environment and Design Ltd (Arboriculture)
Timothy Jackson	FPCR Environment and Design Ltd (Landscape and Visual Impact)
David Parker	Pioneer Property Services Ltd (Affordable Housing)
Matthew Good	Pegasus Group (Housing Land Supply)

INTERESTED PARTIES

Charles Margetts	Councillor and local resident
Julian McGhee-Sumner	Councillor and local resident
Emma Crewe	Local resident
Georgette Gray	Local resident
Professor Derek Steele	Local resident
Ellie Notley	Local resident

Peter Dennis	Town Councillor and local resident
Maria Gee	Councillor and local resident
Jeremy Crewe	Save Woodcray Countryside Campaign Group
Alison Griffin	Local resident and Wokingham District Veteran Trees Association
Sarah Kerr	Councillor and local resident
Darren Notley	Local resident
Dominic Bethencourt-Smith	Local resident
Clarissa Flynn	Save Woodcray Countryside Campaign Group
Peter Dunks	Local resident
Gary Meades	Local resident
Wendy Measures	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Draft Section 106 Agreement.
2. Scott Schedule.
3. Appellant's opening statement.
4. Council's opening statement.
5. Statement by Charles Margetts.
6. Statement by Julian McGhee-Sumner.
7. Statement by Emma Crewe.
8. Statement by Georgette Gray.
9. Statement by Ellie Notley.
10. Statement by Jeremy Crewe.
11. Statement by Maria Gee.
12. Statement by Alison Griffin.
13. Statement by Sarah Kerr.
14. Statement by Professor Derek Steele.
15. Statement by Peter Dennis.
16. Copy of High Court Judgement – Gladman Development Limited [2020] EWHC 518 (Admin).
17. List of draft planning conditions.
18. Note on aircraft noise from Peter Dunks.
19. Full copy of the Wokingham Landscape Character Assessment, November 2019.
20. Agreed Statement of Common Ground – Aboricultural matters.
21. Agreed Statement of Common Ground – Highways.
22. Agreed Statement of Common Ground – Affordable housing.
23. Note from Appellant on Veteran Trees.
24. Ancient Tree Inventory note on oak trees.
25. Full copy of Ancient and other veteran trees: further guidance on management, by Lonsdale.

26. Veteran trees: a guide to good management.

27. Speed survey data, provided by the appellant.

28. Email associated with bus service contribution, provided by the appellant.

29. Note on highway matters and supporting bundle of documents, provided by the appellant.

30. Statement by Darren Notley.

31. Statement by Dominic Bethencourt-Smith.

32. Statement by Clarissa Flynn.

DOCUMENTS PROVIDED AFTER THE ADJOURNMENT OF THE INQUIRY THROUGH THE ENHANCED WRITTEN REPRESENTATION PROCEDURE

33. Additional written statement and appendices, provided by the appellant.

34. Additional written statement and appendices, provided by the Council.

35. Interested party comment on appellant's additional written statement from Paul King.

36. Interested party comment on appellant's additional written statement from Sarah Kerr.

37. Inspector's questions to the parties.

38. Appellant's response to Inspector's written questions.

39. Council's response to Inspector's written questions.

40. Copy of Appeal Decision - APP/R4408/W/19/3242646 - Land to the South of Lee Lane, Royston, Barnsley, provided by the Appellant.

41. Council's closing submissions.

42. Appellant's closing submissions.

43. Signed Counterpart copies of the Section 106 Agreement from the appellant.

44. Signed counterpart copy of the Section 106 Agreement from the Council.

45. Copy of a Secretary of State decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529 at Land off Adlem Road/Broad Lane, Stapeley, Nantwich and Land off Peter De Stapeleigh Way, Stapeley, Nantwich respectively, along with comments provided by the appellant.

46. **Council's reply to appellant's comments on** Secretary of State decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529.

47. **Appellant's final comments in response to Council's reply on Secretary of State** decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529.

The Planning Inspectorate

Appeal Decision

Inquiry held on 4-7 and 11-14 February 2020

Accompanied site visits made on 4, 13 February 2020

Unaccompanied site visit made on 14 February 2020

by Christina Downes BSc DipTP MRTPI

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

Decision date: 9 April 2020

Appeal Ref: APP/X0360/W/19/3238048
Land north of Nine Mile Ride, Finchampstead, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Welbeck Strategic Land II LLP against the decision of Wokingham Borough Council.
- The application Ref 181685, dated 11 June 2019, was refused by notice dated 29 March 2019.
- The development proposed is the erection of up to 118 dwellings and associated parking landscaping and open space (outline) and change of use of part of the land to form a suitable alternative natural greenspace (SANG), incorporating an outdoor education area (full)

DECISION

1. For the reasons given below, the appeal is dismissed.

PROCEDURAL MATTERS

2. The appeal concerns a hybrid application. The residential development relates to the southern part of the site and was made in outline form with access to be considered at this stage. A further plan was submitted with the appeal to show the internal road layout in accordance with the provisions of the *Town and Country Planning (Development Management Procedure) (England) Order* 2015. The SANG relates to the northern section of the site and this part of the application was made in full.

3. At appeal stage the Appellant requested that the red line boundary be changed to omit the gypsy site on the southern part of the site and also a small area of land adjacent to the southern boundary. Minor revisions were also requested to the northern boundary of the SANG. As a consequence, the maximum number of dwellings would be 117. In addition, an uplift of affordable housing from 40% to 50% was proposed, along with the incorporation of 5% Self-Build and Custom-Build serviced plots into the scheme. The Council had no objections to these changes, and I am satisfied that they would not be prejudicial to any third-party interests. I have therefore determined the appeal on this basis.

4. During the inquiry the Appellant submitted a "proving layout". This sought to introduce a layout that provided a better relationship of houses to protected trees, especially on the south-western part of the site. The layout of houses

on this drawing is illustrative of how the site could be developed. Amended SANG Landscape Proposals and Indicative Masterplan drawings have been submitted that include the proving layout and the various boundary changes referred to in the preceding paragraph. For the avoidance of doubt, they are drawing numbers P16-1187_20 Rev F and P16-1187_01 Rev N respectively and I shall take them into account.

5. The proposal is supported by a Planning Obligation by Agreement (S106 Agreement) and a Planning Obligation by Unilateral Undertaking (UU). Due to the large number of signatories it was not possible to complete the Deeds before the close of the inquiry. I therefore allowed a short amount of extra time accordingly. However, due to the illness of one of the freehold owners, 3 of the land parcels could not be included. Both Deeds therefore include a covenant that development will not be commenced until a Confirmatory Deed with these owners has been entered into. I understand that the Council has no objection to this arrangement, and I am satisfied that it would ensure that the covenants would be enforceable.

6. During the inquiry the Appellant also put forward various measures to improve accessibility. These included the widening of the footway between the California Crossroads and Park Lane; the provision of shelters at the two nearest bus stops; and a new pedestrian crossing to Nine Mile Ride. The provisions are included in the UU and were discussed at the inquiry. The Council objected to them and the Appellant did not consider them necessary to make the scheme acceptable. The provisions are considered further below.

7. The application was refused for 10 reasons. 5 of these were not pursued by the Council at the inquiry. These concerned ecology and biodiversity; the Thames Basin Heaths Special Protection Area; archaeology; and the absence of a legal agreement relating to local employment skills and affordable housing.

8. Following the close of the inquiry I asked the main parties whether they wished to comment on any implications that the Coronavirus (Covid-19) pandemic may have in terms of their evidence on housing delivery. I have taken the responses into account accordingly. The Appellant also submitted a further recent appeal decision by the Secretary of State, which was also copied to the Council, relating to residential development at Long Melford Suffolk. I have had regard to its contents, but I am satisfied that it does not necessitate further comment by either party.

REASONS

Planning policy context

9. The development plan includes the *Wokingham Borough Core Strategy Development Plan Document* (the CS), adopted in 2010 and the *Managing Development Delivery Local Plan* (the MDD LP) adopted in 2014. Whilst the 2009 South East Plan has been revoked, policy NMR6 relating to the Thames Basin Heaths Special Protection Area was saved and is also relevant to this proposal. The Council is in the process of preparing a new Local Plan, but this is at a very early stage and has not yet been submitted for examination. It therefore has little weight at the present time.

10. There is no dispute that the appeal site is not within or adjacent to any designated settlement, including Finchampstead North. For policy purposes it is within the countryside.

11. At the inquiry there was a great deal of debate as to whether the most important policies for determining the application are out-of-date. Paragraph 11d) of the *National Planning Policy Framework* (the Framework) is precise in its language. Its **reference to "application" rather than "appeal" means that** it is those policies relating to the consideration of the whole scheme rather than those matters in dispute at the appeal that should be included. However, **"most important" policies do not mean "all relevant"** policies and it is a matter of judgement for the decision-maker to decide what these may be. Case law has determined that it is the basket of most important policies as a whole that is the relevant consideration.

The most important policies

12. There was no agreement between the main parties as to what constituted the most important policies in this case. Most of the policies in the reasons for refusal fall within this category although I consider that policy CP4 in the CS relating to infrastructure requirements and policy TB25 in the MDD LP relating to archaeology are relevant but not most important.

13. There is no dispute that the following policies should be considered most important:

    - CS: policies CP1, CP3, CP6, CP9, CP11
    - MDD LP: policies CC01, CC03, TB21, TB 23
    - South-East Plan: policy NRM6

14. There is dispute about the following policies:

    - CS: policies CP2, CP4, CP5, CP7, CP8, CP17, CP18
    - MDD LP: policies CC02, CC10, TB05, TB08, TB12, TB25

15. Although the following policies are relevant, I do not consider that they fall within the category of most important for the following reasons:

    - Policy CP2 has a number of social objectives that would be applicable to the development. However, the gypsy site is now outwith the application boundary.
    - Policy CP4 relates to infrastructure requirements, which would be addressed through the legal Deeds.
    - Policy CP18 is specific to the Arborfield Garrison Strategic Development Location (SDL), albeit that its future development would impact on the proposal particularly in respect of accessibility.
    - Policy CC10 relates to sustainable drainage, which could be addressed through a planning condition.
    - Policy TB12 requires an employment and skills plan. Although it was a reason for refusal it would be addressed through the S106 Agreement.

- Policy TB25 relates to archaeology but the appeal site is not in an area shown to be of high potential and the reason for refusal could be addressed through a planning condition.

16. Policy CP17 relates to housing delivery and sets out the CS housing requirement and how it will be addressed through the supply of sites from various sources. This is clearly relevant to a consideration of any housing proposal. However, I agree with the Inspector in a recent appeal decision relating to a residential scheme in Hurst[1] that it is not a development management policy that plays a significant role in determining planning applications. It is therefore not a most important policy in this case.

17. The most important policies to this application proposal are thus as follows:

- CS: policies CP1, CP3, CP5, CP6, CP7, CP8, CP9 and CP11
- MDD LP: policies CC01, CC02, CC03, TB05, TB08, TB21, TB23
- South East Plan: policy NRM6

Whether the most important policies are out-of-date

18. Whether development plan policies are considered out-of-date in terms of paragraph 11d) of the Framework will depend on their degree of consistency with its policies. There is no dispute that policies CP1, CP8, CC03, TB21, TB23, and NRM6 do not fall within this category. Policy TB08 is questioned by the Appellant but I am not satisfied that there is evidence that the open space standards on which it is based are other than relevant.

19. In the CS, policy CP3 has 10 general development control criteria against which proposals should be assessed. The provision setting out open space requirements is not based on a current assessment in accordance with paragraph 96 of the Framework. On the other hand, this is rectified by the more recent MDD LP policy TB08. The provision requiring no detrimental impact on important ecological and heritage features does not follow the wording or approach in paragraphs 175 and 194 of the Framework. However, this is a general policy and all but 2 provisions are agreed to be consistent with the Framework. I consider that it is important to take a sensible and proportionate approach and I conclude that policy CP3 is not out-of-date.

20. Policy CP5 includes a provision that residential proposals of at least 5 dwellings will provide 50% affordable housing where viable. Whilst this part of the policy does not apply to the appeal proposal due its size, it is not in accordance with paragraph 63 of the Framework and therefore is out-of-date.

21. Policy CP6 is a permissive criteria-based policy. It indicates that permission will be granted if road safety is enhanced, adverse effects on the network are mitigated and highway problems are not caused. It does not say that permission will necessarily be refused if these provisions are not met. I appreciate that the wording is different from paragraph 109 of the Framework but the way that it is worded does not make it inconsistent.

22. Policy CP7 relates to biodiversity and seems to me to generally follow the

[1] Appeal decision relating to the erection of 5 dwellings at Lodge Road, Hurst, dated 31 January 2020 (APP/X0360/W/18/3194044).

principles in paragraph 175 of the Framework relating to development management. Reference is also made to enhancement, but this is dealt with in accordance with paragraph 174 by policy TB23, which is also agreed by the main parties to be a most important policy and not out-of-date.

23. In the MDD LP, policy CC01 sets out the presumption in favour of sustainable development. Unsurprisingly it does not set out the wording changes introduced in the 2019 version of the Framework, perhaps most importantly referring to the consideration of relevant rather than most important policies. It is not therefore consistent with paragraph 11 of the Framework.

24. Policy TB05 relates to housing mix. It refers to the *Affordable Housing Supplementary Planning Document* within this context and not in relation to the trigger for affordable housing provision, which is dealt with in CS policy CP5 and referred to above. Policy TB05 is therefore not out-of-date.

25. For the reasons given above I do not consider that policy CP17 in the CS is a most important policy, but I do consider it to have relevance to the consideration of whether policies CP9 and CP11 in the CS and policy CC02 in the MDD LP are out-of-date. The housing requirement in policy CP17 was based on the now revoked South-East Plan and is clearly no longer fit for purpose. In any event, the Framework makes clear that as the strategic policies in the CS were adopted more than 5 years ago and have not been updated, local housing need should be calculated using the standard method set out in national planning guidance. There is no dispute that when applying the relevant 5% buffer the requirement is 844.4 dwellings per annum (dpa). This is significantly more than the 723 dpa in policy CP17.

26. The scale and location of housing and the associated development limits were established to accommodate this lower housing requirement. However, as the Hurst Inspector observed, policy CP17 does not cap housing numbers and includes flexibility to bring land forward in identifying future land supply. Housing land supply is considered later in the decision, but the evidence is clear that this depends on some sites that are outside the development limits. The delivery of a sufficient supply of homes is a fundamental objective of the Framework but cannot be achieved through adherence to policies CP9, CP11 and CC02, which are all dependent on the development limits. These policies are therefore out-of-date. In this respect I disagree with the Hurst Inspector, but I note that there was no dispute about housing land supply in that case and therefore the evidence on which his conclusions were based was materially different.

Conclusions

27. From the above, I have found that 5 of the 16 most important policies are out of date. However, a consideration of whether the basket itself is out-of-date and therefore whether the appeal scheme complies with the development plan as a whole is a matter to which I will return in my final conclusions.

The effect of the proposed development on the character and appearance the area, the landscape and trees

28. The appeal site comprises 17.6 hectares (ha) of land on the northern side of Nine Mile Ride, close to its junction with Park Lane. The residential element of

the proposal would occupy the southern part of the site, immediately adjacent to the existing built-up area. At this point there are detached residential properties along the main road frontage but also driveways leading to individual dwellings to the rear and more substantial private accesses serving small residential clusters at depth.

29. Policy CP11 in the CS seeks to restrict proposals outside development limits other than in limited circumstances. The nearest settlement to the appeal site is Finchampstead North and the appeal scheme does not fall within one of those provisions where development would be permitted under the terms of the policy. The policy purpose is to maintain the quality of the environment and protect the separate identity of settlements.

Separation of settlements

30. The appeal site is within the area between Finchampstead North and the Arborfield Garrison Strategic Development Location (SDL). On the Key Diagram to the CS there is a zigzag line and the key makes reference to policy CP19, which relates specifically to this SDL. It requires, amongst other things, measures to maintain separation from Finchampstead North. The wording clearly indicates that it is the development proposals for the SDL that must provide the appropriate measures. The map of development limits in the MDD shows the two developed areas but does not include any specific gap notation in between. Indeed, the Examining Inspector specifically addressed this matter and considered that additional policy protection over and above that in policy CP11 would be unsound.

31. Gaps are a spatial tool to prevent coalescence between built-up areas and have little to do with landscape character. None of the criteria in policy CP11 are specifically directed towards ensuring that the 2 settlements do not get closer together. To my mind it is a policy that is aimed towards countryside protection and, as the supporting text makes clear, seeks to protect the character and setting of settlements and direct development to them for reasons of accessibility. I do not therefore agree that any development within the space between the Arborfield Garrison SDL and Finchampstead North would be harmful to spatial separation as a matter of policy.

32. In any event, in this case the new houses would not extend further westwards than the Robinson Crusoe park homes or further north than existing development served by the western access. In such circumstances the appeal scheme would not have any adverse effect on the separate identity of the settlements.

Effect on the landscape and trees

33. The proposed housing area mainly comprises grassland and trees. It would be divided into two main sections that would be linked by a pathway for pedestrians and cyclists. The western part is about 1.5 ha in extent and the eastern part is about 3.7 ha. To the north of the latter is a large swathe of woodland with grassland on its eastern side and western edges, which is proposed to form the SANG. The north-eastern portion of this land comprises part of the Longmoor Bog Site of Special Scientific Interest (SSSI) and this adjoins a similarly designated area in the southern part of California Country Park.

34. The *Wokingham District Landscape Character Assessment* (2004) (WDLCA) places the appeal site within the Forested and Settled Sands landscape type, which covers the south-eastern corner of the Borough. In particular it is part of the Finchampstead Forested and Settled Sands landscape character area (LCA). This was originally part of the Royal Forest and its long straight roads follow the line of the historic rides that provided access to the royal hunting grounds. There is a strong linear pattern of mainly post-war detached housing within a woodland setting along with more recent estate infill.

35. The appeal site is representative of many of the key characteristics of the LCA. In particular, the influence of the adjacent built-up area is evident especially in the southern section of the site. The proposed access points link into the long, straight green corridor of Nine Mile Ride and woodland covers large parts of the site itself. The enclosure provided by the dense stands of trees creates a sense of remoteness and isolation. The SSSI is former heathland although it has been invaded with undergrowth and bracken.

36. The WDLCA records that this landscape is of high quality and generally good condition. The overall strategy is to conserve and actively manage the woodland, important wildlife habitats and recreational use. The LCA is considered to have moderate sensitivity to change overall. However, there are some aspects of higher sensitivity, including the influence of the long, straight historic rides, the forest, the ecological habitats and the perceptual qualities.

37. The proposed development would result in a substantial loss of trees. In total more than 1,000 protected trees would be removed. This would amount to about 8% of the total tree cover if the Appellant's assessment is correct[2]. On the face of it this would seem to be a significant loss of one of the key characteristic features of this LCA. However, a numerical assessment is insufficient in itself for several reasons.

38. I observed at my site visits that the quality of some parts of the woodland on the northern part of the site was in poor condition. Some areas were overcrowded with young saplings competing for space. There were also many fallen, windblown or damaged trees. I noted a sense of neglect and this has arisen from a lack of proper management. This is private woodland and there is no reason why judicious stewardship should not take place independently of the development proposals. However, there is no evidence that such an eventuality is likely to happen. In the circumstances, the removal of trees in the interests improving the structure, condition and resilience of the woodland would have qualitative benefits to the LCA. I consider that the tree loss that is proposed for management purposes should not be seen to impact negatively in landscape terms.

39. The proposal would also include restoration of the SSSI, which it currently in unfavourable condition. The heathland habitat has been seriously diminished by the encroachment of undergrowth, in particular bracken, following a wildfire in 2011. The proposal is to clear the area of the invasive species in order for heather and other heathland habitats to re-establish. It emerged

[2] The Appellant's assessment was that the site contains about 12,000 trees. This did not include the stand of pine trees within the SSSI. It was agreed that the ecological evidence indicated these would be removed. However, the assessment that they amount to 350 trees was not agreed by the Appellant.

during the inquiry that a relatively dense stand of pine trees on the northern part of the SSSI would be felled in order to undertake this work. In terms of the landscape effects, the harm resulting from the removal of the trees has to be balanced against the ecological benefits to the SSSI. Heathland is a characteristic of the LCA along with the rich wildlife habitats, lakes and bogs. Restoration of these areas is part of the overall strategy in the WDLCA. For this reason, I do not consider that the loss of the pine trees would result in overall landscape harm.

40. However, a significant amount of tree loss would be necessary to enable the housebuilding and also to create the eastern access. The proving layout shows how 117 dwellings could be accommodated on the site. Whilst this is illustrative, it indicates that wherever possible housing would occupy the open grassland areas that immediately adjoin the existing built-up area. However, the Appellant's Tree Survey indicates that there would be significant tree clearance. Although there could be tweaks here and there, it is very clear that the residential development could not be accommodated unless a large number of trees were felled. Whilst it is appreciated that the 117 dwellings is expressed in the application as a maximum, there is no evidential basis for assuming a lower number would be built if planning permission were granted.

41. It is appreciated that the Appellant's objective has been to focus on removing the lower quality trees. However, it is relevant that they are all protected by a Tree Preservation Order and there is no evidence that the areas in question would need to be cleared for purposes of woodland management. Indeed, I saw no such indication at my site visit. Some of the trees are assessed in the Tree Survey to be of relatively low value. Nevertheless, they form part of the woodland edge that make an important contribution within the landscape between existing housing and the wider countryside.

42. Furthermore, a significant number of individual trees and tree groups within the area to be cleared are shown in the Tree Survey to be category B2, which BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* (BS 5837) indicates have moderate quality with a remaining life expectancy of at least 20 years and collective landscape value. Furthermore, there are also some individual trees classified as category A2, which BS 5837 indicates have higher quality with a life expectancy of over 40 years and landscape importance even though this may be as part of a group.

43. Whilst post-war development and modern estate housing is a characteristic element within the LCA this is typically of a linear nature along the rides. Modern infill between the rides is prevalent in Finchampstead North. However, in the vicinity of the appeal site development has been of an ad hoc nature with low density housing extending behind the frontage housing in an irregular and unplanned way. It seems to me that this creeping urbanisation is one of the key issues that the WDLCA is seeking to rectify.

44. I appreciate that the Appellant considers that this would be a unique development with pockets of housing within a treed setting. Whilst I do not doubt that it would be a high-quality scheme, in my opinion it would essentially be a suburban estate of considerably higher density than its surroundings. New tree planting is proposed along the streets, in amenity spaces and in gardens, but the size and species would be likely to be dictated

by their residential context and the limited availability of space. The built development would not, in my opinion, be reflective of the LCA of which it would form a part and the significant net loss of trees to accommodate it would lead to unacceptable landscape harm.

45. A sense of remoteness and solitude is evident, especially in the woodland on the northern parts of the site. Whilst this cannot be publicly experienced due to the private ownership of the land it nevertheless is reflective of one of the key characteristics of the LCA. Whilst this is said to be a landscape of good public accessibility its very provision through the proposed woodland walks and the like, would undoubtedly diminish the qualities of isolation that are attributable to this particular landscape.

46. BS 5837 indicates that care should be taken to avoid misplaced tree retention or attempts to retain too many or unsuitable trees. None of the protected trees would be in private garden areas and the proving layout demonstrates that it should be possible to avoid undue pressure from future occupiers to seek permission to fell or severely prune remaining trees. There would be some overhang of tree canopies on the parking bays shown on the southern side of the access road on the western section of the site. However, methods could be employed to avoid significant root disturbance. Some gardens would be overhung with tree canopies, but I am satisfied that there would be no excessive overshadowing. The Council highlighted instances where development in close proximity to protected trees had made requests to fell unavoidable. In this case I consider that the scale of tree removal would avoid a situation that could not be reasonably controlled.

Effect on the Green Route

47. Nine Mile Ride follows the route of one of the historic linear rides through the Royal Forest. This section has a typically green character being lined with trees and understorey planting, garden boundary hedges and soft verges. Frontage housing, which at this point is mainly on the northern side of the road, is set back behind generous sized front gardens. The frontage is punctuated by private driveways or narrow roads that serve the houses to the rear. Nine Mile Ride is shown as a Green Route in the MDD LP. This is defined as a road lined with trees and vegetation that makes a significant contribution to the character and environment of an area. Amongst other things, policy CC03 in the MDD LP requires proposals affecting such routes to protect and retain existing trees, hedges and landscape features.

48. The eastern access would be a 6 metre (m) wide roadway with a 2 m footway on the eastern side, a bell mouth and grass verges. The existing unmade driveway would therefore be replaced by a substantial engineered feature, which would lead into the site through a straight corridor some 12 m wide. A significant number of individual trees would be lost, including an English Oak and a Beech close to the road frontage. These are category B2 in the Tree Survey and of good quality with landscape value. The other trees to be felled along the new line of the road include English Oak, Sweet Chestnut and Silver Birch. Although these are category C and less visible, they do make a contribution to the green infrastructure that characterises the Green Route. It is appreciated that there would be a group of Scots Pine, Rhododendron and English Oak behind the felled trees. However, these would be in the garden of

the adjoining property and would not compensate for the significant loss of greenery described above.

49. Even though the new roadway would be flanked by new grass verges, I consider that it would be an incongruous urban element that would be very different in character to most other modest private roads and driveways. Whilst the corridor is not devoid of engineered features, including the existing hard surfaced frontage to Oak Tree Nursery, these are not typical of this stretch of Nine Mile Ride. Reference was made to the larger entrances to California Country Park and Nine Mile Ride Industry. However, these are a long established recreational and commercial facility respectively and neither is within the linear residential frontage.

50. At the inquiry proposals were put forward to enhance accessibility and they are discussed in the following section. However, of particular relevance to the Green Route is the potential widening of the footway to 2 m along the 2 kilometre stretch on the northern side of Nine Mile Ride between California Crossroads and Park Lane. There are mature trees close to the back edge of the footway and it is clear that the proposal would retain a narrower width in places so as to protect tree roots. Nevertheless, the work would remove the soft verges that currently exist between the edge of the footway and individual property boundaries in many places. Whilst these vary in quality, they do provide a soft and in places green edge to the footway. The footway widening would therefore be harmful to the character of the Green Route.

Visual effects

51. Public views into the site are relatively limited due to its location to the rear of established development and the intervening tree cover. It is doubtful whether pedestrians or drivers would see the new houses from viewpoints along Nine Mile Ride. The exception would be along the eastern access where I consider it likely that those walking along the footway would be aware of the houses at the southern end of the site. However, such a view would be at a distance and localised and the adverse effect would be of minor significance.

52. The trees would be retained along the side boundary of the western section of the site. When in leaf they are likely to provide an effective screen from viewpoints in Park Lane. In the winter months there would be greater visibility and the upper parts and roofs of the new houses would be seen. However, this would be at a distance and within the context of the Robinson Crusoe park homes and the lake in the foreground. Pedestrians using the footway, including those walking to Bohunt School or the new District Centre would be sensitive to the changes but overall, I consider the adverse impact would be of minor significance.

53. There is a pedestrian walkway within the southern part of California Country Park from where there are views into the site. At present these are restricted by the dense stand of pine trees at the northern end of the SSSI but as referred to above these are proposed to be removed as part of the ecological restoration work. Viewers within this area would be highly sensitive to change and would be able to see the northern edges of the development parcel on the eastern side of the site. Whilst there would be some remaining intervening trees and the view would be at a distance of some 300 m, it was agreed that the adverse impact would be of moderate-major significance. The landscape

proposals would include new tree planting within the open area of the SANG to the north of the houses. After 15 years when this becomes established the adverse impact would be likely to reduce to moderate.

Overall conclusion

54. Drawing together the above points, the proposed housing development would not adversely affect the separation of Arborfield Garrison SDL and Finchampstead North. Whilst the visual impact would be limited, the views of new housing development from California Country Park would result in an unwelcome intrusion to those enjoying that recreational facility. Just because something would not be widely seen does not necessarily mean that it would be acceptable. For the reasons given above, there would be an adverse effect on the character of the area, the Green Route and the landscape.

55. A large amount of woodland on the overall site would remain and in terms of the LCA as a whole the loss of trees to accommodate the housing would be relatively small. However, the trees in question are protected and have value as part of the woodland edge and also individually and in groups. Whilst housing is a key characteristic of the LCA, outside of Finchampstead North that is particularly attributable to the linear development along Nine Mile Ride. The housing to the rear is ad hoc in nature and relatively low in density. The appeal scheme would further push development northwards into the countryside and would introduce an estate of houses that would fail to integrate successfully with its surroundings. Indeed, such creeping urbanisation is a key issue that is referred to in the WDLCA.

56. There would be benefits, including woodland management, restoration of the SSSI to favourable status and public recreational access to the SANG. These matters will be further considered in the planning balance below. However, for the reasons I have given, I conclude that the proposed development would cause very substantial harm and would conflict with policies CP3, CP11 in the CS, policies CC02, CC03 and TB21 in the MDD LP and the Framework, in particular paragraph 170b.

Whether the site is within an accessible location, which would allow new occupiers a real choice about how they travel

57. The CS indicates that the Borough has one of the highest rates of car ownership in the country. The 2011 Census shows that only about 5% of households in the two wards local to the appeal site do not have access to a car. Policy CP1 in the CS includes a provision that development should demonstrate how it would reduce the need to travel, particularly by car. Policy CP3 includes general principles including that proposals should be accessible, safe, secure and adaptable. Policy CP6 requires development to be located where there are, or will be, available modal choices to minimise the distance people need to travel.

58. Section 9 of the Framework promotes sustainable transport and opportunities to promote walking, cycling and public transport. It also points out that sustainable travel solutions will vary between urban and rural areas, which should be taken into account. In this case the appeal site is within the countryside for planning policy purposes. However, it is not within an isolated

rural area and it is reasonable to bear this in mind when considering what opportunities are available to maximise sustainable travel solutions.

Walking

59. There was much debate at the inquiry about how a reasonable walking distance could be determined. *Manual for Streets* indicates that walking offers the greatest potential to replace short car journeys, particularly those under 2 kilometres (km). Whilst not an upper limit, it indicates that walkable neighbourhoods are typically those where there are a range of facilities within a 10 minute (800 m) walk from home. Similar guidance is provided in the *Borough Design Guide* and *National Design Guide*. *The Institute of Highways & Transportation Guidelines for Providing Journeys on Foot* (the IHTC guidelines) suggest that an acceptable walking distance is 800 m with a preferred maximum of 1.2 km.

60. It should of course be borne in mind that these distances are advisory and there are many examples of housing developments that are further away from local facilities than 800 m. Furthermore, the IHTC guidelines make clear that what is acceptable will depend on a number of factors, including the mobility and fitness of the individual, the purpose of the journey and the convenience of alternative options. The nature, attractiveness and safety of the route are also relevant matters to be taken into account.

61. The Appellant's evidence indicated that apart from the bus stops, Oak Tree Nursery and the Nine Mile Ride Industry, all existing facilities would be between about 1.2-2.2 km from the centre of each section of the site. The nearest existing local shops and facilities are at California Crossroads, which is about 2 km away. The pedestrian journey would be along the north side of Nine Mile Ride where the footway varies between about 1.2-2 m in width. The section between the western access and California Country Park has relatively poor surveillance due to the set-back of the houses and sporadic street lighting. *Manual for Streets* indicates that for lightly used residential streets the footway should have a minimum unobstructed width of 2 m.

62. Nine Mile Ride is not lightly trafficked and the footway between the site and California Crossroads is not ideal for comfortable pedestrian movement. This would not be a walk that I would judge to be pleasurable to undertake, particularly at peak periods when the road is busy, during inclement weather or in the dark. Whilst some would travel on foot, I suspect that most people who have the choice would use the convenience of their car, especially as there is available parking outside the shops.

63. The evidence suggests that existing students do walk in a westerly direction along Nine Mile Ride to Bohunt School. This is on the Arborfield Garrison SDL and a crossing has been provided over Park Lane to make this a safer journey. There is no reason to suppose that children from the new development would also not walk the 1.5 km distance to the secondary school, notwithstanding the limitations of the footway along the Nine Mile Ride section. There are primary schools at Gorse Ride and Avery Corner, which are 1.9-2.1 km away respectively. Both involve walking eastwards and children would therefore encounter the same issues as people walking to the shops. I appreciate that the CS indicates that primary school children should have access to a school within safe walking or cycling distance of 3-4km of their

home. However, in my experience this is a challenging distance to expect young children to walk and, in any event, this takes no account of the shortcomings of the walking route described above.

64. The Appellant is willing to widen the footway between California Crossroads and Park Lane to 2km where possible. This would be implemented by a financial contribution in the UU, which has been costed accordingly. However, it is recognised that it would not be possible to achieve the desirable width along the whole route without an unacceptable loss of trees. It would therefore be necessary to maintain existing narrower sections in places where trees are close to the footway edge. Whilst no detailed survey has been undertaken the Appellant considered that this would affect about 160 m of the 2 km route. This improvement would be the best that could be done but for the reasons given above, it would result in harmful environmental effects to the Green Route. In any event, apart from school journeys to Bohunt School, I am not convinced that the walking environment would be sufficiently improved to encourage a significant increase in walking trips especially in the direction of California Crossroads. Other issues including the length of the journey, poor street lighting and absence of surveillance would still act as a deterrent.

65. New facilities are planned at Arborfield Garrison SDL. This includes a new District Centre, and the approved Development Brief indicates that this will contain an anchor foodstore as well as other shops, facilities and services. The walking route once within the site is presently unclear but it seems likely that the District Centre would be about 1.5 km from the site. The legal agreement attached to the outline planning permission for the northern section of the SDL requires that reserved matters for the District Centre should be approved and 25% of it completed by the occupation of 1,000 dwellings. To date some 287 dwellings have been delivered. For the reasons given below, I consider it unlikely that the trigger point will be met in the next 5 years. However, even if it is, that would only require part of the District Centre to be built. It is thus unclear when the shops and facilities would become available. In any event it seems to me that many would not choose to walk from the site, especially if it entailed carrying heavy shopping.

66. Other proposed facilities at the Arborfield Garrison SDL include an extension to the Hogwood Lane employment area, a new primary school and a Local Centre. Reserved matters approval has been given for the Local Centre, which would be about 1.3 km away from the site. The information suggests that it would include two small shops but there is no clarity as to when these facilities would be provided.

Cycling

67. There are many facilities within a 5 km cycle distance of the appeal site. These include employment opportunities, schools, leisure facilities and shops. Crowthorne Station would also be accessible by cycle and it offers secure cycle parking facilities**. However, the Council's Cycling Map indicates that the** routes in question contain no dedicated cycling infrastructure, although parts of some journeys could be undertaken on what are termed **"quiet routes".** There is also a recently introduced route for cyclists between Finchampstead and Arborfield Garrison. Nevertheless, Nine Mile Ride and indeed much of the

local road network carries significant amounts of traffic. I observed on my journeys to and from the inquiry that at peak periods there is considerable congestion, especially along the roads that lead in and out of Wokingham. In the circumstances I consider that cycling would not be for the faint hearted, especially during peak periods.

Bus

68. The site benefits from bus stops close to the western access. The Chartered Institute of Highways and Transportation document *Buses in Urban Developments* provides relatively recent guidance that 300 m is now normally considered to be an acceptable walking distance to bus stops. However, it advises that this will depend on the characteristics of the route, the fitness and mobility of the traveller and the purpose of the trip. In this case the bus stop would be less than 300 m for those living on the western section of the site and 400 m or more for those living on the eastern section. Although the walk would be relatively level and quiet, the distance from the larger eastern residential area is likely to deter some from walking to the bus stops.

69. The CS refers to a "good" public transport service as one at 30 minute intervals during peak times, hourly intervals during off-peak hours and a service on Sundays. The site would be served by Route 3, which runs between Wokingham and Reading and currently provides an hourly service but no buses on Sundays. There are also buses between Shinfield and The Forest School and Bohunt School to convey pupils on Mondays to Fridays during term times. As things stand this is not a "good" level of service that would encourage many people to use it in preference to the convenience of the private car.

70. Improvements to bus services are planned through the *Arborfield SDL Public Transport Strategy*. This will provide an enhanced 30 minute service between Reading and Wokingham and a new hourly service between Reading and Bracknell. The evidence suggests that the improved services will be phased and dependant on the accumulation of sufficient financial contributions as development proceeds. However, the Council emphasised many times during the inquiry that good infrastructure provision was the main strength of focusing development at the strategic locations. In such circumstances it is reasonable to suppose that public transport delivery will be expedient.

71. The appeal proposal includes a financial contribution towards bus improvements, which I was told would be sufficient to fund 5 return journeys between Reading and Wokingham on Sundays for about a year. In such circumstances the future improvements to bus travel is a matter to be taken into account when considering the matter of accessibility.

72. At the present time the nearest bus stops are denoted by pole signs close to the western access to the appeal site. On the south side there is no footway and the bus stop is on the grass verge. The appeal scheme proposes to install a hard-surfaced area leading up to the south side bus stop and bus shelters on both sides. The north side stop would be relocated nearer to the western access to take account of the alterations to the entrance to Oak Tree Nursery. It seems to me that the bus shelters would help encourage new residents to use the enhanced bus service by making their waiting time more comfortable, especially in inclement weather. A similar style of shelter is provided outside

California Country Park. This seems to me to blend satisfactorily into the green environment along Nine Mile Ride. Whilst the Council has raised a number of concerns including the impact on tree roots, available width of verge and interference with sight lines, I am satisfied that a scheme could be designed to adequately address these matters.

73. The Appellant has also proposed a new crossing to allow pedestrians to safely access the southern bus stop. At present there are no other facilities that would require people to cross Nine Mile Ride at this point, not least because there is no footway along this side of the road. Although the plan appended to the UU shows a signal-controlled crossing, this is indicative and the Appellant made clear that a zebra crossing, for example, would be a possible alternative. The implications for interrupting traffic flow have not been assessed and no formal consultation has been undertaken. However, the evidence indicates that a formal crossing would be unlikely to be justified. Even if the modal shifts anticipated in the Framework Travel Plan were to be achieved, the Appellant estimated that only about 6 new residents would use the crossing to reach the southern bus stop in the morning peak and 4 in the afternoon peak. The bus stops outside the entrance to California Country Park provide a dropped kerb and tactile paving rather than a formal crossing and to my mind this would be sufficient in this case.

Train

74. There are direct rail services to Reading and London, Waterloo from Wokingham railway station, which is about 6 km from the appeal site. Crowthorne Station is about 4.5 km away and there is also a service to Reading where trains also run to London, Waterloo. Whilst there are secure cycle parking facilities at both stations, for the reasons given above, the routes are not particularly attractive, especially during peak periods. The bus stops at Wokingham station but although it is a relatively short trip the route is congested at peak times. Car travel would suffer from the same issue but would be more flexible in terms of times of travel and connections and could take advantage of the parking facilities at the station.

Travel Plan

75. The appeal proposal includes a Framework Travel Plan and a planning condition could be imposed to require a full Travel Plan to be agreed prior to first occupation of the development. The anticipated modal share targets would be challenging with a drop of 14% in car travel relying on a significant rise in pedestrian, cycle and bus travel. For the reasons given I do not anticipate that walking or cycling would be particularly popular and therefore such optimism seems unrealistic. However, I appreciate that final targets would be determined when the site became operational and that measures to encourage occupiers to use sustainable modes could include travel packs and free bus passes, for example.

76. The Council operate a Borough-wide travel plan initiative called MyJourney. This aims for a more co-ordinated approach through a dedicated team of officers and provides an alternative to travel plans by individual developers. It has the advantage of being able to apply economies of scale in terms of monitoring, promotions and marketing for each individual site. A cost of £450 per dwelling is charged and this was originally calculated for the SDLs where

the scheme originated. MyJourney is optional and the Appellant is content to provide the requisite contribution as well as fund a Travel Plan. However, there would be considerable overlap between the 2 approaches and requiring both would not pass the test of necessity.

Conclusions

77. The enhanced bus service that will be provided by the Arborfield Garrison SDL, the bus contribution from the appeal scheme, the proposed new bus shelters and the Travel Plan or MyJourney contribution would provide some opportunities for modal shift. However, for the reasons given I consider that this is a site where modal choice is and will remain relatively compromised. Those living on the development would therefore remain largely dependent on the convenience, flexibility and security of the private car for most of their journeys. The appeal scheme would thus conflict with policies CP1, CP3 and CP6 in the CS and with section 9 of the Framework.

78. A great deal of the Appellant's evidence was directed towards comparing the appeal site with others in terms of proximity to services and facilities. However, such an exercise needs to be treated with caution. Most of the sites referred to in the evidence are shown to be close to some facilities than the appeal site and further away from others. In most of the locations chosen it is to be expected that people will meet at least some of their needs through the use of a car. The important point is whether alternative choices are available for as many local journeys as possible.

79. In looking at different sites it is also important to compare like with like. Context is very important and in the grant of planning permission there are likely to be a number of considerations to balance. Also, accessibility is a relative term and depends on context rather than distance alone. For example, the quality of the walk, cycle route or bus journey will be an important factor and its convenience when compared with other modal alternatives. This means that in many cases the judgement will be site-specific. I have considered all of the examples that the Appellant has given but the comparison undertaken does not lead me to alter my conclusions on this issue.

Five-year housing land supply

80. The housing requirement in policy C17 of the CS was based on the now revoked *South East Plan* and is clearly no longer fit for purpose. In any event, the Framework makes clear that as the strategic policies in the CS were adopted more than 5 years ago and have not been updated, local housing need should be calculated using the standard method set out in national planning guidance.

81. There is no dispute that the relevant 5-year period is 1 April 2019 to 31 March 2024. The local housing need based on the standard methodology is 4,022 dwellings. Over the previous 3 years the 2019 Housing Delivery Test shows 175% completions against requirement meaning that the test is passed and that a 5% buffer is applied. This gives an overall figure of 4,223 dwellings. In its latest *Five-Year Housing Land Statement* (July 2019) (HLSS) the Council indicates that its deliverable supply is 5,398 dwellings and that it can demonstrate a 6.39-year supply. The Appellant disputes this and believes that

it is only 4.75 years. This is generally on the basis that delivery rates are overly optimistic, although in some cases the deliverability of the site is questioned.

82. The 2019 Framework includes a much more rigorous approach to the issue of deliverability. It makes clear that the site must be available and in a suitable location for development to take place now and that there should be a realistic prospect that housing will come forward on the site within 5 years. There are 2 closed categories, but the main dispute in this case relates to the second one. These are mainly the large strategic sites with outline planning permission, and it is the Appellant's case that the Council is overly optimistic as to the quantum of housing that will be delivered over the 5 year period.

83. The evidence clearly indicates that historically the Council's record of delivery has not been very good. In the 13 years between 2006/7 and 2018/19 the CS requirement has only been met in 4 years. However, it is relevant that this has improved recently and in the last 3 years the requirement has been exceeded by a significant amount[3]. This supports the Council's point that a large amount of the supply relies on the SDLs. Housebuilding here has often depended on the early delivery of significant infrastructure and this has meant that it was slower to come forward in the early years. The Council contends that developers are now keen to build at pace and it was pointed out that there are some 2,000 homes currently under construction in the Borough.

84. Nonetheless, the evidence suggests that the Council has often been overly optimistic with its forecasting and that performance has consistently lagged behind prediction. Even in the latest HLSS it is shown that only 35% of the predicted number of residential units were actually built. It is not unreasonable to surmise that in order to successfully function in a very competitive industry housebuilders may be tempted to talk-up delivery. In addition, it is understandable that they would wish to present a favourable picture to investors, shareholders and indeed the Council. However, the market can only absorb a certain amount of new housing and developers are unlikely to build houses if they think they will be standing empty for a long period of time. This is clearly an issue that is very dependent on the buoyancy of the local housing market but also the number of outlets competing for the same slice of the market. Those developers who offer a range of housing products or focus on a particular niche are likely to be able to sustain a higher output.

85. On the other hand, the Council has recently been putting more rigorous processes in place to ensure improved accuracy with assessing future delivery rates on individual sites. There is a specialist team of officers that now deals with SDL delivery with a dedicated officer for each one. Regular contact is maintained between the relevant developers and landowners and the information received is carefully scrutinised using empirical evidence, knowledge of the developer and specific site information. I was also told that the Council is adopting a more cautious approach to build-out rates, including moving sites further on in the trajectory or else removing some altogether if delivery seems to be in doubt.

[3] 2016/17, 2017/18 and 2018/19.

86. The onus is on the Council to justify its forecast delivery for sites with outline planning permission. I acknowledge that in a number of recent appeals the housing land supply was not challenged. However, this may have been for a variety of reasons and not just because the appellants accepted that the supply was robust. Whatever the reason, the Appellant has challenged the supply in this case with detailed evidence. Whilst reference has been made to appeal decisions where housing supply was examined, any assessment will be a snapshot in time and depend on the evidence that has been presented. In the circumstances, I have reached my own conclusions on the evidence that I have been given.

87. Since the inquiry the world has been afflicted with the Coronavirus pandemic and this is likely to result in economic repercussions at least in the short term. Bearing all of this in mind I now turn to the disputed sites and my conclusions regarding their delivery.

The Strategic Development Locations

Arborfield Garrison SDL

88. In this SDL the delivery of homes has undoubtedly been much slower to get off the ground than anticipated. However, the development relies on the early provision of infrastructure and this is now well underway with the Nine Mile Ride Extension (north) completed and opened in 2017. Outline planning permission has been granted for 3,500 dwellings and the District Centre. A number of developers are involved, and reserved matters approval has been given on some of the parcels.

89. On the Hogwood Farm part of the SDL, the trajectory indicates that 240 dwellings will be delivered. There is reserved matters approval for 178 and the dispute is with the remaining 62 dwellings. The developer, Legal and General, has just obtained reserved matters approval for the southern extension to Nine Mile Ride and it is understandable that it is keen to deliver the rest of the houses**. The Council's information is that a reserved matters** application will be made in 2020 and I was told that this developer uses a modular system of housebuilding, which should allow faster delivery. The range of different housing products being proposed would also support the build out rates anticipated. Delivery would not be until the end of the 5-year period (2023/24) and from the evidence I am satisfied that the trajectory is robust.

90. On the northern part of the SDL there is reserved matters approval for all but 652 dwellings and of these 308 are included in the 5-year supply. There is a recent full planning permission for 70 dwellings leaving a disputed 238 dwellings. There are several developers operating on this site and the Council indicated that it has reduced their anticipated supply and so the 308 dwellings in the trajectory was cautious. However, there are no reserved matters applications and the evidence from Savills the marketing agent shows no developer interest in 14 of the 15 parcels. The one where there is a developer involved indicates that 44 dwellings are anticipated. However, Savills cautioned the forecasting as being subject to market conditions and not definite or fixed. There is insufficient evidence to be confident that any of these units will be delivered and the trajectory should be reduced by 238 dwellings.

91. The Appellant considers that the anticipated rate of delivery from Crest Regeneration, who are building out several parcels, is too high. Overall the trajectory shows 357 dwellings over the 5 year period, which averages at 71 dwellings per annum (dpa). This is considerably higher than the 50 dpa that the Council has adopted in its assumptions for larger sites with 2 or more developers. The Appellant considers that 107 of the dwellings should therefore be removed from the supply. However, the 50 dpa is an average rate across the Borough and I note that in 2018/19 Crest Nicholson delivered 63 dwellings from one parcel. Having considered all of the evidence, including the better communication initiated with individual developers and the different products on offer, I do not consider that the rate of delivery here is necessarily unrealistic.

92. The Appellant is also critical of the delivery rate from those parcels with reserved matters approval. This involves 1,059 dwellings and would result in an average delivery of 212 dpa. Whilst this is much faster than has happened in the past, housebuilding only commenced in 2016 and the expectation is that it will ramp up as a result of the completion of infrastructure. There are a number of different developers offering a range of housing products, including affordable housing and private rented accommodation. In the circumstances, there is insufficient evidence to justify the reduction in build-out rates suggested by the Appellant.

93. A condition on the outline planning permission for the northern part of the SDL only permits 1,000 dwellings to be delivered until 25% of the commercial floorspace in the District Centre has been completed. Progress is being made but there is no reserved matters application and the Development Brief does not give specific timescales. It is very difficult to be confident about when the District Centre will go ahead, especially with the present fluctuating retail market. The Council indicates that it could vary the condition. However, on the assumption that it was considered necessary when imposed it is far from certain that such steps would be acceptable. At present the northern part of the site is anticipated to deliver 1,119 dwellings in the 5 year period and only 713 remain to be built before the condition would be breached. Taking account of my conclusions in paragraph 90 above, this would leave 406 dwellings where delivery in the 5 year period is subject to doubt.

94. Drawing together all of the above points, 406 dwellings should be removed from the trajectory.

South of the M4 Motorway SDL

95. This SDL is one of the longer established strategic sites where delivery started in 2012/13. However, it was not until 2017/18 that it reached (and exceeded) the 250 dpa anticipated. This continued the following year and a total of 1,280 homes is forecast over the 5 year period. The **Council's own** evidence of delivery on 2 parcels[4], where there were 5 housebuilders involved, was about 39 dpa. The number of active parcels is set to decrease from 10 to 4 by 2021/2022.

96. The land west of Shinfield is being delivered by 3 developers. Linden Homes

[4] Land south of Croft Road (completed in 2018/19) and Land West of Shinfield (Phase 1) (275 of the 517 completed 2018/19).

have specifically indicated that it will be slowing delivery rates. Each parcel is indicated to deliver 75 dpa in the first 3 years of the trajectory but to significantly increase delivery on phase 2 in the last 2 years once phase 1 is completed. Although both sites are adjacent, the assumption that construction teams will be moved across to ramp up delivery on the phase 2 site does not seem to be based on evidence. In such circumstances I consider that the rates should remain consistent and that 73 dwellings should be removed from the trajectory.

97. Taylor Wimpey are active on 3 parcels and the trajectory shows a total of 346 dwellings being delivered over the 5 years. This indicates a rate of just short of 70 dwellings a year. The evidence on past rates for this developer on the south of Croft Road parcel show a delivery rate nearer the 50 dpa referred to in the HLSS. Overall, I consider that this is more realistic and that 96 dwellings should be removed from the trajectory.

98. I note that the Appellant considers that overall past delivery rates should be applied to this SDL going forward. Whilst as noted above Linden Homes have indicated a slowdown that does not necessarily apply to other housebuilders. It is not considered robust to adopt this approach, particularly when the evidence indicates that delivery has significantly improved since 2017/18.

99. Drawing together all of the above points, 169 dwellings should be removed from the trajectory.

North Wokingham SDL

100. This SDL has made slow progress and consistently failed to deliver in accordance with the trajectory until 2018/19. However, the evidence shows that matters are improving and that in 2019, 438 of the 827 dwellings anticipated over the 5 year period were under construction. The Council indicates that there is a likelihood that the 252 dwellings shown in the trajectory for 2019/20 will be delivered. There is evidence that delivery on the SDL is improving and that the increase shown in 2018/19 is likely not to have been due to a "spike" caused by pent up demand.

101. The trajectory shows that the number of outlets will decrease, but 3 developers remain active over the whole 5 year period. The Appellant's contention that a generic build-out rate of 100 dpa should be applied is based on historic rates and the evidence seems to me to be demonstrating that this SDL is now delivering, albeit after a slow start. In the circumstances I consider that no changes should be made to the trajectory.

Other sites

102. At Auto Trader House, Danehill it is understood that there was prior approval for 26 flats in March 2019 and this can be taken into account as part of the forward supply. On the other hand, there is no evidence that a development of 76 dwellings was being contemplated and indeed the Council refused permission for the scheme. Although this larger development was granted permission on appeal in June 2019 this was well after the base date of 31 March. In the circumstances the trajectory should be reduced by 50 dwellings.

103. At Stanbury House, Spencers Wood outline planning permission for 57 dwellings was granted on appeal in September 2018. It is appreciated that

part of the developer's case was that the site would assist the 5 year supply. However, from the evidence there has been no reserved matters application. The Council indicated it had sought an update from the developer but had received no response. Indeed, an application has now been submitted for 120 units on a larger site. The developer's intentions are thus far from clear. Even though delivery is shown to be in the last 2 years of the trajectory, the evidence does not show that housing completions will begin within the 5 year period. In the circumstances the trajectory should be reduced by 57 dwellings.

104. At Sonning Golf Club an outline planning permission was granted for 13 dwellings in July 2018. Apart from a reserved matters application relating solely to the access, no further approvals have been granted. Whilst this is a greenfield site, there are a number of pre-commencement conditions relating to such matters as contamination and archaeology that have not been discharged. It is understood that a pre-application meeting has been held with the housebuilder, Alfred Homes, but there is insufficient evidence that delivery will take place in the 5 year period. In the circumstances the trajectory should be reduced by 13 dwellings.

105. Outline planning permission was granted for 20 dwellings at Trowes Lane, Wokingham in February 2018. It is understood that a conditions application was approved in August 2018 but since then no further progress has been made. Cove Construction Ltd is the developer and the Council has indicated that the site is flagged on its website as "coming soon". However, the developer has not responded to the Council's enquiries and no reserved matters application has been forthcoming. Although this is a small site and has been placed in the final year of the trajectory, there is insufficient evidence that delivery will take place in the 5 year period. In the circumstances the trajectory should be reduced by 20 dwellings.

Windfalls

106. The small sites windfall allowance is not disputed. However, the Appellant contended that a large sites windfall allowance of 32 dpa from year 3 is not justified. The evidence of windfalls of 10 or more completions on previously developed land between 1999 and 2019 indicates an average of 44 dpa although there is considerable annual variation. The Council therefore consider that its rate is very conservative.

107. However, prior approvals would fall into the category of windfalls but there is no evidence that those identified specifically would all deliver in years 1 and 2. Similarly, there is no evidence that windfall sites with planning permission at the base date would deliver as quickly as the Council contends. In such circumstances I consider it likely that there is the potential for significant double counting. In the absence of any better evidence, the 96 dwellings comprising the large windfall allowance should be removed from the trajectory.

Conclusions

108. Drawing the above points together, I conclude that in my estimation 811 dwellings should be removed from the trajectory. This means that the Council can demonstrate a 5.43 year supply of deliverable sites.

109. The Covid-19 pandemic is likely to have implications for the housebuilding industry as with other sectors of the economy. The evidence indicates that a number of developers are temporarily closing their construction sites to protect employee and customer welfare. For those remaining open, the lock-down will impact on the availability of support services. Customer confidence is also likely to be reduced with a consequent effect on the buying and selling of property.

110. The Appellant has concluded that the effects would be felt for a 3 to 6 month period, which does not seem unreasonable. On that basis the conclusion is that a further 168 dwellings should be removed from the trajectory to take these factors into account. Whilst it is contended that this is an optimistic assessment, it is equally possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so.

111. At this stage the economic effects of Covid-19 cannot be known. However, even if all of the impacts suggested by the Appellant are accepted, the Council would still be able to demonstrate about 5.2 years supply of deliverable sites.

Other matters

Affordable housing

112. Policy CP5 in the CS establishes a minimum requirement for 40% affordable housing on sites such as this, subject to viability. The *Berkshire Strategic Housing Market Assessment* 2013-2036 (2016) identifies a need for 441 dpa. In the 6 years since 2013, 1,317 affordable dwellings have been delivered or an average of 220 per annum. This means that a backlog will accumulate year on year. If this were to be addressed over the next 5 years, delivery would have to amount to over 700 affordable dpa. This is not far off the total annual housing requirement, which demonstrates the scale of the issue and that the need is acute.

113. Wokingham is an expensive area in which to live and incomes are not keeping pace with price rises. The average house price to average income ratio now stands at 12:1. The evidence shows that there were 1,860 households on the Council's Housing Register on 1 April 2019 and that this had risen by 247 from the preceding year. In December 2019, 1,502 households were on the Help to Buy South Register, with 40 specifying a preference for a shared ownership dwelling in Finchampstead.

114. The proposed development would provide 50% affordable housing, which would amount to 59 units and be above that required by policy CP5 in the CS. The S106 Agreement indicates that the mix would be 66% social rented units and 34% shared ownership units with a mix of flats, bungalows and houses. Taking account of all of the above factors the affordable housing provision would clearly be an important benefit.

Self-build and Custom-build housing

115. Under the *Self Build and Custom Housebuilding Act* (2015) local authorities have a legal duty to keep a Register of those who wish to acquire serviced plots. The *Housing and Planning Act* (2016) requires local authorities to grant sufficient permissions to meet the demand on their Register on a rolling

programme of 3 years by the end of each base period. Paragraph 61 of the Framework indicates that the housing needs of different groups in the community should be assessed and reflected in planning policies. This includes people who wish to commission or build their own homes. As this is a relatively new provision, neither the CS nor the MDD LP include policies that relate to this issue. However, the emerging Local Plan does address this type of home provision and will be considered in due course by an Examining Inspector.

116. The evidence shows that in the first Base Period ending on 30 October 2019 there was an overprovision of permissions relative to demand. For Base Period 2 ending on 30 October 2020 the Appellant and Council disagree about the residual requirement is 83 or 62 dwellings. The Council referred to a community-led project of 21 dwellings on its own land, although no planning permissions appear to have been granted to date. The Appellant contends that the Council will fail to comply with its statutory duty within the current base period, on the basis of past provision rates and lack of available sites. That remains to be seen.

117. There is clearly a substantial demand for this type of development. The Council's own Register shows that about 35% of those in Base Periods 1 and 2 had a preference for a serviced plot in Finchampstead. The appeal proposal would help meet this demand through the 6 serviced plots that it proposes to include.

The SANG

118. The SANG is intended to provide mitigation against likely significant adverse effects on the Thames Basin Heaths Special Protection Area. Such impacts would include recreational pressure from the new population and the harm that would arise to the integrity of the interest features of this protected site.

119. It is clear that the size and quality of the SANG would exceed the above requirements. I have already referred to the management of the woodland and this would be secured through a Management Plan in the S106 Agreement. Within this area there would be woodland walks for the public to enjoy. Overall, the SANG would provide a significant recreational resource, not only for the occupiers of the new development but also for existing residents. Even though no parking area would be provided many would be able to walk or cycle from the surrounding area. There would be grassland areas with water features and areas that could be used for informal exercise. The S106 Agreement includes provisions for the future management of the SANG, including funding.

Highway safety and congestion

120. There is no dispute that the local road network, including Nine Mile Ride, is busy especially during peak periods. The indications are that this will get worse once the Arborfield Garrison SDL is built out. Local residents were particularly concerned about traffic impacts and pedestrian safety.

121. At present Nine Mile Ride is operating below a theoretical capacity of about 1,500 vehicles. However, once the Arborfield Garrison SDL comes on-stream it is anticipated that this will change, and that capacity will be exceeded in

peak periods depending on daily variations. This will also impact on California Crossroads where congestion occurs at busy periods around the 2 mini-roundabouts. The Appellant's Transport Assessment includes agreed trip rates and trip assignments. This shows 67 trips generated in the morning peak and 65 trips in the afternoon peak, which would be spread between the 2 access points. The evidence shows that the additional traffic that would be added from the appeal scheme would amount to less than one vehicle a minute and be insignificant when daily variations are taken into account.

122. I note the concern about the safety of the eastern access, which would be opposite a residential entrance on the south side of Nine Mile Ride. However, a Stage 1 Road Safety Audit has been undertaken at this access point and no safety issues were identified. Such arrangements are not uncommon and there is no evidence that this stretch of road is particularly dangerous or has a high accident rate.

123. Paragraph 109 of the Framework indicates that development should only be prevented or delayed if there would be an unacceptable impact on highway grounds or the residual cumulative impacts on the road network would be severe. The Council as Highway Authority has raised no objection to the appeal scheme on this basis. This is a matter of importance because it is the statutory authority responsible for highway safety on the local road network. Bearing all of these points in mind, I am satisfied that there would not be an unacceptable highway impact or that the cumulative effects would be severe.

Planning balance and overall conclusions

124. The appeal site is within a countryside location and outside the development limits for Finchampstead North and the Arborfield Garrison SDL. There would be harm to the character of the area, the Green Route and the landscape. In addition, notwithstanding improvements to the bus service, the opportunities for modal choice would remain limited and it is likely that most journeys would be undertaken by car. These harmful impacts are matters of very substantial weight and importance in the planning balance.

125. I have identified the most important policies for determining this application. Of these the proposed development would conflict with policies CP1, CP3, CP6, CP9 and CP11 in the CS and policies CC02, CC03 and TB21 in the MDD LP. Inevitably there are some with which the proposal would comply, policies CP5 in the CS and TB05 in the MDD LP relating to affordable housing and housing mix being obvious examples. Nevertheless, in my judgement the appeal scheme would conflict with the development plan when taken as a whole.

126. Paragraph 11 of the Framework establishes the presumption in favour of sustainable development. The "tilted balance" many be engaged in 2 circumstances. In relation to housing provision, I have concluded that the Council can demonstrate a 5 year supply of deliverable housing sites to meet its local housing need. In relation to the most important policies I have found that a few are out of date but not the majority. Overall, I consider that the basket of most important policies is not out-of-date in this case. For these reasons the "tilted balance" would not be engaged. Taking account also of my conclusion in paragraph 125 above, the presumption in favour of sustainable

development would not apply. I can also conclude that the proposal would conflict with policy CC01 in the MDD LP.

127. I have concluded that a few of the most important policies are not consistent with the Framework and therefore it is necessary to consider the weight to be attributed to the conflict. As the presumption in favour of sustainable development in policy CC01 is worded significantly differently to the Framework I consider that the conflict with it should be attributed limited weight. Policies CP9 and CP11 in the CS and policy CC02 in the MDD LP rely on the development limits that have been breached in several of the component parts of the 5 year housing land supply. On the other hand, the Council has been able to demonstrate sufficient deliverable sites without the need to include the Appellant's land. In such circumstances I attribute significant weight to the conflict with these policies.

128. The appeal proposal would include a number of social, environmental and economic benefits. Policy CP17 does not cap housing provision but the Council is providing sufficient deliverable sites to meet its local housing need plus a buffer designed to provide choice and competition in the market. Whilst it is not delivering housing wholly in a plan-led way, the appeal site would not be a plan-led proposal either. In the circumstances I give limited weight to the provision of market housing as a benefit in this case.

129. There is an acute need for affordable housing and this would be provided above the level required under policy CP5. The inclusion of 6 Self-Build and Custom-Build serviced plots would be a benefit that would clearly meet a local demand. In the circumstances I give substantial weight to these benefits.

130. The SANG would be a recreational resource for those living on the development and also residents within the local area. The SSSI would be restored to favourable condition and its biodiversity would be enhanced. I give significant weight to these benefits. An open area is proposed as an education area for Oak Tree Nursery. Whilst I have no doubt that this would enhance the facilities of the nursery, I am not convinced that the condition to secure it would be necessary in order for the appeal development to go ahead. In the circumstances I give this very limited weight as a benefit of the proposal.

131. The proposal would have a range of economic benefits. It would, for example, provide new jobs during the construction period and thereafter. There would be a contribution to economic growth and the generation of household expenditure would help support the local economy and provide local jobs. I attribute limited weight to these benefits.

132. Overall, I consider that the package of benefits should be given substantial weight in the planning balance. However, as I have identified above, there would also be very substantial harm. In my overall judgement the positive factors are insufficient to outweigh the negative ones, and do not indicate that the decision should be made otherwise than in accordance with the development plan.

133. In this case it is unnecessary for me to undertake an Appropriate Assessment as I am dismissing the appeal. However, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my overall conclusions. I have considered all other matters raised but have found

nothing to change my conclusion that this would not be a sustainable form of development and that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Sasha White	**Of Queen's Counsel**
Ms Anjoli Foster	Of Counsel, both instructed by Ms E-J Brewerton, Solicitor to the Council
They called:	
Mr M Croucher BA(Hons) MSc	Principal Planning Officer at Wokingham Borough Council
Mr G Adam BA DipEcon MA FCIHT MILT	Principal Development Control Engineer at Wokingham Borough Council
Mr I Church BA(Hons) MA MRTPI	Team Leader at Wokingham Borough Council
Mr W Gardner BSc(Hons) MSc(Merit) CMLI	Landscape Architect at EDP
*Ms E-J Brewerton	Solicitor to the Council

FOR THE APPELLANT:

Mr Christopher Young	**Of Queen's Counsel**
Mr Oliver Lawrence	Of Counsel, both instructed by Mr A Meader, the Pegasus Group
They called:	
Mr D Ford MSc	Associate Director of Transport Planning Associates
Ms A Tamblyn MA(Oxon) MSc CEnv MCIEEM FRGS	Managing Director of The Ecology Partnership
Mr A Meader BSc(Hons) DipTP MRTPI	Senior Director (Planning) of the Pegasus Group
Mr J Atkin BSc(Hons) DipLM CMLI	Director (Landscape) of the Pegasus Group
Dr R Curtis BSc(Hons) PgDip PhD MArborA	Associate Director of Aspect Arboriculture Limited
Mr J Stacey BA(Hons) DipTP MRTPI	Director of Tetlow King Planning
Mr A Moger BA(Hons) MA MRTPI	Associate Director of Tetlow King Planning
Mr M Good BSc(Hons) MA MSc MRTPI	Director (Planning) of the Pegasus Group
*Mr B Naish	Solicitor with Osborne Clarke LLP

**Took part in the Planning Obligations and/or the planning conditions sessions only*

INTERESTED PERSONS:

Mr G Veich	Parish Councillor of Finchampstead Parish Council
Mr M Sheehan BEng MSc DIC	Local resident
Mr R Lewis	Local resident
Mr G Anderson	Local resident
Mrs J Joyce	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1	Appeal decision: *Land at Lodge Road, Hurst* (APP/X0360/W/3194044), submitted by Mr White
2	Oral statement delivered to the inquiry by Mr Sheehan and appended extract from TA 79/99
3	Clarification on the Council's position on benefits, submitted by Mr White
4	Extract from Assessment of Walked Routes to School, submitted by Mr Young
5	Summary of S106 planning obligations, submitted by Mr Young
6	Appeal decisions: *Land east and west of Parsonage Road, Takeley* (APP/C1570/W/19/3234530 and APP/C1570/W/19/3234532, submitted by Mr Young
7	Appeal decision: *Land off Meadow Lane/ Chessington Crescent, Trentham, Stoke-on-Trent* (APP/M3455/W/18/3204828), submitted by Mr Young
8	Plan showing application site, land at Wheatsheaf Close, Sindlesham, submitted by Mr Young
9	Statement of Common Ground on sustainability of location matters
10	Note on the *My Journey* initiative, submitted by Mr White
11	Consultation response from Thames Water on sewage disposal
12	Mr Gardner's position statement on landscape and trees, submitted by Mr White
13	Note on foul and surface water drainage strategies, submitted by Mr Young
14	*Suffolk Coastal District Council v Hopkins Homes Ltd and Another; Richborough Estates Partnership LLP and Another v Cheshire East Borough Council* [2017] UKSC 37, submitted by Mr Young
15	Note on the likely use of the proposed pedestrian crossing and its possible impact on traffic flow, submitted by Mr Young
16	Note concerning the Education Space S106 planning obligations, submitted by Mr Young
17	Confirmation of instruction date of Mr Moger, submitted by Mr Young
18	Woodland Management Plan, submitted by Mr Young
19	Refusal notice of the appeal application, submitted by Mr Young
20	Landscape and visual addendum by Mr Atkin, submitted by Mr Young
21	Note by Mr Adam on the proposed bus and pavement improvements, submitted by Mr White
22	Extract from the Panel Report into the RSS for South-East England, submitted by Mr Young
23	Arborfield Green District Centre development brief, submitted by Mr Young
24	Response to Mr Adam's note at Document 21, submitted by Mr Young
25	Draft list of conditions and Council's suggested wording for the construction method statement condition, submitted by Mr White
26	Progress on the Arborfield Green District and Local Centres, submitted by Mr White

27 **Appellant's note** regarding the delivery of Arborfield Garrison, submitted by Mr Young
28 Explanation of the SANG contingency sum and SAMM tariff guidance, submitted by Mr White
29 Arboricultural note relating to the proposed footway widening along Nine Mile Ride, submitted by Mr Young
30 Consents for work to protected trees at Barkham and Wokingham, submitted by Mr White

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE INQUIRY

31 *Written representation from Ms J Joyce (14/2/20)
32 *Written representation from Ms C Broad (14/2/20)
33 **Decision Notice, Minute (point 83) and Committee Report relating to the Nine Mile Ride extension, submitted by the Appellant.
34 ***Note and appeal decision: *Land to the south of Cutbush Lane, Shinfield* dated 10/3/20 (APP/X0360/W/19/3238203), submitted by the Appellant
35 Response of the Council to Document 34
36 Executed Planning Obligation by Unilateral Undertaking (dated 11 March 2020)
37 Executed Planning Obligation by Agreement (dated 12 March 2020)
38 **Appellant's response to Inspector's question about the** impact of COVID-19 on housebuilding
39 **Council's response to Inspector's question about the impact of** COVID-19 on housebuilding
40 Secretary of State appeal decision dated 1 April 2020: *Land off Station Road, Long Melford, Suffolk* (APP/D3505/W/18/3214377), submitted by the Appellant

*I agreed to receive representations from these 2 local residents during the inquiry and they were circulated to the main parties subsequently.
**I agreed to accept these documents after the close of the inquiry as they are factual matters, which the Appellant considered material. The Council confirmed it had no objection.
***I agreed to accept this decision after the close of the inquiry on the grounds that it is a relevant material consideration. The Council was given the opportunity to respond.

PLANS

A/1-A/9 Application plans on which the Council made its decision (A/1-A/9)
B Internal roads plan
C Revised indicative masterplan (P16-1187_01 Rev: N)
D Revised landscape proposals plan (P16-1187_20 Rev: F)
E Facilities plan
F Plan showing the built-up area in the vicinity of the appeal site
G/1-G/6 Plan showing potential footway widening along Nine Mile Ride
H Plan of potential bus stop improvements on Nine Mile Ride
I Proving layout (illustrative)

Appeal Decision

Inquiry Held on 16, 17, 23, 24 October 2018

Site visit made on 24 October 2018

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2018

Appeal Ref: APP/W1715/W/18/3194846
Land at Satchell Lane, Hamble-le-Rice SO31 4HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr S Bull and Mr R Janaway against the decision of Eastleigh Borough Council.
- The application Ref O/17/80319, dated 12 April 2017, was refused by notice dated 26 September 2017.
- The development proposed is up to 70 dwellings together with associated access, public open space, landscaping and amenity areas.

Procedural matters

1. The application was submitted in outline, with only access to be considered along with the principle of the development. I have dealt with the appeal in this manner.

2. A Planning Obligation, dated 23 October 2018, was submitted during the Inquiry[1]. I have taken account of this Obligation and will return to this below.

Decision

3. The appeal is allowed and planning permission is granted for a development of up to 70 dwellings together with associated access, public open space, landscaping and amenity areas on land at Satchell Lane, Hamble-le-Rice SO31 4HP in accordance with the terms of the application, Ref O/17/80319, dated 12 April 2017, subject to the conditions set out at the end of this decision.

Main issues

4. The application was refused by the Council for five reasons. By the time of the Inquiry three of these had been resolved and were no longer contested by the Council[2] (although some were still contested by third parties). These related to the detail of the access, drainage and developer contributions.

5. On that basis, there are two main issues in this case:

   - The effect of the proposal on the character and appearance of the area

[1] Document 11
[2] Details set out in Statement of Common Ground (SOCG) 1.5 – 1.11, together with Planning Obligation

- Whether the appeal site is sustainable in locational terms, having regard to the proximity of and accessibility to local services and facilities

Reasons

The site and the proposal

6. The appeal site is located on the inside edge of a curve in Satchell Lane, which is bounded by mature trees on either side. It is a grazing field around 3.6 hectares in extent. It slopes gently from the north-west corner to the eastern edge, where the land abuts the rear boundaries of properties fronting Satchell Lane. These rear boundaries are marked by a combination of hedgerows, timber fences and wire fences. To the west of the site, beyond a public footpath bounded by a sporadic hedge, is a large disused area of land which was once Hamble Airfield[3].

7. The main part of Hamble-le-Rice lies to the south of the appeal site, with the railway station and educational and recreational facilities to the northwest. These are on the main road into the settlement from the M27 and the north.

8. The vehicle access would be in the north-eastern part of the site, onto Satchell Lane. The proposal is for up to 70 dwellings, with up to 35% affordable dwellings.

9. The site is within the 5.6 km buffer zone of the Solent and Southampton Special Protection Area and other designated areas.

Planning policy background and weight

10. The development plan includes the Eastleigh Local Plan Review 2001-2011 (LPR), adopted in 2006. All the policies relevant to this appeal were saved by the Secretary of State in 2008.

11. The site is outside, but directly adjacent to, the settlement boundary of Hamble-le-Rice as defined in the LPR. It is therefore in the countryside in policy terms. The key policy arising from this is LPR 1.CO (development outside settlement boundaries), which provides that planning permission will not be granted for development in the countryside unless it meets at least one of four criteria – none of which are argued in this case. There are also other LPR policies (18.CO, 20.CO and 59.BE) which follow on from the identification of the site outside settlement boundaries, and are essentially parasitic on LPR policy 1.CO.

12. The question of the weight to be accorded to these policies was the subject of considerable discussion at the Inquiry, and various potential reasons why the plan might be regarded as out of date and/or the policies might be accorded reduced weight were discussed. I can deal with a number of these matters briefly.

13. It is clear that the plan is not out of date simply because of its age (adopted some 12 years ago), nor because it predates even the first version of the National Planning Policy Framework (the Framework) 2012, nor because it made provision only until 2011. Nor, in the current situation where the parties

[3] This is safeguarded for mineral extraction – as is the appeal site – in the Hampshire Minerals and Waste Plan (2013). No objection has been raised to the proposal on this basis.

agree that there is a five year housing land supply, does that indicate any reduced weight to the policies.

14. What is important is the degree of consistency of a particular policy or policies with the 2018 Framework. This will depend on the specific terms of the policy/ies and of the corresponding parts of the Framework when both are read in their full context.

15. The approach of LPR policy 1.CO. is clearly aimed at restricting development outside the urban edge unless certain criteria are met. These deal with agricultural and similar development where a countryside location is required, some outdoor recreational uses, some public services and developments meeting other policies in the plan.

16. LPR policy 1.CO (and related policies) does not impose blanket protection in the countryside. However the approach clearly lacks the flexible and balanced approach towards the issue enshrined in the Framework. On that basis the policies should be accorded reduced weight.

17. The question of the extent to which the weight should be reduced was canvassed at the Inquiry. Appeal decisions at various locations within the area were discussed[4], but I am conscious that I do not know what evidence or arguments were advanced in those cases. Similarly a range of appeal decisions from elsewhere were considered, although these are of less relevance as the policy situation and the details of particular cases could be significantly different.

18. As stated above the fact that the authority can clearly demonstrate a five year housing land supply is not relevant to the weight which should be accorded to development plan policies. However when considering the currency of a policy, it is relevant to have regard to the record of how it has been applied. In this case the Council has achieved the current supply position in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps (an additional policy objection which does not apply in this case). I do not criticise the authority for any of these decisions but it is reasonable to infer that, in those cases, the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations.

19. In assessing the weight to be given to the settlement boundary and related policies the appellant accepted that a range from considerable/significant to full weight had been attributed in other cases. In this case, I find that although LPR policy 1.CO (and related policies) do not apply a blanket prohibition on development in the countryside they are out of step with national policy. I therefore attribute limited weight to the countryside policies.

20. Finally the emerging Eastleigh Borough Local Plan 2016-2036 has been the subject of public consultation, and adoption is hoped for in mid-2019. At this stage a number of the draft housing allocations are proposed outside the LPR

[4] Land off Bubb Land (APP/W1715/W/16/3153928), Land adjacent to The Mazells (APP/W1715/W/17/3173253), Land south of Mallards Road (APP/W1715/W/16/3156702), and Land adjacent to the Roll Call (APP/W1715/W/18/3194697)

settlement boundaries. However given the stage which the plan has reached it can be accorded only limited weight – as agreed by the parties.

The effect on the character and appearance of the area

21. The site, as described in summary above, is within the South Hampshire Lowlands National Character Area which is described as a low lying plain between the chalk hills and Southampton Water. It is a gently undulating lowland river landscape which supports pasture in small to medium sized fields, bounded by agriculturally managed hedgerows. The coastal plain, in which the appeal site lies, is described as being more open. In the County Council's Integrated Character Assessment (2012) references are made to the valley landform. In the more local Landscape Character Assessment (2011) for the Borough the site is within the 'Hound Plain' area which is a gently domed landform falling towards the coast and the wooded valleys.

22. These general descriptions accurately portray the wider area around the appeal site, but in more detail the site is strongly influenced by the proximity of the existing settlement. This can be appreciated as the site slopes gently down from the edge of the airfield plateau.

23. The parties agree that the landscape character of the wider area would not be materially affected. There is agreement that this is an "ordinary" landscape of "medium quality" – albeit not an unattractive one. It is also agreed that this is not a 'valued landscape' in terms of paragraph 170 of the Framework. I have no reason to disagree with the views of the parties.

24. Of considerable significance is the Council's own 2018 study which identified the site as being within an area having low sensitivity to residential development. This was defined as meaning that " development may be more easily accommodated without significant negative landscape or visual impact, with limited mitigation".

25. The site is well contained from the wider area by virtue of the existing trees and development along the eastern boundary. As I saw from my site visit it would be partially visible in long distance views from the public footpath along the eastern bank of the River Hamble. However this is a considerable distance away and it is hard to even identify the site from that direction. Closer to the site the properties which bound the land to the east and south east have variable views from rear windows and gardens, although some of these are filtered by the intervening vegetation. There are limited views of the site from the road itself, and clear views from the footpath which runs along the western side of the site.

26. Clearly the change from an open field to a housing development, even allowing for landscaping and planting, would have a permanently urbanising effect and a consequent change in the appreciation of the immediate landscape. This would cause some limited harm to the existing landscape character, although this would also be the case in relation to any greenfield development proposal.

27. There was also an argument advanced by the Council that the site would extend the built up area as viewed from the road or the footpath, and some debate as to the current extent of the settlement in view of the particular nature of the development on the opposite side of the road. However, the precise location of the current built up area is not a matter on which the

decision should turn, as it is clear that the proposal would extend the settlement into what is currently open countryside.

28. The Council also criticised the proposal as being development in depth which, it was alleged, would be out of keeping with this part of the settlement. Although I appreciate that the houses backing onto the site are arranged in a linear form there are examples of development in depth elsewhere in the immediate area – particularly on the opposite side of Satchell Lane. The proposal would therefore not be out of keeping with the general form of development in this part of the settlement.

29. I fully appreciate that the outlook from some of the adjoining houses would be significantly changed, even with a potential set back of the new development to limit the effect. However that is not a matter, in either landscape terms or in relation to outlook, which is of overriding significance.

30. At the Inquiry the Council suggested that there is a value in the local landscape in its context as a route to and from the settlement. However this is not identified in any policy or guidance and the views of the site as one approaches the settlement are restricted by high banks and vegetation. Some parts of the wider area are identified by the Council as having a particular function of separating settlements and providing an open gap. The appeal site is not within such an area and does not perform a function in either this respect or as a gateway to the settlement.

31. Other decisions which were drawn to my attention have attributed a range of weights to the landscape consequences of development in greenfield locations. This variety is inevitable given the importance of the particular location of the site.

32. Overall, this is medium quality landscape area with a low sensitivity to residential development. The effect of the proposal would be appreciated only from close views. That said, the proposal would be in the countryside and would cause limited harm to the character and appearance of the area and conflict with the policies summarised above (which themselves have limited weight).

Sustainability/accessibility

33. Many of the facilities in the settlement are located to the south of the appeal site, around the centre of Hamble-le-Rice. However there are other services to the north including Hamble Secondary School, a health centre and the railway station. Due to the layout of the settlement, these facilities can also be accessed by a southerly loop, either through a housing estate or along the main road. However the shortest journey is northwards along Satchell Lane.

34. As clarified at the Inquiry, the Council's sole objection on sustainability/accessibility grounds focused on one point. That was whether accessibility by walking along the northerly route on Satchell Lane to Hamble Secondary School, the health centre and other facilities was safe and acceptable. There was no objection related to accessibility to these facilities by other means of transport, most particularly cycling, or access to other employment, leisure, retail, social or primary school provision. In addition the railway station was accepted to be within acceptable walking and cycling

distance along the southerly route. The appellant's evidence on these matters was not challenged.

35. The first matter to be decided is whether the northerly route is acceptable for those walking to school and other facilities. The appellant's expert evidence is that the route is already used by a limited number of children, that the proposal would generate few additional walking trips and that there is no record of pedestrian/vehicle accidents along the northern route over the past five years. None of these matters was contested by the Council, and I have no reason to disagree.

36. However the appellant's position was that the northern route was a safe walking route for those choosing to walk to the northern facilities. I have to disagree with that position. I walked the route, in both directions, on two occasions – once before the Inquiry and once at the conclusion of my formal site visit. The first visit was undertaken as dusk was falling. The road is unlit, possesses no footpaths for most of the route, and includes a number of tight bends. In many places there are steep banks which limit the ability of pedestrians to avoid oncoming traffic.

37. The agreed fact that a few children use the northern route as a route to school does not indicate that this is desirable or that it should be relied on as part of the accessibility credentials of the appeal site. I also appreciate that there are no recorded accidents, but this may simply be a function of the very limited number of people using what I regard as an unsafe route.

38. If the use of the northern part of Satchell Lane as a safe walking route to the facilities, especially the school, were a policy requirement and there was no alternative, I might have a very different view on this issue. However there is no such policy requirement and, in any event, alternative modes of transport and walking routes exist.

39. There is no necessity to use the northern route as access to the school because the southern routes (possibly including a short cut through a housing area) is within a reasonable walking distance. The shortest of these is within the distance considered acceptable for secondary school children by the education authority. As a further alternative, a pedestrian could start along the southern route and then take a bus from the end of Satchell Lane for the remainder of the journey.

40. I am conscious that there is an informal walking route across the former airfield, leading indirectly to the school and other facilities. However I place no reliance on this route as it does not appear to be legally established and its continuation is therefore uncertain. This route, leaving aside its legality, is unsurfaced and unlit, and is therefore unattractive and unwelcoming in inclement weather and certainly during the hours of darkness.

41. The Council's position in closing was that anyone "..attending the secondary school, health centre or the railway station will either have to risk walking along the northern route…..or navigate fields and unauthorised footpaths, or go by car." However this omits the southern walking route(s), the part walking and part bus option, and the agreed acceptability of cycling by either route.

42. Overall, there is no policy requirement that a specific walking route should be acceptable, especially when other routes and transport modes exist. Although

I disagree with the appellant concerning the safety of the northern route for pedestrians, the appeal site is sustainable in locational terms having regard to the proximity of and accessibility to local services and facilities. It complies with policy LPR 100.T.

Other matters – nature conservation

43. There are overlapping European nature conservation designations around the River Hamble and the Solent Estuary to the east of the appeal site. These are the Solent Maritime SAC, Solent and Southampton water SPA and RAMSAR. They are saltmarsh and mudflat habitats which are important for a number of flora and fauna species including breeding and overwintering waterbirds.

44. Since the application was originally considered by the Council there has been a Court of Justice of the European Union (CJEU) judgement [5]. That requires the decision maker, when considering the effect that a proposal may have on a European Site, to consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage.

45. The appellant has provided a Habitats Regulations Assessment Technical Note[6] which builds on the material submitted with the Statement of Common Ground. The Council has agreed both these documents and provided an HRA Screening proforma.

46. Whilst the site is not within the designated areas, it is sufficiently close that the proposal has the potential to result in likely significant effects on the European sites, and accordingly an Appropriate Assessment is needed. The proposed mitigation measures which are included and detailed in the s106 Obligation are intended to avoid or reduce the effects. On that basis I consider that the proposed development will not have any adverse effect on the integrity of the European sites, either alone or in combination with other plans or projects drawn to my attention. In coming to this conclusion I have taken account of the CJEU judgement, the positive response from Natural England[7] and the comments provided by both the appellant and the Council.

Other matters – housing land supply

47. The Council gave evidence as to how the authority has managed to achieve its current housing land supply position and the parties agreed that the Council can demonstrate a five year land supply. The Council's evidence was that there is a figure of 7.8 years, with the appellant evidencing a 7.2 year supply. Both parties agreed that there is no need to explore the reasons for this slight difference further. At the close of the Inquiry it was suggested by the Council that the figure is around 10 years on the basis of recently released data. However again there is no need to explore this further. Overall, despite the presence of significantly more than a five year supply, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.

---

[5] People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244
[6] Document 14
[7] Document 13

Conditions and planning obligation

48. A range of conditions was discussed and agreed (without prejudice) at the Inquiry. I have made minor amendments in the interest of precision.

49. Given the outline nature of the proposal, a number of reserved and other matters need to be submitted for approval, in general accordance with the Development Concept Plan. The number of dwellings needs to be limited to accord with the application and the illustrative material, and the approved plans need to be identified to avoid confusion. In the interests of highway safety a condition is necessary to ensure the provision of the agreed sightlines. (1 – 6, 23 - 24)

50. In the interests of the amenity of the area and the appearance of the development, landscaping and planting details need to be submitted for approval in line with the material already submitted. An Arboricultural Method Statement and other related matters are necessary to control the method of working and to protect existing trees. (7 - 12)

51. Both to minimise effects on the area and local residents, and in the light of the proximity of European sites, a Construction Method Statement and a Construction Environmental Management Plan need to be submitted for approval. (13)

52. Given the location of the site within and adjacent to an area of sand and gravel resource, conditions are needed to deal with material recovered incidentally from excavation work and with the relationship between the proposed development and the safeguarded site for mineral extraction at Hamble Airfield. (14 – 15)

53. Foul and surface water drainage need to be controlled in the interests of avoiding flooding and pollution. (16 – 17)

54. To avoid and remove contamination in relation to human health, a condition is needed requiring an updated risk assessment and control over imported materials. (18)

55. A site-wide green infrastructure strategy and a mechanism for the protection of breeding birds is necessary for ecological reasons (19 – 20)

56. A written scheme of investigation and a programme of archaeological work is required so as to investigate any heritage assets. (21)

57. In the interests of environmental sustainability, details of energy efficiency and water consumption should be submitted for approval. All homes on the site should be constructed to Lifetime Homes Standard. (22, 25)

58. So as to promote sustainable modes of travel, a Travel Plan is necessary. (26)

59. There are two conditions which were put forward at the Inquiry which I have not imposed. The first would require a noise mitigation scheme to address the impact of traffic noise. However the reason put forward was to protect the amenities of the occupiers of nearby properties, which is not understood or justified. If the condition were intended to protect the amenity of future residents of the development, I have been provided with no evidence that future residents would be subject to any high noise levels, and the condition is unnecessary. The second condition would control plant and equipment giving

rise to emissions. However no justification has been put forward and, in the context of a residential development, I do not consider this to be necessary.

60. The Planning Obligation, which is in unilateral form, makes a number of provisions, including:

- Contributions to a range of matters including air quality monitoring, the Solent Disturbance Mitigation Project, footpath works, and education contributions
- Affordable housing at no less than 35%
- On-site open space and play areas
- Arrangements for unallocated parking areas

61. The CIL Compliance Schedule[8] sets out the detailed background and justification for each of the provisions in the Obligation in terms of their necessity, relationship with the appeal scheme, and their reasonableness. I have no reason to disagree with the Schedule in relation to any of these matters.

62. The provisions of the Obligation are directly related to the proposed development and are necessary to make the development acceptable in planning terms. Therefore, I consider that the Obligation meets the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore given due weight to those provisions, especially related to affordable housing, which go beyond mitigation.

Planning balance and conclusion

63. Given that the proposal has been the subject of Appropriate Assessment the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply. The appeal therefore falls to be considered on the basis of the s38(6) balance and the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.

64. As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. I appreciate the Council's point that the economic benefits related to short term construction jobs, and the longer term boost to local spending power, could arise from any similar development. However that does not detract from the fact that this particular development offers these benefits, which I accord significant weight.

65. I have concluded that the proposal meets the relevant accessibility policy. However this matter is essentially neutral in the planning balance.

66. The key factor to be set against the benefits of the proposal is the conflict with the settlement boundary and related landscape policies. As set out above, I attach limited weight to these matters, and this harm is substantially outweighed by the benefits of the proposal.

[8] Document 12

67. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Conditions

RESERVED MATTERS

1. The development hereby permitted shall begin either before the expiration of;
   a) two years from the date of this permission or
   b) one year from the date of approval of the last of the reserved matters to be approved, whichever is the later

2. No development shall start until details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission. The development shall be carried out in accordance with the approved details.

3. The residential development hereby permitted shall comprise no more than 70 dwellings.

4. The development hereby permitted shall be carried out in accordance with the details shown on Site Location Plan CSA/3212/106; visibility plan drawing 17-004-035 rev D "Required landscaping to provide visibility".

5. The development hereby permitted shall be carried out in general accordance with the details shown on drawing CSA/3212105 rev C "Development Concept Plan" and on drawing CSA/3212/108 "Illustrative Landscape Strategy" and no building shall be more than 2 storeys in height.

6. The development shall not be occupied until the works shown on drawing 17-004-035 rev D "Required landscaping to provide visibility" have been completed to the satisfaction of the Highways Authority.

LANDSCAPING & TREES

7. No development above slab level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall cover all hard and soft landscaping, including new and replacement trees, ground level changes, boundary treatments, means of enclosure and landscaping to the SUDS to increase the aesthetic and biodiversity value of the site; and proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. The hard and soft landscape works shall be carried out in accordance with the approved plans and to the appropriate British Standard.

8. The landscaping shall be carried out no later than the first planting season following the completion of the development. If, within a period of 5 years after the date of planting, any tree, shrub or hedgerow (or its replacement) is removed, destroyed, damaged or dies, it shall be replaced in the same location during the next planting season with another of the same species and size.

9. The development must accord with the Tree Information report (reference 9415-KC-XX-YTREE-TreeSurvey-and-Impact Assessment) produced by Ian

Keen Ltd and drawing 9415-KC-XX-YTREE-TPP02Rev0 "Tree Protection Plan" produced by Ian Keen Ltd.

10. No development, or site preparation, shall commence until an Arboricultural Method Statement, prepared in accordance with BS5837:2012, is submitted to and approved in writing by the Local Planning Authority. This statement will include timings and the methodology for:
    a) Installation of protective fencing and ground protection
    b) Excavations and the requirement for specialised trenchless techniques where required for the installation of services.
    c) Installation of new hard surfacing, including construction methods, materials, design constraints and implications for levels
    d) Retaining structures to facilitate changes in ground levels
    e) Preparatory work for new landscaping
    f) Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision

    The approved Arboricultural Method Statement shall be adhered to in full in accordance with the approved plans.

11. No development, or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site, shall take place until a suitably qualified person appointed on behalf of the developer and approved by the Local Planning Authority has been appointed to supervise construction activity occurring on the site. The arboricultural supervisor appointed on behalf of the developer will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved arboricultural method statement and that all such measures to protect trees are inspected by the Local Planning Authority Arboricultural Officer prior to commencement of works and any vehicle movements on site related to the development. Where a no dig solution is specified to protect root protection areas the arboricultural supervisor shall ensure that this is installed prior to any vehicle movement, earth moving or construction activity occurring on the site and that all such measures to protect trees are inspected by the Local Planning Authority Arboricultural Officer prior to commencement of any vehicle movements/use of the proposed access road.

12. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations take place within those areas. The tree protection shall be retained in its approved form until the development is completed.

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

13. No development shall take place, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the Local Planning Authority. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement/Plan shall provide for:
    a) No construction, demolition, ground or earth works, deliveries to the site or any other construction-related activities during the

construction period except between the hours of 0800 to 1800 Mondays to Fridays or 0900 to 1300 on Saturdays and not at all on Sundays or Bank Holidays

b) Means of access for construction work
c) A programme and phasing of construction work, including roads, footpaths, landscaping and open space
d) Location of temporary site buildings, compounds, construction material and plant storage areas used during construction
e) The arrangements for the routing/turning of lorries and details for construction traffic access, including signage to the site, and restriction on deliveries during school pick-up/drop-off times
f) The parking of vehicles of site operatives and visitors
g) Provision for storage, collection, and disposal of recycling/waste from the development during construction period
h) Details of wheel washing and highway cleaning measures to prevent mud and dust on the highway during demolition and construction
i) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
j) Temporary lighting
k) Measures to control the emission of dust and dirt during construction; **(having regard to the details contained in the "Best Practice Guidance –** The Control of Dust and Emissions from Construction and Demolition**", 2006 (London Authorities) and "Guidance on the assessment of dust from demolition and construction" 2014 (Institute** of Air Quality Management)
l) No burning of waste material on site
m) A scheme for controlling noise and vibration from construction activities (to include any piling)
n) Safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.
o) Diagrammatic and written details of construction drainage containing three forms of temporary filtration

MINERALS

14. Prior to the commencement of development a mineral recovery plan for the management of sand and gravel resource recovered incidentally from excavation work throughout the construction phase of the development shall be submitted to and approved in writing by the Local Planning Authority. The mineral recovery plan shall include details of methods for ensuring that all viable minerals excavated during the construction phase are put to beneficial use on site as part of the development. A method to record the recovery of minerals shall also be included within the plan. Records of the amount of recovered material shall be made available to the Minerals Planning Authority. The development must accord with these approved details.

15. Any reserved matters applications shall be accompanied by a report detailing how the relationship between the proposed development and the nearby safeguarded site for mineral extraction – Hamble Airfield – has been considered; taking into account impacts on the proposed design and layout of the development and how any potential significant impacts to and from the safeguarded site are to be avoided or mitigated.

DRAINAGE

16. No development shall take place until a drainage strategy detailing the proposed means of foul water sewerage disposal and an implementation timetable has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme and timetable.

17. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented before the development is completed, and thereafter managed and maintained in accordance with the approved details. Those details shall include:
    a) A technical note detailing any changes to the submitted Flood Risk Assessment, drainage design and the parameters used to demonstrate the design. The note shall be in accordance with the Indicative Surface Water Drainage Strategy plan ref: 17-004-017 submitted within the Flood Risk Assessment & Preliminary Surface Water Drainage Strategy dated April 2017 rev A, Appendix E
    b) Detailed drainage drawings and calculations for a naturalised sustainable drainage system with 3 stages of natural filtration, and any swales, attenuation basins or watercourses to be designed to have sides no steeper than 1:4 gradient
    c) Infiltration testing to BRE365
    d) Plans and calculations showing exceedance routing in the event of blockages or storms exceeding design criteria
    e) Information on water quality following the methodology in the Ciria SuDS Manual C753
    f) Information about the design storm period and intensity, the method employed to deal with and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
    g) Control measures to ensure no pollutants leave the site
    h) A timetable for its implementation and
    i) A management and maintenance plan for all elements of the drainage system for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain greenfield rates water flows and operational water quality. This must also include information on how the drainage features will be protected during construction

CONTAMINATION

18. No work shall commence on site until the following has been submitted to and approved in writing by the Local Planning Authority:

a) An updated risk assessment and supporting details to cover final site layout, changes to site levels and housing construction details
b) A detailed discovery strategy for identifying and dealing with unexpected contamination encountered on site
c) Specifications for imported soils, and reporting procedures to confirm materials imported are as agreed

BIODIVERSITY

19. The first reserved matters application shall include details of a site wide green infrastructure strategy detailing the extent and nature of the natural habitat, open space and corridors within the network. The network should incorporate all open space within the development and extend into the urban area via wildlife corridors and other enhancements. The strategy should be overarching, referencing all the species specific strategies and providing details relating to overall habitat connectivity within the network and any requirements above that provided for mitigation. The final green infrastructure should be multifunctional and provide gains for wildlife and the human population in line with national policy.

20. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the Local Planning Authority. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.

ARCHAEOLOGY

21. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and recording which has first been submitted to and approved in writing by the Local Planning Authority.

ENVIRONMENTAL SUSTAINABILITY

22. Prior to the occupation of any dwelling as built stage SAP data and as built stage water calculator for that dwelling confirming energy efficiency and the predicted internal mains water consumption to achieve the following shall be submitted to and approved in writing by the Local Planning Authority:
    a) In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations
    b) In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day

    The development shall not be carried out otherwise than in accordance with the approved details.

DESIGN AND APPEARANCE

23. No development above slab level shall take place until details and samples of the materials to be used in the construction of the external surfaces of the

development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

24. No development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
    a) Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land
    b) The width, alignment, gradient, sight lines and type of construction proposed for any roads, footpaths and accesses
    c) The provision to be made for street lighting and any external lighting. Lighting shall be designed and located to minimise light spillage and avoid impacting on flight corridors used by bats
    d) Details for the on-going management and maintenance of any roads, footpaths and accesses including any future plans for adoption
    e) Any pumping stations and associated no build zone details
    f) Crime prevention measures

    Development shall be carried out in accordance with the approved details and the approved provision shall be retained and kept available.

LIFETIME HOMES

25. All affordable units to be erected on site shall be constructed to Lifetime Homes Standard.

TRAVEL PLAN

26. Prior to the occupation of the first dwelling within the development hereby permitted, a detailed Travel Plan shall be submitted to the Local Planning Authority and approved in writing. The Travel plan shall be designed to reduce dependency on the private car, including measureable and unambiguous objectives and modal split targets, together with a time-bound programme of implementations, monitoring and regular review and improvement; and be based on the particulars contained within the Charles & Associates Consulting Engineers Ltd's draft framework Travel Plan (17-004-015 Rev A) produced in support of the application for the development hereby permitted. The development shall be occupied in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Stinchcombe QC		Instructed by the Legal Services Manager
	He called	
	Councillor K House	Leader of the Council, lead Member for planning policy, County Councillor for the appeal site, Board Member of Homes England
	Mr P Armstrong MLI MUD Chartered Landscape Architect	Senior Associate, Hyland Edgar Driver Landscape Architects
	Mr M Grantham BA MS (Transport Planning & Engineering)	Principal Transport Development Planning Officer, Hampshire County Council
	Mrs L Harrison BA(Hons) DipTP MRTPI	Development Management Senior Specialist
	S106 and conditions only Ms K Budden	Planning Officer

FOR THE APPELLANT:

Mr C Boyle QC		Instructed by Woolfe Bond Planning
	He called	
	Ms S Gruner B(Hons) (Landscape Architecture) CMLI	CSA Environmental
	Mr G Charles BEng CEng MICE	Managing Director, Charles & Associates Consulting Engineers
	Mr S Brown BSc(Hons) DipTP MRTPI	Principal, Woolf Bond Planning LLP
	S106 and conditions only Mr B Ralph	Partner, Moore Blatch
	Not called at the Inquiry Mr P McColgan	Associate Director, G L Hearn

INTERESTED PERSONS:

Mr S Gardiner	Local resident
Mr P Riley	Local resident
Ms J Austin	Local resident
Mr A Hamlett	Local resident
Ms A Jobling	Local resident, Clerk to the Parish Council

INQUIRY DOCUMENTS

1	List of persons present at the Inquiry
2	Email (15 October 2018) from Mr Brown on 5 year housing land supply
3	Pedestrian and cycle counts (Mr Charles)
4	Revised walking/cycling isochrones (Mr Charles)
5	Appeal decision (3097721) at Stanbury House, Spencers Wood
6	Mr Riley's statement
7	Hampshire County Council letter (undated) - education
8	Eastleigh Borough Local Plan policy HA3
9	Email (22 October) from Mr Charles re.walking distances
10	Schedule of sites granted planning permission after May 2017
11	Planning Obligation (23 October 2018)
12	CIL Compliance Schedule and related documents
13	Natural England response (22 October) to draft HRA
14	Revised Habitats Regulations Assessment technical note (October 2018)
15	Council's closing submissions
16	Appellant's closing submissions

CORE DOCUMENTS

CD1.1	Extracts of Adopted Eastleigh Borough Local Plan Review (2001-2011) (May 2006) and Proposals Map
CD1.2	Direction under Paragraph 1(3) Schedule 8 Planning and Compulsory Purchase Act 2004. Saved Policies Direction May 2009
CD1.3	Extracts of Submitted Eastleigh Borough Local Plan 2011-2029 and Proposals Map
CD1.4	Report on Examination into Eastleigh Borough Council's Eastleigh Borough Local Plan 2011-2029
CD1.5	Extracts of Emerging Local Eastleigh Borough Local Plan 2016-2036 and Proposals Map
CD1.6	EBC Planning Obligations SPD (July 2008)
CD1.7	EBC Planning Obligations SPD Background Paper (July 2008)
CD1.8	EBC Public Art Strategy 2015-2019 (February 2016)
CD1.9	EBC Landscape Character Assessment: Area 13 - Hound Plain
CD1.10	Extracts of Hampshire Minerals & Waste Plan 2013
CD1.11	HCC 'Integrated Character Assessment: Area 3D - Hamble Valley
CD1.12	HCC Integrated Character Assessment: Area 9D - Netley, Bursledon & Hamble Coastal Plain
CD1.13	Extract of Hampshire Rights of Way online maps
CD1.14	Solent Recreation Mitigation Strategy
National guidance	
CD2.1	Landscape Institute and The Institute of Environmental Assessment 'Guidelines for Landscape and Visual Impact Assessment' third edition (GLVIA)
CD2.2	National Character Area Profile NCA 126, South Coast Plain
CD2.3	Draft Planning Practice Guidance (March 2018)
CD2.4	Housing Delivery Test – Draft Measurement Rule Book (March 2018)
CD2.5	Planning Practice Guidance, as published, on annual local housing need figures

CD2.6	Independent Review of Build Out Rates – Draft Analysis (June 2018)
Planning History	
CD3.1	Z/18953/000 – Residential development – Land west of Satchell Lane and east of Hamble Airfield
CD3.2	Z/26999/000 – The erection of 2 detached houses – Land adjoining **Folly's End,** Satchell Lane
Relevant Appeal Decisions	
CD4.1	APP/W1715/W/15/3005761 - Land to the east of Grange Road, Netley Abbey, Southampton (14.12.15)
CD4.2	APP/W1715/W/15/3139371 - Land off Botley Road, West End, Hampshire (7.10.16)
CD4.3	APP/W1715/W/15/3130073 - Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire (30.11.16)
CD4.4	APP/W1715/W/16/3153928 - Land off Bubb Lane, Hedge End, Hampshire (13.19.17)
CD4.5	APP/W1715/W/16/3156702 - Land to the south of Mallards Road, Bursledon, Hampshire (2.8.17)
CD4.6	APP/W1715/W/17/3173253 and APP/W1715/W/17/3178540 **Land adjacent to 'The Mazels', Knowle Lane, Horton Heath,** Southampton, Hampshire (11.1.18)
Relevant Judgments	
CD5.1	North Wiltshire District Council v Secretary of State for the Environment [1992] 65.P & C.R.137
CD5.2	Hunston Properties v SSCLG and St Albans City & District Council [2013] EWHC 2678
CD5.3	Fox Strategic Lane and Property Ltd. V SSCLG [2013] 1P. & C.R.6
CD5.4	Zurich Assurance Ltd v Winchester City Council & South Downs NPA [2014] EWHC 758 (Admin)
CD5.5	Bloor Homes East Midlands Ltd v SSCLG [2014] EWHC 754 (Admin)
CD5.6	Satnam Millennium v Warrington Borough Council [2015] EWHC 370
CD5.7	Oadby & Wigston BC v SSCLG & Bloor Homes Ltd [2016] EWCA Civ 1040
CD5.8	Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146
CD5.9	St Modwen Developments Ltd vs. SSCLG & East Riding [2016] EWHC 968 (Admin)
CD5.10	Suffolk Coastal DC v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC [2016] EWCA Civ 168
CD5.11	Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37.
CD5.12	Lichfield v SSCLG [2017] EWHC 2242 (Admin)
CD5.13	People Over Wind v Teoranta judgment by the European Court of Justice (C-323/17)
CD5.14	Phides Estates (Overseas) Limited v. Secretary of State for Communities and Local Government [2015] EWHC 827 (Admin)

Appeal Decision

Inquiry Held on 29, 30 September; 4, 12-14, 28 October 2022

Site visits made on 28 September and 11 October 2022

by Christina Downes BSc DipTP MRTPI

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

Decision date: 13 February 2023

Appeal Ref: APP/P0119/W/21/3288019
Land to the west of Park Farm, Thornbury, South Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Barwood Development Securities Ltd and the North-West Thornbury Consortium against South Gloucestershire Council.
- The application, Ref PT18/6450/O, is dated 18 December 2018.
- Erection of up to 595 dwellings (Use Classes C3); land for a primary school (Use Class D1); up to 700m^2 for a retail and community hub (Use Classes A1, A2, D1); a network of open spaces including parkland, footpaths, allotments, landscaping and areas for informal recreation; new roads, a sustainable travel link (including a bus link), parking areas, accesses and paths; and the installation of services and drainage infrastructure

DECISION

1. The appeal is allowed and outline planning permission is granted for the erection of up to 595 dwellings (Use Classes C3); land for a primary school (Use Class D1); up to 700m^2 for a retail and community hub (Use Classes A1, A2, D1); a network of open spaces including parkland, footpaths, allotments, landscaping and areas for informal recreation; new roads, a sustainable travel link (including a bus link), parking areas, accesses and paths; and the installation of services and drainage infrastructure on land to the west of Park Farm, Thornbury, in accordance with the terms of the application, Ref PT18/6450/O, dated 18 December 2018, and the plans submitted with it. This is subject to the conditions in the Schedule in Annex C to this decision.

PROCEDURAL MATTERS

2. The application was originally submitted for up to 630 dwellings but following post-submission discussions with the Council and consultees there were various changes made, including the reduction in housing number. The description set out above is agreed between the Council and the Appellants in the Statement of Common Ground (SCG) on Planning.

3. The application was submitted in outline form with all matters save for access reserved for future consideration. However, plans for determination at this stage include a Land Use and Access Parameter Plan, a Scale Parameter Plan, a Green Infrastructure Parameter Plan and a Sustainable Travel Link Plan. There is also an illustrative Masterplan and illustrative Landscape Masterplan.

4. The proposal is Environmental Impact Assessment development. An Environmental Statement (ES) has been submitted. I am satisfied that this meets the relevant statutory provisions, including publicity and is adequate in terms of its scope.

5. The Council determined that it would have refused planning permission had it been in a position to do so. The putative reasons for refusal related to harm to heritage assets; loss of high-grade agricultural land; development within the countryside and outside the settlement boundary of Thornbury; and the lack of a legal agreement to secure required mitigation. A Planning Obligation by Unilateral Undertaking (the UU) has been submitted that addresses the Council's concerns on the latter. This is considered later in the decision.

6. Following discussion at the inquiry there were several changes to the UU. A short period was allowed for these to be done and for the document to be signed. The engrossed Deed was submitted on 3 November 2022.

REASONS

ISSUE ONE: WHETHER THE LOCATION OF THE APPEAL SITE OUTSIDE THE SETTLEMENT BOUNDARY OF THORNBURY WOULD BE HARMFUL TO THE SPATIAL STRATEGY IN THE DEVELOPMENT PLAN

7. There is no dispute that the appeal development would be on a greenfield site outside the settlement boundary for Thornbury. The land in question lies to the north-west of the town and to the south of Oldbury Lane.

8. Policy CS5 sets out the spatial strategy in the *South Gloucestershire Local Plan Core Strategy 2006-2027* (the CS), adopted in 2013, and seeks to concentrate housing development within the north and east fringes of Bristol. Outside these areas, development is mainly directed to Yate, Chipping Sodbury and Thornbury in order to improve the self-containment of the settlements and strengthen their vitality. The settlement boundary for Thornbury is drawn around the built-up area but includes two opportunity areas at Park Farm and Moreton Way. These are now largely built out.

9. Policy CS34 indicates that the settlement boundaries around rural settlements should be maintained unless they are reviewed through Neighbourhood Plans, the *Policies, Sites and Places Development Plan Document* (the PSP DPD) or a replacement local plan, following local and stakeholder engagement. The *Thornbury Neighbourhood Development Plan* (the NDP), made in 2017, and the PSP DPD, adopted in 2022, do not contain any such review and the *South Gloucestershire New Local Plan* (the emerging Local Plan) is at a very early pre-submission stage.

10. The housing requirement on which the spatial strategy is based is reliant on a *Strategic Housing Market Assessment* (SHMA) that pre-dated the *National Planning Policy Framework* (the Framework). It therefore had no regard to the duty to co-operate or to consider the needs of the wider Housing Market Area (HMA). This includes Bristol, which is unable to meet its housing needs within its own boundaries. Although the Examining Inspector found the CS sound, this was on the basis that an early review would be undertaken based on a Framework-compliant SHMA. It was anticipated that the new SHMA would be produced by 2015 and thus the Examining Inspector considered that the requirement to review the CS by 2018 would be reasonable.

11. Unfortunately, no updated SHMA has been produced for the HMA as the relevant local authorities have been unable to agree a joint approach. The latest attempt was through the *Spatial Development Strategy* but work on this document has recently been halted. This means that South Gloucestershire will need to produce its own plan whilst co-operating with its neighbours on the issue of housing needs within the HMA. Any assessment of housing needs will be a matter to be considered in due course through the Local Plan examination process. However, even though the duty to co-operate is not a duty to agree, it is not unreasonable to surmise that South Gloucestershire will play its part in helping meet the wider needs of the HMA, albeit that the extent that it will do so is at present unknown.

12. In the circumstances, the housing requirement in the CS and the settlement boundaries that depend on it, is not compliant with the Framework and is out-of-date. This is regardless of the five year housing land supply position, which I consider later. This means that the fact that the proposed development would be within the countryside and outwith the settlement of Thornbury is a matter of limited weight. It is noted that the Council has itself granted planning permission for several housing developments on greenfield sites adjoining the built-up area of Thornbury. That does not have any effect on the statutory nature of the relevant policies, but it does mean that the conflict with those policies is a matter of reduced importance.

13. Policy CS5 seeks to strictly limit development in the countryside. However, it is also relevant that this policy includes a provision relating to Thornbury that seeks an appropriate scale of development to revitalise the town centre and strengthen community services and facilities. Policy CS32 specifically relates to the town and is based on a vision that it will become a thriving and socially cohesive historic market town. From my observations and from the available information it is clear that the revitalisation of the town has not yet been successfully achieved, notwithstanding the new development that has taken place thus far.

14. The Council did not dispute that the new population from the proposed development would have the potential to boost local spending and increase footfall within the town centre, although this is of course within the context of difficulties faced by High Streets nationally due to factors such as competition from online shopping. In addition, there would be various benefits flowing from the scheme itself, including a new nursery and primary school and a retail/ community hub with the potential to serve the northern part of Thornbury. This would improve choice for the existing population as well as for new residents, thus having a positive effect on the town and helping realise the vision.

15. I note that several local objectors considered that the appeal proposal is premature and contrary to local democracy. However, the Framework makes clear than amongst other considerations such arguments are unlikely to be justified unless the emerging Local Plan is at an advanced stage. As considered above, that is not the position in this case. The proposed development would be contrary to policies CS5 and CS34 in the CS. However, for all of the above reasons I conclude that the location of the appeal site outside the settlement boundary of Thornbury and the conflict with these policies would only cause limited harm to the spatial strategy in the development plan.

ISSUE TWO: THE EFFECT OF THE PROPOSAL ON HERITAGE ASSETS

16. Policy CS9 in the CS indicates that the natural and historic environment is a finite and irreplaceable resource. In order to protect and manage resources in a sustainable way, new development will be required to conserve, respect and enhance heritage assets in a manner appropriate to their significance. Policy PSP17 in the PSP DPD seeks to protect and where appropriate enhance or better reveal the significance of heritage assets. It indicates that where development would cause harm to the significance of a heritage asset or its setting planning permission will only be granted where public benefits would outweigh the harm, amongst other things.

17. The relevant designated heritage assets are the Thornbury Castle assemblage, the Church of St Mary the Virgin, Sheiling School and Thornbury Conservation Area. These are sited to the south of the appeal site and any effect on their significance arising from the appeal development would derive from changes to their setting. There was no dispute that any ensuing harm would be less than substantial in nature. The *Planning Practice Guidance* indicates that it is relevant to consider the degree of less than substantial harm that would be caused. It covers a wide spectrum from virtually no adverse effect on significance to its almost total loss.

18. The Framework defines significance as the value of the asset because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. The setting is defined as the surroundings in which the asset is experienced, which may change as the asset and its surroundings evolve. Historic England's *The Setting of Heritage Assets* (GPA 3) sets out a stepped approach to considering the settings of designated heritage assets and the impact of development on them. It also makes clear that whilst visual considerations play an important part in how a setting is experienced, other factors also have relevance, such as noise or aesthetic associations.

Thornbury Castle assemblage

19. Construction started on Thornbury Castle in around 1510 by Edward Stafford, the Third Duke of Buckingham (the Third Duke). It was intended as a grand fortified residence to demonstrate the Third Duke's wealth and importance. However, it was never finished due to his execution by King Henry VIII in 1521. There are separate Grade I listings for the outer court and walls to the kitchen court; the inner court; and the walls enclosing the privy gardens. The castle was built on the site of a medieval fortified manor house and this along with the 16th century privy garden comprise a Scheduled Monument. There is also a Grade II Registered Park and Garden, and the east and west lodges and gateway are Grade II listed buildings. Thornbury Castle is now a private hotel. Whilst it is made up of the aforementioned designations, I shall use the umbrella term "*the Castle*" to refer to the whole assemblage, the parts of which are closely interrelated. The inclusion of Grade I listings means that this comprises an assemblage of exceptional interest and importance.

20. The significance of the Castle is derived from its historic, architectural, artistic and archaeological interest. It provides an example of the transition between a late medieval castle and a Tudor country house and was originally designed to demonstrate the incumbent's wealth and aspirations. Although only one tower was completed at the south-west corner, there were various restorations and renovations over the centuries. It is noteworthy that Henry

VIII and Anne Boleyn stayed at the Castle following the demise of the Third Duke. The early origins of the site and its development thereafter can be appreciated from the buildings comprising the Castle. The surviving structures have been depicted in various 18th and 19th century paintings.

21. The setting around the Castle undoubtedly contributes to its significance. This includes the adjoining Church and the Medieval town with which it has historic and functional associations. Thornbury Park, which is now occupied by the Sheiling School, was built in the 1830s on land purchased from the Castle. The house and grounds are to the north and there are thus historic and associative relationships between the two.

22. I do not consider the evidence indicates that the site was chosen by the Third Duke specifically for its expansive views towards the River Severn. There was already a manor house established here, which he inherited. He was granted licenses between 1510 and 1517 by the King to enclose 1,500 acres of the adjoining land as a deer park. This would have been a further demonstration of his wealth and status by repurposing the farmland as hunting grounds for his recreational enjoyment and as a source of food for his larder.

23. Whilst the historical records indicate that a deer park existed with access from the Castle, whether it ever occupied the full extent of the licensed land is unclear. Curved boundaries were typical, and it seems likely that Oldbury Lane marked the alignment of the original park pale to the north. Whilst deer parks usually contained woodland for the animals to shelter, in this case the evidence suggests that there were mainly hedgerows and tree lines. Although no earthworks associated with the park pale have been detected there are medieval fishponds and Parkmill Farm and Park Farm indicate the positions of two of the lodges and a water mill.

24. It appears that following the Third Duke's death pieces of the Castle land were sold off, including the former deer park. The 1716 Estate Map comprises the earliest pictorial record of the lands around the Castle. It was created by the Newman family who had by this time purchased the Castle lands and went on to build Thornbury Park. The Estate Map shows the land divided into fields separated by hedgerows and this is typical of an 18th century agrarian landscape. Whether it depicts the extent of the former deer park or what was left of it, is disputed by the parties. In any event, it shows some 800 acres of land, which was very much smaller than the licenses would have permitted to be emparked.

25. Historic England did not consider that the former deer park was of sufficient importance to reach the criteria required for designation as a Registered Park and Garden. However, in its consultation response to the planning application it commented that this was an important non-designated heritage asset. It considered that the former deer park is relatively easy to read and provides a unique example from the Tudor period of a deliberately designed landscape associated with the Castle. I was able to observe the surrounding area from the roof of the completed Castle tower, which allowed a very good view of the area of land to the north. I also walked the footpaths that cross this rural area. I find it difficult to agree with Historic England's view that the former deer park is easy to read and the only aspect that is clear is the curving alignment of Oldbury Lane. The eastern side is now occupied by the Park Farm housing site and the Castle School, and these developments have

isolated the Medieval fishponds. It seems to me that the association is mainly evidenced through the historical records rather than through an experiential link with the contemporary landscape.

26. The former deer park has not been identified by the Council as a non-designated heritage asset**. Notwithstanding Historic England's view, I do not** consider that it has sufficient heritage significance to qualify as such and the heritage expert witnesses had a similar view. Nevertheless, it is clear that there was an important, albeit short lived, historical association between this land and the Castle and that it is likely to have been used as a hunting ground. If the extent of this feature is the area shown on the 1716 Tithe Map, then the built development would occupy and remove a further part from it, but a large part would remain unaffected.

27. The open countryside to the north of the Castle does contribute to the importance of the location with views across to the Severn Estuary. The raised ground on which the Castle stands was originally occupied by a medieval manor and so there is a longstanding historical association. The tree cover on the upper slopes limits views in both directions. There are though glimpses of the Castle tower and chimneys from within the appeal site and from the public rights of way that cross it. Some of these views would remain unaffected because the closest part of the site would remain undeveloped. Whilst setting does not depend on public accessibility, GPA 3 does indicate that opportunities to maximise enhancement should be explored. The proposal includes the creation of a large public open space around Pickedmoor Brook, which would widen public access and allow glimpses of the upper parts of the Castle through the trees. In order to appreciate the historical and cultural associations, it is proposed to install interpretation boards, which would allow the significance of the heritage asset to be better revealed.

28. When considering where on the scale the harm would lie, it is important to bear in mind that a large part of the significance of the heritage assets, both individually and as a part of the assemblage, is derived from the historic, architectural, artistic and archaeological value of their fabric and the immediate grounds in which they stand. That would remain unaffected by the proposed development. The wider setting also contributes to significance but much of that would also remain undisturbed by the appeal scheme. The change would occur to the north where a small part of the agricultural landscape, which for a short time was probably occupied by a deer park, would be removed. However, it is relevant to take account of the opportunity that has been taken to maximise enhancement and minimise harm as indicated above. For these reasons I consider that the harm to significance would be towards the lower end of the scale.

The Church of St Mary the Virgin

29. This is a Grade I listed building to the south of the Castle grounds. It provides an important example of a Medieval parish church and its form and fabric reflect its 12th century origins and subsequent development between the 14th and 16th centuries with restoration concluded in the 19th century. It has a fine crenelated western tower and a grandiose style and form. A large part of the significance of the Church is derived from the architectural, historical and archaeological interest of its form and fabric.

30. However, the setting is of importance to its significance. This includes the churchyard, which is delineated by stone walls and is closely associated with the church in functional terms and historically. It also provides the immediate context from where the Church is experienced and includes a series of 18th and 19th century table-top tombs that are listed separately at Grade II. There were strong links to the Medieval manor that stood immediately to the north and subsequently to the Castle. The Third Duke, for example, built a timber gallery between the two sites and this allowed him direct access to the Church. Thornbury and its parish church have been closely associated since Medieval times and the focus of the town was originally thought to have been around the immediately adjoining green.

31. The Church stands at the northern end of a ridge and there is a significant fall in ground levels to the north and west. It is within the centre of its parish, which includes the town as well as the rural area to the north. Views of the heritage asset from the appeal site are at a distance and are disrupted by the thick belt of vegetation that grows around the intervening slope. Nevertheless, due to its elevated position and its height and distinctive form, the upper parts of the tower can be seen from a number of viewpoints and provide a distant landmark from Oldbury Lane and the public footpaths that cross the site. These views allow some appreciation of the historical link between the Church and part of the agricultural lands of its parish. There are also glimpses of the very top of the Castle tower and its flagpole to allow the opportunity to experience the relationship between the historic buildings.

32. The appeal development would not affect the form or fabric of the church itself or the elements that make up its immediate setting. Furthermore, its relationship with the town to the south would remain undisturbed. In my opinion these contribute most to the significance of this Grade I heritage asset. Nevertheless, the agricultural lands to the north were a part of the parish and would have had a direct functional association with the market town they served. The appeal proposal would remove a small element and so this association would be diminished to a limited degree. The built development would also disrupt the visual connection and landmark function of the Church as experienced from within that part of the rural landscape. However, it is important to consider that much of the landscape that lies within the parish would remain unaffected.

33. The Council referred to the effect on the functional and historical associations between the Church and its parish. However, the appeal site would remain within the parish regardless of the development. Furthermore, this parish is very extensive and the reduction in size resulting from the appeal proposal, even in combination with Park Farm and other recent developments, would be very small.

34. As this is an outline proposal there would be the opportunity to minimise harm, and this has been shown on the indicative Landscape Masterplan through maintaining an open vista to the Church through the development. In addition, there would be the opportunity to enhance the experience and associations through the publicly accessible open space proposed within the southern part of the site. In my judgement the harm to significance that would ensue would be towards the lower end of the scale.

The Sheiling School

35. The Thornbury Park Estate appears to have been created by Richard Newman in the 17th century on land that was sold off from the Castle but originally probably formed part of its Medieval deer park. The extent of the estate can be seen to cover a large area to the north of the Castle and is depicted on the 1716 Estate Map. The house was built much later in the 1830s by one of Richard Newman's descendants, Henry Newman, and is listed at Grade II. It is a well-proportioned Georgian/ Regency villa that faces north-east towards a designed parkland. The front elevation has tripartite ground floor sash windows either side of an elaborate porch supported by four Ionic columns. This was intended to indicate that its owner was a person of some standing in society.

36. The significance of the heritage asset is mainly derived from its form and fabric. However, its setting contributes to significance in various ways. There is a close association with the immediate garden with its lawns, trees and shrubs and a wider relationship with the designed parkland beyond, which extends around the northern side of the Castle. From these places the architectural and historic interest of the villa can be experienced. It also allows the association with the Castle to be appreciated and the historical circumstances that led the Castle to be left with virtually no land whilst the relatively modest villa had an extensive landholding.

37. The land beyond the parkland was divided into smaller agricultural fields. However, within the southern part Henry Newman created small circular plantations and lines of trees that were intended to frame views and provide an outer setting designed to be distinctive from the wider agricultural landscape to the north. The Sheiling School purchased the property in 1952 and there have subsequently been some modern developments within its grounds. These have diminished its open parkland character.

38. There is no dispute that the appeal site lies within the setting of the Sheiling School. The southern field, which would remain as undeveloped open space, includes remnants of the circular plantations referred to above and lines of trees along the northern and western perimeters. From this southern area there are views towards the listed building, which stands on higher ground within its parkland grounds. There is the opportunity for enhancement here and as well as public access to allow more people to appreciate the connections, there would be landscaping, including planting trees as "eye catchers" to better reveal Henry Newman's design for this outer setting. The Appellants have also suggested interpretation boards to explain the significance of Thornbury Park and indeed how it was associated with the deer park created by the Third Duke.

39. The proposed housing development would be further to the north. This was part of the Thornbury Park Estate and therefore historically there was a functional relationship. However, this is now difficult to appreciate. Due to the intervening hedgerows and trees, there is little visual connection between this part of the site and the heritage asset. Any glimpses of the new houses would be seen at a considerable distance. The functional link no longer pertains and there are no physical features to connect the land to the heritage asset. Overall, the significance of the Sheiling School derives mainly from its form and fabric. Insofar as the setting is of importance, its value is drawn from the

immediate area of gardens, the parkland beyond and the proximate area of farmland and its designed views. The land beyond this in which the built development would stand has little remaining association or visual connection and in my opinion any harm would be at the very lowest end of the spectrum.

Thornbury Conservation Area

40. The northern section of the Conservation Area includes the former parkland associated with Thornbury Park. To the south it includes the historic town, centred on the main routes of Castle Street**, St John's Street** and the High Street along with the marketplace at their junction. Here the *Thornbury Conservation Area Advice Note 12* (the Advice Note) identifies a number of different character areas, including densely built burgage plots within the historic core. To the west are the informal stone walled closes and to the east are the back lanes. The significance of the Conservation Area is derived primarily from its historic interest as a seat of power and influence and its importance as a Medieval market town. It also has architectural interest found in the varied character of the buildings and spaces and the archaeological interest focused on its Anglo Saxon beginnings.

41. The Advice Note refers to the wider setting of the Conservation Area, including the agricultural land to the west of the town beyond the closes, which extends towards the River Severn. The Advice Note mentions a Key View from the town centre northwards towards the Church and the wooded hills beyond. Due to the drop in land levels the lower land, which includes the appeal site, is little evident in this view. Historically there would have been functional links between the livestock and produce grown on the surrounding agricultural land and the market town where it was used and distributed.

42. The wider agrarian setting therefore contributes to the significance of the Conservation Area through its cultural and historical associations. Visually the majority of the heritage asset cannot be seen or appreciated from this land due to the topography but as I have already noted there are visual links with the designated assets that stand within it.

43. The nearest part of the site to the heritage asset would not be developed but would become publicly accessible open space. It is from here that the northern part of the Conservation Area can best be appreciated. The proposed built development would be further to the north and at a similar distance to the Park Farm estate. For the reasons given in my consideration of the effect on the other heritage assets, there would be some loss of visual connection between the northern part of the Conservation Area and its agricultural surroundings. To the extent that the proposal would extend built development westwards from Park Farm there would be a degree of diminution at this point to one of the rural approaches to the town.

44. Some views of the landmark church tower from Oldbury Lane and the public footpaths would be interrupted, although I commented above on the proposed provision of a viewing corridor to the church in the indicative Landscape Masterplan. There is also the opportunity for more people to experience the visual and historical connections through the provision of public open space in the southern field. It is worthy of note though that of the three key views in the Advice Note, none encompass the appeal site. The NDP includes nine key views and vistas which are to be protected, but none includes the appeal site or the area to the north-east of the Conservation Area. In the circumstances,

the less than substantial harm to the significance of the Conservation Area would be at the lower end of the scale.

Conclusions

45. The appeal proposal would cause less than substantial harm to the significance of the Castle, the Church, Sheiling School and the Conservation Area on account of development within their setting. The Church and the Castle assemblage include assets of exceptional importance but in my assessment the harm individually and as a group would be at the lower end of the spectrum. The harm to the Conservation Area would also be at the lower end of the scale. The Sheiling School is a Grade II listed building and I consider that the harm would be at the lowest end of the spectrum.

46. Nonetheless, having regard to the importance of these assets and their irreplaceable nature, very great weight and importance must be given to their conservation. The harm to the heritage assets would not accord with policy CS9, but this policy makes no provision for the consideration of public benefits and in this respect is inconsistent with the Framework. The more recent policy PSP17 does include such a provision, but there is a requirement to demonstrate that there is no other means of delivering similar public benefits through development of an alternative site. This is not a test that is in national policy and therefore in this respect is also inconsistent with the Framework. I return to my conclusion on this issue later in my decision.

ISSUE THREE: WHETHER THE PROPOSAL WOULD RESULT IN AN UNACCEPTABLE LOSS OF BEST AND MOST VERSATILE AGRICULTURAL LAND

47. The appeal site comprises some 36 hectares of mainly agricultural land. Following an Agricultural Land Classification survey, it was established that 14.4 hectares of Grade 2 and 10.3 hectares of Grade 3a land would be permanently lost to built development. This is classified as best and most versatile agricultural land by the Framework and paragraph 174 indicates that the economic and other benefits of such land should be recognised. Paragraph 175 indicates that planning policies should seek to allocate land with the least environmental or amenity value where consistent with other policies in the Framework. The associated Footnote 58 explains that where significant development of agricultural land is necessary, areas of poorer quality should be preferred. In seeking to protect natural resources in a sustainable way, policy CS9 in the CS includes a provision that opportunities for local food cultivation should be maximised by avoiding the development of best and most versatile agricultural land. Policy CS34 includes a similar provision.

48. The Appellants have sought to quantify the economic benefit of the land for local food production. It has been estimated that it could annually produce, very roughly, 28 tonnes of cereal crops or around 1,200 kg of live weight beef cattle. This would equate to around £4,500 and £2,600 respectively. In itself I agree with the Appellants that this is a relatively limited benefit in terms of food production

49. It is noted that much of the land to the north and east of Thornbury adjacent to the settlement comprises Grade 2 or Grade 3a agricultural land. This includes the two CS opportunity areas of Park Farm and Moreton Way as well as other sites granted planning permission by the Council such as Post Farm

and land west of Gloucester Road. The agricultural land quality has not therefore been seen as a determinative factor in **the Council's** decision-making or plan-making at Thornbury. This is particularly apposite bearing in mind that much of the south and south-western side of the town is designated Green Belt.

50. Nevertheless, the appeal proposal would result in the loss of best and most versatile agricultural land. This should properly be considered a disbenefit of the scheme and would be contrary to policies CS9 and CS34 in the CS. I return to this matter later in my decision.

ISSUE FOUR: WHETHER THE PROPOSAL WOULD PROVIDE SUFFICIENT CHOICE FOR JOURNEYS OTHER THAN THE PRIVATE CAR

Introduction

51. Thornbury is a market town that has a good range of shops, services and facilities, including some local employment opportunities. The appeal site is on the north-western side of Thornbury, adjacent to the new housing development being constructed at Park Farm. Many local people were very concerned that the proposed development would be inaccessible and that most new residents would travel by car. The Council did not object on these grounds, but objectors claimed that this was because a site of similar distance on the north-eastern side of the town was not considered to be an unsustainable location at appeal[1]. I note the comments by that Inspector, which seem to me to be reasonable and well justified. Nevertheless, each site is different, and I have considered the accessibility of the appeal scheme on its own merits.

52. Policy CS8 in the CS does not support development that is car dependant and seeks to promote other transport choices, including walking, cycling and public transport. Policy PSP11 in the PSP DPD has similar objectives whereby development should be located on safe, useable walking or cycling routes that are an appropriate distance from key services and facilities. Where this is not possible development should be located on a safe, useable walking route to a bus stop which connects to a frequent service to the relevant destination. The supporting text sets out what an appropriate walking and cycling distance may mean. This will vary depending on the facility, although there are some important provisos. The distances in the PSP DPD are "*as the crow flies*" and no account has been taken of the quality or safety of the route. The point is made in the supporting text to policy PSP11 that this will mean that greater or lesser distances could be appropriate depending on the circumstances. Both national and local planning policy seek to give people travel choices. However, it is important to understand that it cannot mandate that they are taken up.

Walking and cycling

53. The actual walking or cycling routes will often exceed the "*crow flies*" distances referred to above. Furthermore, as the appeal site is relatively large there will be a material difference between the distances that those people living on the western side have to travel compared to those living closest to Park Farm. The main parties and the objectors did not agree on the actual

[1] Land south of Gloucester Road, Thornbury (APP/P0119/W/17/3189592).

distances[2]. However, on any assessment the walking or cycling journey to most facilities would be further than that set out in the PSP DPD.

54. I undertook walks on several occasions between the site and different parts of the town. There are various route choices, including footpaths which appeared to be well frequented and pleasant to use. *Manual for Streets* indicates that walking has the most potential for replacing short car trips, particularly those under 2km. Some people will undoubtedly walk further and travel to the town centre or to other facilities on foot. However, from the centre of the site I estimated that the distances to the town centre and most other facilities would exceed 2km. For some people, for example those with mobility impairments or those accompanied by small children, the walk may therefore not be a viable option.

55. Greater distances can be covered by bicycle and many of the routes seemed from my observations to be conducive to this form of travel. Cycling is a popular means of getting around for some people and there is no reason why it would not be a modal choice for those able to do it. The scheme includes a financial contribution towards the provision of additional cycle stands in the town centre to allow cycles to be parked securely. It should be noted that there are proposals by the Council and the West of England Combined Authority to make improvements along the A38 corridor towards Bristol for cyclists. This will include the provision of segregated cycle tracks alongside the main road, reduced speed limits and improved crossing points. Whilst these proposals are only at consultation stage, if implemented they would result in a more attractive and safer environment for cyclists travelling between Thornbury and Bristol.

Bus travel

56. The nearest bus stops are in Park Road and Alexandra Way, around 1km from the nearest part of the appeal site. From here there is a choice of three services, which go into the High Street and various other places, including Cribbs Causeway, Yate, Chipping Sodbury Bristol Parkway and Avonmouth. The proposal includes a financial contribution towards improved shelters at two bus stops in Rock Street, with real-time information being provided at one of them. This would add convenience and comfort to the user experience. I see no reason why people would not use the bus for short trips to the High Street. However, I appreciate that the lack of frequency of these services to places further afield would require more careful planning, which would deter some potential customers.

57. The T1 service operated by First Bus runs to Bristol City Centre every 30 minutes on Mondays to Saturdays and every hour on Sundays. The nearest bus stop is somewhere between 1.9 and 2.4 km from the centre of the site. The frequency of the service is likely to attract some new residents to use this travel option, notwithstanding the distance to the bus stop. It is also to be noted that the aforementioned package of improvements to the A38 corridor includes new bus lanes close to busy junctions, including the M5 interchange. This, along with improvements to bus stops and busy junctions would improve the experience and help shorten bus journeys along this busy section of road.

---

[2] The Appellants and the Council have agreed distances in the SCG on Transportation and Highway Matters. Mr Woosnam, an objector, has presented his assessment in Appendix 7 of his statement to the inquiry. I have referred to the relevant distances from each source.

Proposed sustainable travel measures

58. As part of the Park Farm development there is a commitment to an extension of the bus route through the new estate to join Butt Lane at one end and Alexandra Way at the other end. The latter would entail a new link, which has been secured through a legal agreement with the relevant landowners. However, it is not known when this will be provided. Furthermore, the evidence in the SCG on Transportation and Highway Matters is that there is insufficient patronage from Park Farm alone for this extended route to be commercially viable.

59. The proposal includes a sustainable travel link between the appeal site and the Park Farm development. This would be 6.5m in width with a design speed of 20 mph and would allow two-way bus movement if required. It would also allow cycle and pedestrian access but would not be available for car use. There would be two alternatives for the proposed extended bus service. The first option would divert it from Park Farm through the appeal development, effectively resulting in an extended loop. This would rely on the aforementioned link to Alexandra Way being implemented. The second option would be for the bus route to loop through the appeal site in a similar way but route through the northern part of Park Farm to exit onto Butt Lane. This would not require the Alexandra Way link to come forward. In either scenario residents in both developments would have the potential to be within 400m of a bus stop and the long-term viability of the bus service would be assured.

60. Funding has already been secured from the Park Farm development for the extended bus service into that site. No additional financial contribution would be required for the additional section of the route through the appeal site. However, the Business Case submitted in the Updated Transport Assessment indicates that a contribution of £2,000 a year for 5 years would be necessary to allow the Park Farm funds to be utilised over a longer period of time and thus ensure commercial viability.

61. The appeal proposal would include a single form entry primary school and a nursery facility along with a retail/ community hub. Residents of the new development would be able to access these facilities on foot. In addition, the proposal would be served by a Travel Plan that accords with the principles of the submitted Framework Travel Plan. The main objective is to reduce reliance on the car and reduce single occupancy car journeys. Various measures are proposed including sustainable travel vouchers, which could be used for bus travel or cycle training, for example. There would also be secure cycle storage for each dwelling and at the retail/ community hub. The sustainable travel link would allow cycle and pedestrian access to the Park Farm development in order to provide a quicker and more convenient route towards the town centre. There would be provision for a Car Club to be set up and this and the sustainable travel vouchers would be paid for by financial contributions secured by the UU.

Conclusions

62. The site has some shortcomings in terms of accessibility, especially in relation to walking trips. I have no doubt that trips would be undertaken by car as is the case with the existing population. However, there would be opportunities available for people to exercise alternative modal choices. The proposal includes a number of measures designed to encourage changes in travel

behaviour as set out above. The Framework indicates that when assessing development proposals, it should be ensured that appropriate opportunities to promote sustainable travel modes can be - or have been - taken up, given the type of development and location. The Council is clearly taking pro-active action in this respect through its proposals for the A38 corridor. The appeal scheme also includes its own sustainable travel measures.

63. I appreciate that there was a survey of the new estates around the town undertaken in 2018 by the residents' group TRAPP'D. As I understand it the results were based on 71 returns. These indicated that the demographic is skewed towards young families in comparison with the settled population. In terms of travel mode nearly all used a car, and none used the bus. During the inquiry an objector undertook a Facebook poll. On the question that asked how often the bus was used, just under 70% respondents answered negatively. On the question asking whether a car share scheme would be used nearly all answered negatively. On the question asking about walking to the High Street there was a more even split between walk and car. On the question of the frequency of undertaking the walk to the High Street, there was a more varied response. The results of these two surveys do not seem to me surprising. This is because they reflect the available facilities from the respective locations available at the time of the poll. In the case of Park Farm, clearly people do travel on foot, although I accept that this estate is closer to the town centre that the appeal site. There is no bus serving the development at the moment and a car share scheme is rather different from a Car Club scheme, which as far as I am aware does not operate at Park Farm.

64. I therefore conclude that the appeal site has the potential to become a relatively accessible location where new residents will have the option to choose a number of sustainable travel opportunities rather than rely on car journeys for their trips. That is not to say that the car will not be used because that would be unrealistic. The important point is that there would be reasonable alternatives available in this case for many journeys. For these reasons I consider that in this respect the proposal would comply with policy CS8 in the CS and policy PSP11 in the PSP DPD.

ISSUE FIVE: WHETHER THE COUNCIL CAN DEMONSTRATE A FIVE YEAR HOUSING LAND SUPPLY

Background

65. The CS is over five years old and so the assessment of housing land supply is against the local housing need using the Government's standard methodology. In this case there is no dispute that the relevant figure is 1,388 dwellings per year, taking account of the 2022 updated affordability ratio. Whilst the NDP was made in May 2022 it does not include policies and allocations to meet the identified housing requirement. Paragraph 74 of the Framework is engaged, and it is necessary for a supply of 5 years of deliverable housing sites to be demonstrated. The January 2022 Housing Delivery Test results show that the Council has exceeded delivery expectations over the past 3 years. It is therefore only necessary to apply a 5% buffer, moved forward from later in the trajectory, to ensure choice and competition in the market for land. In order to meet the Council's housing need and provide the necessary buffer, a deliverable five year supply of 7,287 homes will need to be demonstrated.

66. The Framework clearly defines the meaning of deliverable. The site must be available now, offer a suitable location for development now and be achievable with a reasonable prospect of delivery over the five year period. Sites fall into one of two categories. Those with detailed planning permission are assumed deliverable unless there is evidence to indicate otherwise. Sites with outline planning permission or allocated sites are only be considered deliverable where there is clear evidence that delivery will take place within five years. The agreed five year period is 1 April 2021 to 31 March 2026. The position of the Council following the housing round table session at the inquiry was that it has 5.54 years of deliverable sites. The Appellants considered the position to be 4.33 years.

67. I turn now to consider the elements of supply that remain in dispute. It should be made clear that my consideration is on the basis of the evidence I received at the inquiry, and I have taken into account the helpful information provided by the individual case officers for the sites in question. My conclusions are a snapshot in time and by the time the decision is issued it is quite possible that the circumstances of some sites may have changed.

Student accommodation

0251: University of Western England Phase 1 and 0252: Block B Cheswick Village

68. There are two sites that will provide a total of 885 bedspaces in cluster flats and 54 studio flats. 307 dwellings have been added to the housing supply on the basis that the students would not be seeking alternative accommodation in the housing market. The Council indicate that this is a conservative figure.

69. The *Planning Practice Guidance* indicates that such accommodation can be counted on the basis that the students would not be seeking to find housing on the open market, most likely in the form of HMOs. Such a scenario would rely on the number of students remaining relatively stable and being accommodated on-campus rather than off-campus. In this case UWE's objective is for its first-year students to be housed on-campus and for that reason the aforementioned new accommodation is being provided. It is of course the case that second and third-year students would have to live off-site as happens at the present time. It is acknowledged that the on-site accommodation would not be sufficient to house all first-year students.

70. The figures indicate that student numbers have been increasing since 2016/17, mainly due to an increase in full-time students. However, the information from the University is that there were 7,737 first-year students in 2020/21 and the planned intake for 2022/3 is 7,720 with the projected intake for the following year much the same. It has also confirmed its strategy to bring its first-year students onto the campus and that as demand cannot currently be met the further on-site accommodation is to be provided. Clearly students will still be relying on accommodation within the general housing market, but it is a reasonable proposition that there will be a reduction in the degree of such reliance. Due to its proximity, some students will no doubt be accommodated in Bristol and the evidence indicates that UWE has nomination rights for 1,795 bedspaces within the City. Nevertheless, as many of the residential areas surrounding the university are in South Gloucestershire, I consider that on the basis of the evidence before me, it is reasonable for 307 dwellings to remain in the housing supply.

Windfalls

71. Objectors pointed to the 2021 Annual Monitoring Review (AMR), which indicated that since the start of the CS period in 2006 an annual average of 253 dwellings had been built on small sites. They therefore queried the AMR, which adopted a more cautious figure of 210 dwellings. However, The CS Inspector indicated in his 2013 report a historic rate of 159 dwellings a year over the preceding 23 years. Clearly there has therefore been considerable fluctuation in the contribution of small sites to the housing supply. Furthermore, whilst paragraph 71 of the Framework indicates that the approach should be realistic this is within the context of taking account of historic rates as well as expected future trends. In the circumstances I see no reason to depart from the conclusion in the AMR that a windfall allowance of 210 would be justifiable. This matter will no doubt be reviewed during the examination of the new Local Plan.

Cribbs Patchway new neighbourhood

0134aa: Land at Cribbs Causeway (Berwick Green/ Haw Wood)

72. This part of the strategic site is being developed by Bellway. Reserved matters were approved in April 2022 and the infrastructure, including road construction is underway. I was told that the developer wishes to start building the dwellings by the end of 2022, but it has provided no confirmation that the first 37 units will be built out by the end of March 2023. The Council accepted that this may not happen but was confident that the shortfall was capable of being made up during the following 3 years. There is no evidence to support such an assertion and it seems to me more likely that the building period will extend beyond the five year period. In the circumstances, 37 dwellings should be removed from the supply.

0134ab: Parcels 14-19 land at Cribbs Causeway (Berwick Green/ Haw Wood)

73. This part of the strategic site is being developed by Taylor Wimpey and shares the same outline permission as the site above. The reserved matters application was made in July 2021 and there are outstanding objections from internal consultees on matters such as crime prevention, urban design and landscape. Whilst these are important matters there is no reason why they will not be resolved. I was told by the Council that approval was expected by the end of September 2022. In the circumstances it would be unreasonable to remove all 244 dwellings from the supply as suggested by the Appellants.

74. Even if reserved matters are to be approved imminently there will be a lead-in period before house building can begin. In the absence of clear evidence from the Council it is reasonable to take a cautious approach. It seems to me that delivery should be pushed back to the last 3 years of the five year period. I consider that 9 dwellings should be removed from the supply.

0134c: Former Filton Airfield

75. YTL are the developers of this site, which is part of a much larger site with outline planning permission for mixed-use development including 2,675 dwellings. As I understand it a new outline application was submitted in April 2022 with a much larger residential component. The legal position regarding the two outlines is unclear but I was told that 0134c would be built out under the existing outline permission. It comprises a retirement village and 339

dwellings, but the former will be subject to a separate application and will not be included in the supply. Reserved matters were submitted in September 2022 for the 339 units, which has yet to be determined. The developer considers that 100 will be delivered in the last 2 years of the five year period.

76. YTL has a Planning Performance Agreement with the Council. Even allowing for the determination of the reserved matters application and a lead-in period thereafter, it seems reasonable that 100 dwellings would be delivered between April 2024 and March 2026. The Appellants point out that this would be phase 2 of a site that YTL is constructing on adjoining land. The Appellants raised no objections to that, and in their own five year trajectory phase 1 would be completed by the end of year 3. All things considered the 100 dwellings should remain in the supply.

Land east of Harry Stoke new neighbourhood

0135a: Land south of the railway

77. This is part of a larger development that had outline planning permission and is being built by Crest Nicholson. The first phase to the west is being built out. Reserved matters for 137 dwellings were submitted in March 2022. The Planning Performance Agreement is apparently being renegotiated and there are a number of issues to be worked through, including access to the adjacent Hoodlands site, which is to be independently developed. The Council indicated that the road and drainage infrastructure has been approved and is being delivered, thus opening up the site for housebuilding. However, it seems to me that there are several uncertainties about delivery of this land within the period in question. The lack of clear evidence leads to my conclusion that 55 dwellings should be removed from the supply.

0135b: Land north of the railway

78. This is part of a larger site, part of which is being built-out by Wain Homes. 0135b is immediately to the south and is owned by the Council who is trying to sell it to a housebuilder. It shares an outline permission for 327 dwellings with the Wain Homes land, which would provide the infrastructure including the access. but no reserved matters have been submitted. I understand that the sale of the land is anticipated by the end of 2022 but due to confidentiality this could not be confirmed. Whilst a reserved matters application was expected next year, without a known housebuilder to confirm build rates or timescales this is impossible to corroborate. There is no clear evidence to confirm the likelihood of any homes being delivered within the five year period. In the circumstances, 100 dwellings should be removed from the supply.

0135d: Land off Old Gloucester Road, Hambrook

79. This site lies to the south of 0135b and is privately owned. It has outline permission for 158 dwellings granted in October 2020. There is no information that a housebuilder has been engaged even though the land appears to have been marketed. Furthermore, there has been no reserved matters submitted or any idea of build-out rates or timescales. There is no clear evidence to confirm the likelihood of any homes being delivered within the five year period. In the circumstances, 53 dwellings should be removed from the supply.

North Yate new neighbourhood

80. Policy CS15 establishes the strategic allocation and the expectation of 2,700 dwellings being built by the end of the plan period (2027). The plan period was split into 3 parts with different delivery expectations. The evidence indicates that by the base date of 2021, 1,449 dwellings should have been delivered but that only 648 dwellings had materialised. Various AMRs have predicted increasing delivery rates and the 2021 AMR considered that 1,487 homes would be delivered by 31 March 2026, which would be 297 dwellings per year.

81. The majority of the land is being built out by Barratts and David Wilson Homes although Taylor Wimpey and Bellway are constructing 157 and 257 homes respectively. The Appellants consider that the build out rates for the 2 housebuilders responsible for the majority of the site should be considered. They point out that the highest rate was 191 dwellings in 2019/20. The Council counter this by pointing out that the need to put in road infrastructure would have reduced the ability to build houses and that Covid-19 also caused construction delays. The Council made a comparison with Charlton Hayes. For the same period an average of 201 dwellings per year were delivered, although I understand that more housebuilders were involved.

82. It seems likely that build-out rates will increase now that the infrastructure is completed. I also appreciate that some of the units will be flats, which should be faster to deliver. However, most of the site is being developed by 2 housebuilders rather than 4 and I consider that the Council's contention that 1,487 dwellings will be built out over the 5 year period is overly optimistic and there seems little or no evidence to support it. For example, no assessment has been made by the housebuilders as to how quickly the homes will be constructed. The Council has invited me to determine a reasonable rate if I do not accept its arguments. I gave it the opportunity to reflect but no other figure was forthcoming. I consider that the only reasonable option is to look at the actual delivery that the 2 major housebuilders have achieved up to the base date. Taking the highest of these, which was for 2019/20 and thus pre-pandemic, seems to me the most appropriate solution. In the circumstances, 532 dwellings should be removed from the supply.

Land at Harry Stoke

0021b: Phases 1-5, Harry Stoke

83. The site has detailed planning permission for 763 dwellings with 605 being included in the supply. It is being developed by Crest Nicholson in a joint venture with Sovereign who are constructing the affordable element. It is understood that Linden Homes has developed a part of the site and has completed 112 dwellings. The dispute relates to the build-out rate. The Council indicate that Crest has projected delivery of 559 units between 2021 and 2026, which would give a build-out rate of 111 units a year. That does not seem to tally with the developer's pro-forma, which was submitted in evidence and indicates a total of around 387 units. However, the proforma is not signed or fully completed and can thus have little credence.

84. The Council's evidence is therefore far from clear with different figures in its AMR trajectory and evidence. In the circumstances I consider that it is reasonable to adopt the Appellants more cautious position by using the

average build-out rates that have been achieved by Crest on the first phase of the wider site. I appreciate that this was for a lower density development whilst 40% of the 0021b site would be flats and thus potentially quicker to build. Nevertheless, based on the available information, an average rate of 52 dwellings per annum is to be preferred. This means that 233 dwellings should be removed from the supply.

0021c: Phases 6 and 7, Harry Stoke

85. The outline planning permission for 1,200 dwellings was granted in 2007 with a ten year period for reserved matters to be submitted. Just before this expired a reserved matters application for 263 dwellings was submitted. This has not been determined. During the discussion at the inquiry the Council revised its assessment reducing the anticipated 125 dwellings to 50. The site is controlled by Crest Nicholson but one of the power lines still needs to be moved underground.

86. It is acknowledged that the developer asked for the reserved matters application to be put on hold during the pandemic and that consideration has only recently restarted. Nevertheless, the timescales involved since the outline permission was granted do not indicate much sense of urgency, especially bearing in mind that the reserved matters application was submitted well before the pandemic. The Council indicated at the inquiry that it has regular meetings with Crest, and yet there is no written indication from the developer, and I was told that the Planning Performance Agreement is being renegotiated. There is too much uncertainty and no clear evidence that the site will contribute anything to the supply during the five year period. In the circumstances, 50 dwellings should be removed from the supply.

Watermore Junior School, Coalpit Heath

87. The site has outline planning permission for up to 26 dwellings and full permission for a primary school. Reserved matters approval was given for 5 dwellings in June 2020 and this part of the proposed development is not disputed. A Registered Provider, Live West, now owns the site. It is proposing 15 new dwellings and conversion of the existing school building to 6 units. All would be affordable. Prior approval was given in June 2022 for the removal of a modern teaching block, which was required to build the new dwellings. Live West has also undertaken public consultation events.

88. The demolition may be underway but there have been no reserved matters for the 21 dwellings submitted. Whilst the Council indicate that this is "expected" in early 2023 there is no indication of intention from Live West itself. In the absence of such, I consider that 21 dwellings should be removed from the supply.

Land east of Cedar Lodge, Charlton Common

89. An outline planning permission for 29 dwellings was granted in October 2021. Reserved matters applications were made for the 29 dwellings and an attenuation basin to serve them in February 2022 by Woodstock Homes. I was told that there are objections on ecology grounds and relating to biodiversity net gain. There is no indication from the developer or its agent of its intentions and no approval on either of the reserved matters applications. The Council indicated that progress on the outstanding issues was not

sufficient to determine the applications yet but was confident this would be resolved in 2023. This is not sufficient to comprise the clear evidence of deliverability required and so 29 dwellings should be removed from the supply.

Conclusions

90. For all of the reasons given above, I consider that the Council can demonstrate through clear evidence that it has sufficient housing land for the delivery of 6,948 dwellings within the five year period 2021-2026. On the basis of an agreed five year housing need of 7,287, including a 5% buffer to provide choice and competition in the market for land, the Council has a 4.77 year housing land supply.

ISSUE SIX: THE EFFECT ON ECOLOGY AND NATURE CONSERVATION

Effect on wildlife

91. A number of objectors are concerned about the loss of wildlife. It is noted that the appeal site is not within any designated area in terms of its ecological importance, although there are several non-statutory sites of nature conservation value within relative proximity. The closest is the Park Mill Covert SNCI adjoining the western boundary. The ES includes detailed information about the effects on ecology and it is noted that various site surveys have been undertaken, including of protected species. Mitigation measures are proposed during and after construction. These would be secured by planning conditions, requiring submission of an Ecological Construction Method Statement, a pre-works badger survey and a Landscape and Ecological Management Plan.

92. The habitat of greatest value to wildlife, including bats, is the wooded corridor along the Pickedmoor Brook and the broadleaved woodland in the southern and western sections of the site. These areas would remain undisturbed. The ES recognises that there would be a loss of hedgerows within the developed areas, although this is generally species-poor due to intensive management over the years. They are thus of limited value to wildlife. The proposal includes green spaces and corridors within the developed areas as shown on the Green Infrastructure Parameter Plan. These green links would provide connectivity for bats to commute between the foraging habitats around Pickedmoor Brook and the rural area to the north. Planning conditions would secure various enhancement measures including a lighting strategy, which would minimise light spill to protect the habitats of bats and nocturnal wildlife.

93. An assessment has been undertaken using Natural England's Biodiversity Metric 3.1. The results show that there would be a net gain of some 74% in habitat units and 39% in hedgerow units. There was no dispute about methodology and the way the gains had been calculated. I consider that they demonstrate there would be considerable enhancement to the biodiversity of the site. At present there is no requirement for any specified gain in either national or local planning policy. The scheme would be in accordance with policy PSP19 in the PSP DPD and the Framework in this respect.

Effect on European sites

94. The *Conservation of Habitats and Species Regulations* 2017 (as amended) (the Habitats Regulations) require that where a plan or project is likely to

have a significant effect on a European site either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (myself in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

95. There are a number of European designated sites within 10km of the appeal site. The Severn Estuary Special Area of Conservation (SAC), Special Protection Area and Ramsar Site are the closest, being some 2.8km to the west. This area is designated for its estuarine habitats, wintering bird assemblage and migratory-fish populations. The River Wye SAC is about 8.2km to the west and is designated for its water courses, vegetation and species, including the Atlantic Salmon, White clawed crayfish, otter and various species of lamprey. The Wye Valley and Forest of Dean Bat Sites SAC is approximately 9.5km to the north-west and its qualifying features include the Lesser and Greater Horseshoe bat populations. The Wye Valley Woodlands SAC is approximately 9.8km to the north-west and is designated for its beech and mixed broadleaf forests and yew woodlands.

The Severn Estuary protected sites

96. The Pickedmoor Brook runs across the southern part of the appeal site and discharges into the Severn Estuary about 2.5km downstream. The built development would be in excess of 140m to the north of this watercourse and even if any contamination of surface water or ground water during construction reached it this would be diluted due to the distance from the protected waters. There could potentially be some loss of potential feeding habitats, but the ES did not record any of the qualifying bird species being present at the appeal site or its use for foraging. It is therefore safe to conclude that the appeal site is not important in terms of supporting the protected characteristics of the SAC habitats.

97. The Habitats Regulations Assessment published in connection with the now withdrawn *West of England Joint Spatial Plan* stated that, further to discussions with Natural England, housing developments within 7km of the Severn Estuary sites will have most potential risk of generating damaging recreational pressure. Potential effects include disturbance to sensitive species, including wintering birds, through habitat erosion and fragmentation. The ES indicates that there are limited public access points and parking facilities at the closest points to the protected sites. The Severn Way long distance footpath, which follows the estuary edge, is not directly accessible from the appeal site by public footpath. Furthermore, the appeal proposal would include some 17.50 ha of on-site public open space, which would be a more convenient alternative for informal recreation, including dog walking. In such circumstances I am satisfied that there would be no significant adverse impacts as a result of recreational pressure from the new population.

98. The sustainable drainage design would ensure that the pre-development greenfield characteristics would not be exceeded so that there would be no significant increase in the quantity or change in the quality of water leaving the site during the operative phase. Foul drainage would be managed through existing sewage treatment infrastructure and in accordance with existing

legislative controls, including discharge consents. In the circumstances there would be no risk of harm to water quality within the Severn Estuary sites.

The other European sites

99. Although the appeal site is 9.5km from the Wye Valley and Forest of Dean Bat Sites SAC the conservation objectives include maintaining the habitats on which the qualifying species rely. The appeal site would be within the range that Lesser and Greater Horseshoe bats could travel to forage. However, the ES records very low levels of these species of bat being present and therefore it seems to me reasonable to conclude that the site is not of importance as a foraging ground for the Horseshoe bat populations within the SAC.

100. The appeal site is separated from the other European designated sites by the Severn Estuary. Therefore, the distance by road for the consideration of recreational effects and potential trip generated air quality effects would be significantly greater than 10km. I am thus satisfied that there would be no risk or probability of a likely significant effect on the interest features of these sites arising from the occupation phase of the appeal scheme.

Conclusion

101. It is to be noted that Natural England, who is the Government's advisor on nature conservation, was satisfied with the assessment in the ES. I can therefore safely conclude that the appeal proposal would not have a significant effect on the integrity of the European sites, having regard to their conservation objectives. To be clear, this conclusion does not rely on further mitigation. In such circumstances it is not necessary for me to carry out an Appropriate Assessment under the Habitats Regulations in this case.

102. With regards to wildlife on the site, including protected species, I consider that, subject to the mitigation indicated in the ES and the imposition of appropriate planning conditions, there would be no significant adverse ecological impacts. In this respect the proposal would be in accordance with policy CS9 in the CS and policies PSP18 and PSP19 in the PSP DPD.

OTHER MATTERS

Highways

103. There was a considerable amount of local objection about congestion and highway safety. I noted from my own observations that the roads in and around Thornbury are busy, especially at peak times. A development of nearly 600 dwellings would clearly generate additional traffic movements, although for the reasons already given, the scheme includes sustainable travel solutions. The number of peak period traffic movements and the trip distribution was agreed by the Council as Local Highway Authority. This included a cumulative assessment with other committed development projects. The Framework makes clear that planning permission should not be refused on highway grounds unless the residual cumulative impacts on the road network would be severe.

104. The Local Highway Authority is responsible for the function and safety of the local road network. As the statutory authority it has a duty to consider matters of safety and whether development proposals would be acceptable without severe impacts. In this case, the Transport Assessment concluded

that there is residual capacity across the network, having regard to committed developments. The Local Highway Authority has not objected to the appeal scheme subject to a number of mitigation measures. These include signalisation of the Butt Lane/ Morton Way/ Gloucester Road junction and financial contributions towards the increased capacity and safety of the junctions of the A38 with Thornbury Road and Church Road. A 40 mph speed limit to the west of the site entrances is also proposed, which would encourage drivers to slow down as they enter the town.

105. National Highways is responsible for the safe operation of the strategic road network. The A38/ B4509 right hand lane capacity would be increased through local road widening and the pedestrian crossing facility improved. The two-way north-bound slip road leaving the M5 Motorway at junction 14 would be lengthened, which was identified as a required improvement to reduce morning peak queuing. National Highways has agreed that these measures would not only mitigate the impact of the proposed development but also result in a wider improvement to capacity and traffic flow in the morning peak period.

106. There are no Air Quality Management Areas in Thornbury or its vicinity. Whilst I appreciate that there would be increased traffic movements, there is no reliable evidence that the levels of pollutants such as NO_2, PM_{10} and $PM_{2.5}$ would exceed the levels set out in the national air quality objectives if the development were to go ahead. This has been addressed in the ES and no significant effect on air quality was concluded.

107. For all of the above reasons the evidence indicates that there would not be a severe residual impact on either the local or strategic highway network. I am satisfied that in this respect the appeal scheme would not conflict with policy CS8 in the CS and policy PSP11 in the PSP DPD.

Infrastructure

108. There is local concern that Thornbury has been subject to a large amount of development in a relatively short period and that it has been difficult to absorb such rapid growth into the existing community. This is perhaps exacerbated by the fact that many of the new residents have a younger age profile than the existing population. Whilst I understand this concern it is difficult to see how it could be a reason for objecting to the scheme. The Council cannot at the present time meet its housing need and it has limited opportunities to provide for such growth in view of the extent of protective designations, including the Green Belt. Also, there is no evidence that integration cannot satisfactorily be achieved. Whilst pressure on GP and dental services is raised, this is a problem nationally and not within the remit of this appeal to resolve. I note that the relevant consultees have not objected to the scheme or requested that contributions be provided.

109. The proposal includes an on-site primary school and nursery. The area of land has been identified in the UU and once the Council has accepted it, the contributions for these facilities would be transferred. The up-to-date evidence indicates that there are sufficient surplus places at several primary schools relatively close to the appeal site to accommodate pupils prior to the delivery of the on-site facility.

110. I appreciate that there is local objection relating to secondary school capacity to accommodate the children who would live within the appeal development. However, it is important to understand that the Council as Local Education Authority has a statutory duty to provide sufficient school places for pupils in its area. On the basis of the Council's child yield multiplier, which I consider the most reliable indicator to use, the development would generate 113 secondary school pupils. Thornbury falls within the catchment area of the Castle School, but it appears to draw children from a considerable distance, including some from within the adjoining catchment of Marlwood School in Alveston. The evidence indicates that now and in future years there would be sufficient spare capacity at the Castle School, which would be accessible on foot or cycle from the appeal site. I note that these two schools are within the same planning area for funding. However, due to the considerable spare capacity between them no financial contribution was required by the Local Education Authority from the appeal development.

PLANNING CONDITIONS

111. A list of planning conditions was drawn up by the main parties and these were discussed at the inquiry. My consideration has taken account of paragraph 56 of the Framework and advice in the *Planning Practice Guidance*. In particular I have had regard to the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification. I have changed the detailed wording in some cases to ensure that the conditions are precise, focused and enforceable.

112. This is an outline application with all matters save for access reserved. The standard requirements regarding the submission of reserved matters have been imposed but reduced timescales for implementation have been included. This was agreed by the main parties as reasonable in order that the housing could contribute to the short-term land supply deficit. There is a requirement that the development should accord with the submitted drawings in the interests of precision and proper planning. In addition, there is a requirement that the design parameters and strategies should be in accordance with the Design and Access Statement. This is required to ensure that the details put forward later in the process achieve high design quality.

113. Due to the size of the development, it is proposed to be constructed in phases. In order to ensure that this is planned comprehensively and proceeds in an orderly manner, a strategy setting out the relationship between the different phases is necessary. This would need to be submitted before or at the same time as the first reserved matters. It is acknowledged that during the development process small changes to the agreed phasing process may be required. It is therefore reasonable to allow this to happen at the discretion of the Council. The Phasing Strategy would include the disposition of uses, including open spaces, affordable housing, the non-residential elements, transport infrastructure and the like. Also included would be the parts of the site where public art would be provided. This was a matter of dispute and I consider the justification for it below.

114. There are various details that need to be provided but do not fall within the defined scope of "*reserved matters*". Examples include ground and floor levels, materials, car and cycle parking, walls and fencing. A condition is

justified that requires these matters to be considered at the same time as the reserved matters for each phase of the development. A separate condition is required to ensure that the main road through the development is sufficient in size to accommodate all modes of travel, including cyclists and the bus.

115. A Framework Travel Plan has been submitted. However, it is necessary to ensure that its principles are incorporated within a final document that reflects the detailed scheme before the development is first occupied. The cost of implementing the Travel Plan is included within the S106 Agreement. As already commented the development would be within cycling distance of many facilities in Thornbury and beyond. However, it has been acknowledged that some journeys would continue to be undertaken by car. In such circumstances the car and cycle parking facilities provided for each dwelling or non-residential use should be provided prior their occupation. The Government is encouraging more use of electric vehicles and details of the infrastructure to support them needs to be provided for each phase of the development.

116. Highway improvements have been proposed to various junctions on the local and strategic highway network as referred to earlier in my decision. It is also intended that localised road widening is carried out to Oldbury Lane and Butt Lane. These works are necessary for reasons of highway safety and would improve capacity and mitigate the impact of additional traffic generated by the proposed development. These works would not be needed until the traffic movement reached a certain point. This is why in some cases part of the development could go ahead before the mitigation is required.

117. Two new access points to the appeal site would be constructed onto Oldbury Lane. There would be supporting infrastructure and lighting, and the speed limit would be reduced to 40 mph. The latter would require the making of a Traffic Regulation Order. Although this would be subject to public consultation it would have safety benefits and there is no reason to surmise that it would not be made. These works and at least one of the accesses should be completed before any dwelling is occupied and the measures are necessary to ensure that a safe and suitable access is provided.

118. In order to ensure that the main road through the development is suitable for buses it is required to be 6.5m in width. The provision of a link between the appeal site and the Park Farm development is important as part of the sustainable travel package. This would allow buses to pass between the developments as well as pedestrians and cyclists. It is necessary for it to be in place before the appeal scheme is first occupied. In order to encourage bus travel and make it an attractive option for all users, high quality waiting and boarding facilities would be provided. These provisions would be carried out in accordance with the agreed phasing strategy.

119. It is proposed to use sustainable drainage principles as indicated in the Flood Risk Assessment. A surface water drainage strategy is necessary to ensure that the needs of the development are met in a sustainable manner and without harm to ecological interests. The developed areas are within Flood Zone 1, but in order to satisfactorily mitigate against climate change, taking a precautionary approach, the Flood Risk Assessment recommends finished floor levels are set at 11m AOD. The Pickedmoor Brook is in Flood Zones 2 and 3 and for adjacent development parcels ground floor levels should be set

at 11m AOD or 600mm above ground level, whichever is the higher. The Council wishes to impose a condition requiring groundwater monitoring. However, I am not satisfied that there is sufficient evidence to demonstrate that groundwater flooding is an issue or that the ingress of groundwater into the attenuation ponds would be likely to result in flood risk. I do not therefore consider that the suggested condition is reasonable or necessary.

120. Policy PSP6 in the PSP DPD requires all major greenfield residential schemes to reduce CO^2 emissions by at least 20% below Building Regulations requirements. This is necessary to help combat climate change in accordance with national and local planning policy. An energy statement is therefore to be submitted for approval before or along with the reserved matters to demonstrate how this would be achieved.

121. Taking account of the historic interest of the lands around the Castle and the former deer park a scheme of archaeological investigation is necessary. This will need to be undertaken prior to any works on the site in order to ensure that the results are not compromised by ground disturbance.

122. The report submitted on ground conditions recommended further ground gas monitoring, surface water sampling and geotechnical investigation. If this results in unacceptable risks being found, a programme of remediation works will need to be carried out and subsequently verified. A condition setting out the necessary measures to be taken will ensure that the site is suitable for its intended purposes and that the wellbeing and health of future residents will be assured. A further condition is required to put measures in place if unexpected contamination is encountered during the course of construction.

123. The ES identified the potential for noise impacts to new dwellings and gardens within 60m of Oldbury Lane. It is therefore necessary to ensure that the design and layout of the development provides an acceptable living environment for new residents. For a similar reason, details of noise insulation measures in relation to extraction systems and building plant are required to protect new residents and also any existing residents living close to the noise source. Furthermore, before the retail and community hub is occupied, details are needed of the measures to be taken to protect residents from any odours resulting from hot food preparation.

124. The construction period would inevitably cause some disturbance and inconvenience to nearby residents and road users. A Construction Environmental Management Plan is therefore required to help minimise adverse impacts. This should include the hours of construction and delivery, measures to protect surrounding properties from noise and vibration during building operations, arrangements for the parking of contractors, control of dust and measures to maintain air quality, lorry routeing and a means of dealing with issues and complaints.

125. In order to protect ecological interests during the construction period an Ecological Construction Method Statement is necessary to demonstrate how retained habitats would be safeguarded and how site clearance works would be undertaken. Before any are undertaken an up-to-date badger survey is also required, bearing in mind that these animals are highly mobile. This may require a license to be obtained in order to carry out necessary mitigation.

126. In order to achieve a sustainable outcome with high quality green spaces and ecological improvements, a Landscape and Ecological Management Plan is required. This will reflect the principles outlined in the ES. The proposal includes a proposed net gain to biodiversity in accordance with national and local planning policy. A scheme is therefore needed to show how this would be achieved. Nocturnal animals, especially some species of bat, can be sensitive to artificial lighting. It is therefore necessary to require a Lighting Strategy to demonstrate how the impacts will be satisfactorily mitigated.

127. A strategy for the site-wide management of waste and recycling is required in order to ensure that the generated waste is dealt with in a co-ordinated and sustainable way. The retail/ community hub is intended to provide local facilities for people living on the new development as well as nearby to meet some day-to-day needs. It is therefore justifiable to restrict the uses to Use Classes A1, A2 and D1 in line with what is being proposed. Without this the facilities could be used for a range of uses that would not necessarily meet the needs of the development as assessed in the ES.

128. The Council wish to include a requirement for the provision of public art within the development. Policy CS23 in the CS relates to community infrastructure and cultural activity but it does not specifically require proposals to incorporate public art. The Council explained that other developments in Thornbury had made such provision and examples include carved benches and landscape features. Whilst it does not appear to be a formally adopted document, the Council has approved a planning advice note on art and design in the public realm. The Appellants object to the inclusion of this provision on the grounds that it does not meet the necessity tests for conditions and is vague and open ended.

129. I do not agree. To my mind incorporating public art into the scheme would contribute in a positive way to the quality of the development and provide a unique sense of place and identity. It would be for the Commission to consider what would be appropriate and there is much inspiration that could be drawn upon from the rich history of the town and the quality of the landscape that surrounds it. For these reasons I consider the requirement reasonable and necessary and compliant with the Framework and Planning Practice Guidance. In order to ensure that the public art scheme is effectively integrated, the overall concept needs to be submitted at an early stage. The details and implementation timetable can be submitted along with the reserved matters. I have amended the wording to be more concise and relevant to this particular development.

THE PLANNING OBLIGATION BY UNILATERAL UNDERTAKING (the UU)

130. The UU was considered in detail at the inquiry. It was engrossed on 3 November 2022. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations) and the policy tests in paragraph 57 of the Framework. I have also taken account of the *Community Infrastructure Levy and Section 106 Planning Obligations Guide* SPD (March 2021), which provides support to policy CS6 in the CS. It should be noted that the Deed contains a "blue pencil" clause in the event that I do not consider a particular obligation would be justified in these terms.

131. I requested further information about the financial contributions. I have scrutinised this carefully and I am satisfied that the sums of money sought have been adequately justified. There are the necessary provisions in the Deed to index-link the contributions.

Highway improvements

132. There are various obligations that provide financial contributions to improve capacity and safety. The Highways Contribution of £171,208 covers the cost of the two local A38 junction improvements referred to previously. This is on a pro-rata basis with the Cleve Park and land west of Gloucester Road developments, which would also impact on these junctions. However, it is now proposed to put the money towards improvements to these junctions as part of the wider improvements to the A38 corridor, referred to earlier. This seems to me acceptable as it would result in capacity improvements to mitigate the impact of traffic generated by the appeal development. In the event that the wider A38 works do not come forward, the originally intended improvements would be carried out to these junctions. The Zebra Crossing Contribution of £73,500 would reflect the cost of provision of a new crossing on Gloucester Road close to the Anchor Inn. To mitigate against additional traffic generated by the appeal scheme, it is necessary to provide a safe crossing point on the walking route to Manorbrook primary school and The Castle secondary school.

133. A number of obligations relate to improvements to accessibility and are necessary to allow new residents realistic modal choices as already explained. The Travel Plan Contribution of £375 per dwelling will include sustainable travel vouchers for the first household occupying each dwelling. In addition, it includes a reasonable sum to cover the costs of a Council officer's time to implement and administer the provisions of the Travel Plan. The justification for the £10,000 bus service contribution, which would be used to extend the bus service into the site, is set out in the business case in the updated Transport Assessment. The Bus Waiting Contribution of £20,500 has been costed for provision of two new bus shelters at stops in the town centre with real time information for one of them. The Town Centre Cycle Parking Contribution of £4,000 will cover the cost of providing 3 new cast iron cycle stands each accommodating two cycles in the town centre.

134. The Car Club would be run by an independent operator. The covenants allow the Appellants to choose whether they will make arrangements for the set-up of the Car Club or whether they will ask the Council to do so. If the latter option is chosen, the contribution of £38,000 is a reasonable assessment of the cost of setting up this service and offering free membership to residents for a period of 4 years. If the former option is chosen a monitoring fee of £1,000 is required for the Council to ensure that the Car Club is secured, marketed and taken up over a 4 year period. The £250 per year seems a reasonable sum to cover the time taken by a member of staff for this purpose.

Open spaces

135. The Open Spaces include the allotments, unadopted road verges, the informal recreational open space, the natural and semi-natural open space, equipped play space and any unadopted surface water infrastructure on or under the Open Spaces. These are shown on the Green Infrastructure Parameter Plan, which is appended to the Deed as Plan 4. A covenant requires that a

landscaping scheme and the surface water infrastructure works for a phase has to be approved before development on that phase is commenced. The landscaping scheme includes the hard and soft landscape features with a timetable for completion before 70% of dwellings in a relevant phase are occupied. These provisions are all required in order to meet the needs of the development and also to ensure that there is sufficient space for informal recreation so that protected European sites are not damaged by recreational pressures from the new population.

136. A management and maintenance scheme for the Open Spaces is required upon commencement of development and no dwelling can be occupied until it has been approved. Once completed, the landscape and surface water infrastructure works are to be inspected by the Council to ensure satisfactory completion. Thereafter they are to be managed and maintained in accordance with the aforementioned scheme. There are also clauses about removal of existing hedgerows and provisions for replacement of planting that dies or is removed. The provision for a Management Entity is included to manage and maintain the Open Spaces in perpetuity if the site owners do not wish to take on that role themselves.

137. An Inspection Fee of £21.43 per 100m^2 is required to be paid upon completion of the landscape and surface water infrastructure works for a relevant phase. The Council has provided a detailed justification for this fee. It has given an example from another site and also detailed what would be involved and which staff members would be carrying out the inspections. It is clear that the Council's experience is that multiple visits are often required over a prolonged period. I note that it is about half of the rate that was originally being sought. This is a large site, which would be built out in several phases possibly by more than one housebuilder. In the circumstances I am satisfied that the inspection fee is necessary and proportionate to the appeal scheme.

138. The Outdoor Sports Facilities Contribution comprises £1,199.154.43 to provide or improve the facilities at various sports clubs, schools or playing fields named in the covenant. It also includes £362.942.76 for the maintenance of these new or improved facilities. The contribution is to be paid before 500 dwellings have been occupied. The Appellants object to this contribution on the grounds that there is no evidence of a shortfall or how the money would be spent. Policy CS24 in the CS states that new developments must comply with all the appropriate local standards of open space provision in terms of quantity, quality and accessibility. The Appellants refer to the *Playing Pitch Strategy and Action Plan*. This indicates that in terms of capacity Thornbury has no shortfall. However, although the front cover is dated September 2020, the document itself is dated February 2018. Furthermore, the Council indicated at the inquiry that the assessment was done in 2016. In such circumstances it is not up to date and unlikely to include the new developments that have taken place around the town, including Park Farm.

139. The Council has provided information about existing provision within the vicinity of Thornbury and concluded that there is a shortfall. Although the Appellants have indicated that some sites have been left off the Council's list, several are taken from the *Playing Pitch Strategy and Action Plan*, which as indicated above is not current. Overall, the Council's list seems to me to be more comprehensive and in my opinion provides a more reliable picture of the situation as it presently exists.

140. The contribution has been worked out on the basis of the proposed number of dwellings and an occupation rate of 2.4 persons per dwelling. On the basis of the local standard in the CS of 1.6ha per 1,000 population, the proposed development would generate a requirement for 22,848m^2 of outdoor sports facility space. The Council has put forward an overall cost of £52.484 per m^2, as set out in the *Infrastructure Delivery Plan* with the appropriate annual uplift.

141. Normally, I would expect to have information about the funded project(s) on which the money would be spent. However, in this case the contribution would not be paid until towards the end of the development project. On the basis of the Appellants' own delivery programme, it seems unlikely that 500 homes would be occupied until 2029/30 at the earliest. Clearly it is unlikely that a fully funded project could be identified so far ahead. It is also relevant to note that the local standards referred to in policy CS24 also include quality of provision. The sort of improvements indicated by Thornbury Town Football Club, Thornbury Rugby Club and Thornbury Lawn Tennis Club would qualify in this regard. Indeed, this sort of improvement meets the criteria within the guidance notes for Section 106 funding provided to applicants by the Council.

142. The maintenance payment is worked out in a similar way and based on a cost per m^2 set out in the *Infrastructure Delivery Plan* with the appropriate uplift. It is necessary to ensure that the facilities provided will be properly maintained and clearly as they will be provided off-site there will be a cost involved in doing so.

143. Policy CS24 indicates that the default position is to provide sport and recreation facilities on site. In this case the Appellants have chosen not to do so but to make a financial contribution instead. It is relevant to note that there is a repayment clause in the Deed for any part of the contributions that remain unspent. In the circumstances, I am satisfied that the contributions are necessary and proportionate to the appeal development.

Affordable housing

144. Provision is made for 35% of the housing to be affordable with 65% social rented units, 5% affordable rented units and 22% shared ownership units. 8% are to be social rented units that are suitable for wheelchair users or disabled people. A site-wide plan is required to be submitted with the first reserved matters to ensure that mixed and balanced communities are delivered across the different phases. For similar reasons the affordable dwellings should not be distinguishable from the market dwellings and only provided in small groups. The social rented and shared ownership dwellings would comprise a mix of 1 and 2 bedroom flats and 2, 3 and 4 bedroom houses. The affordable rented units would comprise 2 bedroom flats and 2 and 3 bedroom houses. I was told at the inquiry that the mix reflected local need.

145. The affordable housing would be offered to a Registered Provider. The obligations make provision for its delivery in two stages on a phased basis, which would be linked to the occupation of the open market housing. The second trigger would be prior to the occupation of no more than 75% of the market dwellings in the phase. Sufficient value should remain in the land to be confident that all of the affordable dwellings would be delivered. Various other covenants are made regarding occupation, management standards

service charges, right to buy and staircasing to ensure that the benefit derived from the affordable provision remains in perpetuity.

146. There is a considerable need for affordable housing in the District. The obligations are necessary to meet that need in accordance with policy CS18 in the CS. This is further discussed in my conclusions.

Primary school

147. There is a covenant to provide a 1.12 ha site for a single form entry primary school and a co-located nursery of 610.5m^2. The land is broadly identified on Plan 3 to the Deed. Once the Council has approved exactly where the school will be sited or upon the occupation of 200 dwellings, whichever is later, it will be invited to accept transfer of the site. Once that has been completed a contribution of £4,207,899 will be paid to cover the cost of construction of the primary school and £620,000 to cover the cost of the nursery. The justification for the primary school has been considered above. The financial contributions are based on the department for Education Cost Calculator.

Self-build and custom housing

148. Provision is made for at least 5% of dwellings to be custom build dwellings as defined in the *Self-Build and Custom Housing Act* (2015). The phases that will contain the plots require to be identified before development starts. Prior to commencement of a phase containing such plots the number and boundaries of the plots require to be specified, along with information on such matters as delivery, design parameters and plot boundaries. The delivery of the plots is linked to the occupation of the other dwellings and no more than 85% can be occupied until the serviced plots have been provided and marketed. There is to be an agreed marketing strategy and if, after a specified period, the plots are not sold they will be offered for sale at open market value to the Council.

149. The available evidence shows that there is a clear demand for such housing and in January 2022 there were **1,138 entries on the Council's Register**, which far exceeds the provision. The obligations are therefore necessary to meet the need and the 5% provision is in accordance with policy PSP42 in the PSP DPD and its supporting *Self-Build and Custom Housebuilding* SPD. This is further discussed in my conclusions.

Safeguarded land

150. An area of land at the eastern end of the site adjacent to Oldbury Lane and identified on Plan 2, is safeguarded for drainage improvements to that road should it be required by the Council before the end of 2024. This would be transferred to the Council for a peppercorn sum for this purpose. If it is not required, it would be used as open space in accordance with the requirements set out in the second schedule dealing with such matters. This is a relatively short-term covenant that seems to me to be reasonable and necessary in order to allow improvement works to the adjoining highway if needed.

Conclusions

151. For the reasons given above and taking account of all of the information provided to the inquiry, I am satisfied that the planning obligations in the UU are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and

kind to the appeal development. They meet the statutory requirements of Regulation 122 in the CIL Regulations and the policy requirements of paragraph 57 in the Framework. I am therefore able to take them into account in my decision.

CONCLUSIONS AND PLANNING BALANCE

152. The appeal proposal is Environmental Impact Assessment development. I have taken the ES and all other environmental information provided before and during the inquiry into account. I have also concluded that in this case the scheme would have no significant effect on the integrity of the European sites, having regard to their conservation objectives.

Planning benefits

153. On a general point, I do not agree with the proposition that a benefit should be ascribed lower weight if it is either policy compliant or ubiquitous. It is difficult to understand why a benefit should be downgraded just because it is delivering an objective that the development plan considers to be important and in the public interest. That approach would not allow the exercise of judgement by the decision-maker that some policy-compliant benefits are more important than others on account of the circumstances of the case. There is no evidence that there is any alternative form of development in the pipeline that would deliver the package of benefits being proposed in this appeal. In any event, the weight to be given to the benefits would depend on the particular circumstances, both temporal and spatial, and when considered individually and together. In that respect they are likely to be unique.

154. It is relevant to note that the application is an outline proposal for "up to" 595 dwellings. Whilst it is possible that a lower number could be proposed at a later stage, no evidence has been given that this is intended or likely. In such circumstances, the Council would not be in a position to require a reduction at reserved matters stage. All of the evidence to the inquiry and in the Environmental Impact Assessment is on the basis that the maximum number of dwellings would be constructed.

155. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale: *limited, moderate, significant and substantial*.

156. The shortfall in five year supply is some 0.23 years and this amounts to some 335 dwellings. I understand that there are housebuilders interested in the site and that Barwood Development Securities Ltd have a good track record of securing deliverable schemes. However, it is unlikely that the scheme would be delivering until the final year of the five year assessment period (2025/6). The Appellants anticipate that delivery, based on the adjacent Park Farm development, would be about 91 dwellings a year. This would make an important contribution to reducing the housing shortfall. Delivery would continue beyond the five year assessment period and the contribution made in terms of the longer term should also be given weight. This is especially relevant in this case because it is unlikely that a plan-led solution to housing delivery will be in place for some years to come. For all of these reasons, I attribute significant weight to the proposed housing delivery.

157. The need for affordable housing is disputed. The CS identifies an annual need for 903 affordable homes, but the Examining Inspector recognised that this

could not be achieved and set an affordable housing target of 35% on large sites as a viable objective. The evidence of the Appellants, which does not appear to be disputed, is that to date annual provision has only been about 27%. However, the CS affordable needs assessment was based on the 2009 SHMA, which was subsequently superseded and cannot therefore be relied upon. In 2021 the *West of England Local Housing Needs Assessment* (LHNA) was published as part of the evidence base to the draft *Spatial Development Strategy*. Although it has not been scrutinised through public examination it is the most up-to-date information available. This finds that in the period between 2020 and 2035 there will be a need for about 411 affordable homes per annum and 370 over a longer timeline between 2020 and 2040.

158. Looking at the **information on the Council's Housing Register**, in April 2021 there were 55 households who were homeless, 229 households owed a duty under the Housing Act and 1,327 occupying insanitary or overcrowded housing. It seems to me that these households are unlikely to be adequately housed or able to access alternative housing through their own resources. The **Council's evidence is** that currently it is forecasting to deliver over 500 affordable homes a year over the next 5 years. However, I am not convinced that this is realistic, especially in view of my conclusions on overall housing land supply.

159. The Appellants have submitted information on the expected delivery of affordable housing on each site within **the Council's housing trajectory** and concludes that there would be a supply of 1,569 affordable homes within the five year period. This is of course on the basis of the Appellants' housing supply evidence, with which I largely concur. Making an adjustment for the 2 sites that I consider would deliver more dwellings[3] there would be an annual delivery of approximately 330 affordable homes over the five year assessment period.

160. On the basis of the LHNA there would therefore be a considerable shortfall in affordable housing provision. The Housing Register also indicates that there are many families in need of a home at the present time and there is little reason to believe that this situation is going to improve. Indeed, the **Council's** website indicates that there is a high demand for social housing in the district and a shortage of properties. It states that many applicants will never receive an offer of housing. For all of the above reasons, I consider that the 208 units that would be delivered by the appeal scheme is a benefit of substantial weight.

161. In addition to the 35% affordable housing, the proposal would include 5% as custom-built plots. As mentioned earlier, the demand appears to be far greater than the delivery, and I note that the Council is not meeting its legal duty for provision in this respect. The 30 plots from the appeal development would be a benefit of significant weight.

162. The provision of the sustainable transport link and the extension to the bus service would help to improve the accessibility credentials of the site. However, on the evidence it would also make the provision for the Park Farm development viable. Without the appeal scheme it seems unlikely that the

[4]These are sites 134ab and 134c – see paragraphs 74 and 76 above.

adjoining development will have a proximate bus service for its residents to use. For this reason, I consider it to be a benefit of significant weight.

163. There are a number of provisions that are over and above what is required as mitigation and therefore that offer a wider public benefit. These include the net gains to biodiversity; the provision of informal recreation space; the provision of cycle stands in the town centre; the strategic highway works and the zebra crossing at Gloucester Road. The provision of the new school and retail/ community hub would also be available to the existing population, most particularly the residents of Park Farm. These are each ascribed moderate weight as benefits of the scheme.

164. There would be new jobs provided during the construction phase and also during the operative phase of the development including at the new school, nursery and retail/ community hub. The local economy would also benefit by new residents supporting local shops and facilities, which would contribute to improving the vitality and viability of the town. These economic benefits are ascribed moderate weight.

165. The safeguarding of land for drainage improvements to Oldbury Lane would be for a relatively short period of time and it is not known whether it will be required or not. In such circumstances it has limited weight as a public benefit.

166. Drawing all of the above matters together it seems to me that the appeal proposal would offer a wide range of public benefits. Whilst individually the weight that I have given them varies, when taken together I consider that the package can be given very substantial weight on the positive side of the planning balance.

The heritage balance

167. For the reasons given in the second issue there would be harm to the significance of a number of heritage assets by virtue of the appeal development being within their setting. These include the Thornbury Castle assemblage, the Church of St Mary the Virgin, The Sheiling School and Thornbury Conservation Area. The Church and parts of the Castle are Grade I heritage assets, which are considered to be of exceptional interest and rarity. Only 2.5% of all listed buildings in England are Grade I. There are also Grade II assets, including a Registered Park and Garden within the Castle Assemblage and the Castle is also recognised as an Ancient Monument. In each case the harm would be less than substantial in nature and in my judgement at the lower end of the spectrum apart from Sheiling School, where I have concluded that the harm would be at the lowest end of the spectrum.

168. In applying paragraph 202 of the Framework, I am mindful that the balance is not even, and that great weight and importance must be given to the conservation of the heritage assets in accordance with paragraph 199. Heritage harm is a function of the importance of the asset and the magnitude of the harm, and I have had particular regard to the fact that some of the heritage assets are of exceptional value when undertaking the balancing exercise. However, there would be a package of public benefits to which I have attributed very substantial weight. In my judgement it would clearly outweigh the harm that would arise to the significance of the heritage assets

either individually or together in this case. The appeal proposal would therefore be in accordance with national policy in this respect.

The planning balance

169. The most important policies in the determination of this appeal are policies CS5, CS9, CS34 and PSP17. For the reasons I have given I consider that they are not consistent with national policy in the Framework and are therefore out-of-date. Even if that were not to be the case, the Council is unable to demonstrate a five year supply of deliverable housing sites. In such circumstances, paragraph 11d) in the Framework is engaged. There are policies in the Framework that protect designated heritage assets but for the reasons given above the appeal proposal does not conflict with these policies so there is no clear reason for refusing it on these grounds. Paragraph 11d)i) does not therefore apply in this case, which means that the appropriate approach is to apply the tilted balance under paragraph 11d)ii) of the Framework.

170. The appeal proposal would conflict with the spatial strategy because it would involve development on a greenfield site outside of the settlement boundary of Thornbury. For the reasons I have given, the conflict with the relevant policies is a matter of limited weight. However, even if that reasoning is not accepted, it remains the case that the Council has less than 5 years of deliverable sites to meet its housing needs. This means that a policy-led solution to housing needs cannot be achieved and that the housing required cannot all be accommodated within the confines of the settlement boundaries. The conflict with the development plan policies in this regard is therefore a matter of limited weight.

171. The harm to heritage assets has already been considered and found to be outweighed by the public benefits. Nevertheless, this harm, is a matter of very great weight and importance and therefore is added to the negative side of the planning balance. The loss of some 25 hectares of best and most versatile agricultural land would be harmful but the weight to be given should reflect the relatively small quantum, the limited loss in terms of the value to food production, the constraints on development in the district due to the Green Belt and flood zones and the fact that much of the land around the town has similar agricultural value. The harm is therefore a matter of limited weight. I have concluded that there would be shortcomings in terms of accessibility and that journeys would continue to be made by car. This is a disbenefit to which I attribute moderate weight.

172. However, in my judgement these adverse impacts would not significantly and demonstrably outweigh the very substantial benefits, when assessed against the policies of the Framework taken as a whole.

173. Turning now to the development plan, the appeal proposal would be contrary to policies CS5, CS9 and CS34 in the CS and policy PSP17 in the PSP DPD. These are considered to be the most important policies in determining this application and so the appeal proposal would conflict with the development plan when taken as a whole. However, in this case there are material considerations that indicate that the decision should be made otherwise than in accordance with the development plan. Most important of these is the Framework and the conclusion that the adverse impacts would not significantly and demonstrably outweigh the benefits.

174. I have taken account of all other matters raised in the representations and at the inquiry, but I have found nothing to change my conclusion that the development would be acceptable and that the appeal should be allowed.

Christina Downes

INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Fraser-Urquhart	**King's Counsel, instructed by** the Head of Legal Services, South Gloucestershire District Council
He called:	
Ms E Paterson BA(Hons) PG Dip Law PG Dip Legal Practice MRTPI	Strategic Major Sites Manager, South Gloucestershire District Council
Mr R Burns BA (Hons) MCD	Place & Context Ltd
*Mr J Ryan MA MRTPI	Principal Planner, South Gloucestershire District Council
*Mr D Jones BA(Hons) PG Dip Urban & Regional Planning PG Urban Design MRTPI	Principal Planner Urban Design, South Gloucestershire District Council
*Ms L Blakemore BA(Hons)	Planning Officer, South Gloucestershire District Council
*Ms K Cox HNC Housing Studies HNC Architecture and building studies	Housing Enabling Officer, South Gloucestershire District Council
**Ms L Neve LLB(Hons) MSc	Planning Solicitor, South Gloucestershire District Council
**Ms H Cameron Dip Horticulture	Public Open Space Officer, South Gloucestershire District Council

FOR THE APPELLANTS:

Mr David Manley	**King's Counsel**, instructed by Mrs L Marjoram, Bird, Wilford & Sale
He called:	
Mr A Crutchley BA(Hons) PGDip(Oxon) MCIfA	Director of EDP
Mr N Mathews MA MTCP MRTPI	Director of Savills
***Mr P Richards BA(Hons) DipLA CMLI Dip Urban Design	Director of The Richards Partnership
***Mr N Thorne BSc MSc MCIHT MTPS	Director of Community Development, South-West, Stantec UK Ltd
*Mr B Pyecroft BA(Hons) DipTP MRTPI	Director of Emery Planning
**Mrs L Marjoram LLB	Solicitor with Bird Wilford & Sale
**Ms R Mitchell	Planning Director of Barwood Land

*Took part in housing land supply round table session (RTS) only
**Took part in Planning Obligation RTS and/ or planning conditions RTS
***Took part in question-and-answer sessions only

INTERESTED PERSONS:

Ms M Tyrrell	South Gloucestershire Ward Councillor and Chair of the Planning Committee of Thornbury Town Council
Mr C Gardner	Co-Chair of Thornbury Residents Against Poorly Planned Development (TRAPP'D)
Mr K Woosnam	Local resident
Mr R Hall	Speaking on behalf of Ms N Jordan, local resident and also on his own behalf as co-Chair of TRAPP'D
Mr R Taberner	Local Resident

ANNEX B: DOCUMENTS

1	Updated statement of common ground on housing supply and delivery
2	Statement delivered orally to the inquiry by Mr R Taberner
3	CV of Mr R Burns, heritage witness to the Council
4	Statement delivered orally to the inquiry by Mr K Woosnam
5	Cabinet Report on the Local Plan Delivery Programme 2022-2025, submitted by the Council
6	Site visit map and itinerary
7	Letter from Professor M Boddy, Pro Vice-Chancellor, UWE Bristol regarding student accommodation (21 March 2022)
8	Statement of Ms N Jordan delivered orally to the inquiry by Mr R Hall
9	Residential site assessments deliverability questionnaire 2022, Crest Nicholson & Sovereign for Land at Harry Stoke (phases 1-5), submitted by the Council
10	Statement from TRAPP'D regarding capacity and location of Marlwood School
11	Poll of Park Farm residents undertaken by Mr Taberner regarding proposed benefits of the appeal development
12	Plan booklet of proposed off-site highway works, submitted by the Appellants
13	Written response by Mr Thorne to the Inspector's questions on the Local Transport Plan
14	Land ownership details and plan, submitted by the Appellants
15	Written response by Mr Scholefield, the Appellants' ecology expert, to the Inspector's questions on Biodiversity Net Gain
16	Written representation by Dr R McKibbin, local resident
17	Scott schedule setting out the final position of the main parties on the disputed housing sites following the housing round table session
18	Briefing note relating to bus services at Park Farm, submitted by the Council
19	Ecclesiastical parish boundary – present day and in 1888, submitted by the Appellants
20	Local Plan 2020 Phase 2 consultation – urban, rural and key issues
21	Expressions of interest by housebuilders to the appeal site,

	submitted by the Appellants
22A	List of inquiry participants on behalf of the Council
22B	List of inquiry participants on behalf of the Appellants
23A	Note on outdoor sports facilities, submitted by the Appellants
23B	Addendum note on outdoor sports facilities, submitted by the Appellants
24	Response to the outdoor facilities note, submitted by the Council
25	Note on open space inspection fee, submitted by the Council
26	Note by EFM on local education facilities and the proposed new school, submitted by the Appellants
27	Savills delivery rate note, submitted by the Appellants
28	Additional information on the compliance of planning obligations with Regulation 122 of the CIL Regulations, submitted by the Council
29	Travel Plan cost per dwelling breakdown, submitted by the Council
30	Car club contribution and monitoring fees, submitted by the Council
31	A38/ Church Road capacity improvement costings, submitted by the Council
32	Plan showing the Thornbury Road/ A38 junction improvement, submitted by the Appellants
33	Proposed zebra crossing and speed reduction feature costing, submitted by the Council
34	Response by the Council to the Inspector's questions about specific planning conditions
35	Community Infrastructure Levy and Section 106 Planning Obligations Supplementary Planning Document (March 2021)
36	Draft planning conditions following discussion at the round table
37	Council's Art and Design in the Public Realm – Planning Advice note
38A	Morton Way, Thornbury, Public Art Strategy, submitted by the Council
38B	Morton Way, Thornbury, Artist's Brief, submitted by the Council
39A	Land at Crossways, Morton Road, Thornbury – Public Art Plan, submitted by the Council
39B	Land at Crossways, Morton Road, Thornbury – Artist's Response, submitted by the Council
40	Planning Obligation by Unilateral Undertaking, dated 3 November 2022

ANNEX C: SCHEDULE OF PLANNING CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") in any phase shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase begins and the development shall be carried out as approved.

2. Any application for the approval of the reserved matters for the first phase of the development shall be made to the Local Planning Authority before the expiration of 12 months from the date of this permission. Any application for approval of the reserved matters for any remaining phases shall be made to the Local Planning Authority before the expiration of three years from the date of the permission.

3. The development hereby permitted shall begin no later than 12 months from the date of approval of the final reserved matters for that phase, and development of any subsequent phase shall begin no later than 12 months from the date of approval of the final reserved matters for that phase.

4. The submitted details shall be in accordance with the approved parameter plans (listed below):
   - Site Boundary Plan – Drawing Ref: 27982/9000 Rev H.
   - Land Use and Access Parameter Plan – Drawing Ref: 27982/9601 Rev G.
   - Scale Parameter Plan – Drawing Ref: 27982/9603 Rev I.
   - Green Infrastructure Parameter Plan – Drawing Ref: 27982/9604 Rev L.
   - Concept Site Access Layout – Drawing Ref: 39209/5501/SK15 Rev A.
   - Sustainable Travel Link Plan – Drawing Ref: 39209/5501/SK25 Rev A.

5. Any reserved matters application shall be in accordance with the Design Parameters and Design Strategies of the approved Design and Access Statement (Dated March 2021).

6. Alongside the reserved matters for each phase details shall be provided of the following:

   a) Layout, scale and appearance, including all building facing materials and finishes.
   b) Details of access arrangements including: the internal highway hierarchy; all carriageway, footway, cycleway and shared surface widths and surface material finishes for the highways, footpaths, cycle ways, private drives and all other hard surfaces.
   c) Car and cycle parking facilities.
   d) Soft and hard landscaping of the site including details of screen walls, fences and other means of enclosure.
   e) Details of existing and proposed ground levels and proposed finished floor levels and building heights.
   f) Broadband connection infrastructure timetable for implementation.
   g) Details of a play strategy.
   h) Details of the pedestrian and cycle links through the site.
   i) A combined drainage, landscaping and street lighting plan.
   j) Minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs, lighting).

k) Proposed and existing functional services above and below ground (eg drainage power, communications cables, pipelines indicating lines, manhole); retained and proposed landscape features, including trees and hedgerows and proposals for restoration where relevant.
l) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

7. Prior to or along with the submission of the first reserved matters application, a Phasing Strategy for the development shall be submitted to and approved in writing by the Local Planning Authority.

The Phasing Strategy shall identify the stages at which each element of the proposed development shall be commenced and made available for use. The elements shall include:

a) The general locations of residential and non-residential uses including the local centre, allotments and primary school site.
b) The allocation of floor space within the Retail / Community hub.
c) The general location of open spaces, green infrastructure and surface water drainage features.
d) The approximate number of market and affordable homes and custom-build homes plots to be provided for each phase.
e) Accesses for pedestrians, cyclists, buses and other vehicles.
f) The phase(s) where public art may be located.
g) Transport infrastructure for all modes of travel to connect each phase or reserved matters application to the existing highway network and the adjacent Park Farm site.
h) Identification of locations for bus stop facilities within the site, within 400m of each occupied dwelling, in accordance with one of the two approved bus stop strategies:
   - PBA Transport Assessment (Dated December 2019) Figure 5.1 B. Bus access via Alexandra Way bus link.
   - PBA Transport Assessment (Dated December 2019) Figure 5.2 B. Bus access via Butt Lane and Barley Fields.

Any subsequent amendment to the approved Phasing Strategy shall be submitted to and approved in writing by the Local Planning Authority in the form of a revised Phasing Strategy.

The development shall be carried out in accordance with the approved Phasing Strategy, including any approved revisions.

8. The primary street through the development shall have a minimum carriageway width of 6.5m and follow the general alignment of the primary street route identified on the approved Land Use and Access Parameter Plan (Drawing Ref: 27982/9601 Rev G).

9. No dwelling, community or commercial facility shall be occupied until car and cycle parking has been provided for that dwelling, community or commercial facility in accordance with details approved through Condition 6.

10. Prior to the commencement of development on a phase, a scheme for the installation of Electric Vehicle charging infrastructure for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the specification of the ducting infrastructure and charging facilities and a plan showing the locations of the ducting infrastructure and charging facilities for residential and non-residential uses and appropriate public locations to be delivered within that phase. Development of that phase shall be carried out as approved before the residential and non-residential buildings on that phase are first occupied and the public locations are opened for use.

11. No dwellings shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be based on the principles set out in the Framework Travel Plan (January 2021) and shall include modal targets to achieve its objectives and a timetable for their achievement. The Travel Plan shall thereafter be implemented in accordance with the approved details.

12. No more than 50 dwellings shall be occupied until a scheme of localised road widening on Oldbury Lane and Butt Lane has been completed generally in accordance with Stantec Drawings 39209/5501/SK24 Rev A and 39209/5501/SK23 Rev A.

13. No dwellings shall be occupied until the Sustainable Transport Link along Buttercup Road, to include a bus gate and camera control/ CCTV, has been completed generally in accordance with Stantec Drawing 3909/5501/SK25 Rev A.

14. No dwelling shall be occupied until the signalisation improvement scheme at the junction of Butt Lane, Gloucester Road and Morton Way has been completed generally in accordance with Stantec Drawing 39209/5501/SK08 Rev H.

15. No more than 100 dwellings shall be occupied until the improvements on the A38 at the junction with the B4509 have been completed generally in accordance with Stantec Drawing 39209/5501/SK37 rev B.

16. No dwelling shall be occupied until at least one of the development accesses onto Oldbury Lane and the supporting highway works have been completed generally in accordance with Drawing 39209/5501/SK15 Rev A including street lighting from the site access to Butt Lane and provision for a reduction in the national speed limit to 40mph on Oldbury Lane.

17. The bus stops shall be provided with a raised boarding platform, shelter, seating, lighting and real time passenger information and installed in accordance with the agreed Phasing Strategy in condition 7.

18. No more than 100 dwellings of the development hereby permitted shall be occupied until the improvement scheme identified for M5 Junction 14, as shown on Stantec drawing reference 39209/5501/SK31, has been completed and is open to traffic.

19. No development other than ground clearance works shall be carried out until a Surface Water Drainage Strategy incorporating sustainable drainage principles for the whole of the development site has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be in accordance with the Flood Risk Assessment (ref: 39209/4001/ rev G) by Stantec, dated 23 January 2020 and drawing 39209/4001/SK01 C. It shall include details of impermeable areas draining to surface water infrastructure, the size and location of the attenuation structures, the phasing of surface water drainage infrastructure including source control measures and a timetable for implementation. The development shall be carried out in accordance with the approved strategy and timetable

20. Finished ground floor levels across the development shall be set to 11.0m AOD. At the edge of Flood Zone 2 finished ground floor levels shall be set 600mm above ground level or 11.0 m AOD, whichever is highest as indicated in section 5 and Figure 3 of Appendix A in the Flood Risk Assessment (ref: 39209/4001/ rev G) by Stantec, dated 23 January 2020.

21. Prior to or along with the submission of the reserved matters application(s) for a particular phase an Energy Statement shall be submitted to and approved in writing by the Local Planning Authority. This will provide details of how energy saving measures will be incorporated into the design and how carbon dioxide emissions will be reduced from the total residual energy consumption by at least 20% (based upon Part L of the Building Regulations at the date of the outline planning permission) through on-site renewable and/or low carbon energy generation. Development shall be carried out in accordance with the approved details.

22. Prior to the commencement of development including any exempt infrastructure or remediation works, a written scheme of investigation, based on the results of the geophysical survey produced by Sumo Survey dated March 2018 and Results of an Archaeological Trench Evaluation dated May 2018, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall set out the need for, and extent of, any subsequent detailed mitigation, outreach and publication strategy including a timetable for the implementation and phasing of the mitigation strategy. Thereafter each phase of development shall be carried out in accordance with the approved scheme.

23. Prior to the commencement of development of a particular phase, the additional monitoring and investigation recommended in the Combined Phase 1 and Phase 2 Ground Condition Assessment, by Peter Brett Associates LLP, dated September 2018, shall be carried out. The findings shall be submitted in a report for the written approval of the Local Planning Authority and shall include a conceptual model of the potential risks to human health; property/buildings; and ground waters.

    Where unacceptable risks are identified, the report submitted shall include an appraisal of available remediation options; the proposed remediation objectives or criteria and identification of the preferred remediation option(s). The programme of the works to be undertaken shall be described in detail and shall include the methodology that will be applied to verify the works have been satisfactorily completed.

The approved remediation scheme shall be carried out before the particular phase of development is occupied.

Prior to first occupation within any particular phase, a report shall be submitted to and approved in writing by the Local Planning Authority to verify that all necessary remediation works have been satisfactorily completed.

24. Any contamination found during the course of construction of the development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found additional remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

25. Prior to the submission of the reserved matters application(s) for any phase that includes residential development within 60m of Oldbury Lane details shall be submitted to and approved in witing by the Local Planning Authority to demonstrate that through mitigation, design and site layout, dwellings and their gardens will be protected from the impact of road traffic noise having regard to BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* and the WHO *Guidelines for community noise*. The development shall be carried out in accordance with the approved details before the occupation of any dwelling to which those mitigation measures relate.

26. Any building plant, extraction systems or externally located equipment shall be acoustically insulated in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of its use. The scheme shall ensure that the rated noise level at the boundary of the nearest extant or proposed noise sensitive property will not increase above the existing background noise level in accordance with BS 4142:2014+A1:2019 *Methods for rating and assessing industrial and commercial sound.*

Any mitigation measures proposed to attain this level shall be clearly identified.

The scheme shall be implemented as approved prior to the commencement of use of the plant or equipment and shall be retained and maintained in **accordance with the manufacturer's instructions for the duration of the use.**

27. Prior to occupation of the retail/ community hub full details of the proposed extraction and odour abatement system for any hot food outlets within that building shall be submitted to and approved in writing by the Local Planning Authority. The odour abatement system shall comply with the principles of best practice contained within the EMAQ technical guidance, *Control of Odour and Noise from Kitchen Exhaust Systems*. The development shall be

carried out in accordance with the approved details and installed and **maintained in accordance with the manufacturer's instructions.**

28. No development shall take place on any phase until a Construction Environmental Management Plan (CEMP), has been submitted to and agreed in writing by the Local Planning Authority. The CEMP shall provide for:

    a) Measures to prevent flood risk and drainage impacts, including to water quality, in accordance with best practice contained in the *SuDS Manual* and *Construction of SuDS* guidance.
    b) Processes for keeping local residents informed of works being carried out and dealing with complaints including contact details of the Site Manager.
    c) Hours of construction and deliveries to and removal of plant, equipment, machinery and waste from the site.
    d) Measures to control the migration of mud from the site by vehicles during construction.
    e) Measures to protect surrounding properties from construction noise and vibration in accordance with the standards in BS5228: Code of practice for noise and vibration control on construction and open sites. Noise.
    f) Measures for controlling dust and maintaining air quality on site, including details of street sweeping, street cleansing and wheel washing facilities.
    g) Measures for controlling the use of site lighting whether required for safe working or for security purposes.
    h) Locations for the loading, unloading and storage of all plant, machinery and materials including oils and chemicals to be used in connection with the construction of the development.
    i) Measures for the control and removal of spoil and wastes.
    j) Access arrangements for visitors, constructors and deliveries.
    k) Measures for the storage, landing, delivery and use of fuel oil, and how any spillage can be dealt with and contained.
    l) Arrangements for the parking of contractors, site operatives and visitors.
    m) A lorry routing schedule excluding Barley Fields and Buttercup Road.
    n) Evidence of membership of the *Considerate Constructors Scheme* and the induction programme for the workforce highlighting pollution prevention and awareness.
    o) Details of security hoardings.
    p) Tree protection measures in accordance with the Appendix A of the Arboricultural Impact Assessment, dated January 2020.
    q) A precautionary working method statement in order to protect any badger setts which are present.
    r) Neighbouring residential premises shall be advised of any unavoidable late night or early morning working which may cause disturbance. Any such works shall be notified to the Environmental Services Department on (01454) 868001 prior to commencement.

    The approved CEMP shall be adhered to throughout the construction period.

29. An Ecological Construction Method Statement (ECMS) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, including groundworks and vegetation clearance. The ECMS shall detail how all retained semi-natural habitat will be

safeguarded during the construction phase (including from pollution incidents) and detail a precautionary method of clearing vegetation to avoid harm to wildlife, including birds and hedgehogs. All works shall be carried out in accordance with the approved ECMS.

30. A pre-works badger survey shall be undertaken by a suitably qualified ecologist no more than 3 months prior to the commencement of works and/ or clearance of vegetation on a particular phase to establish use of that part of the site by badgers. If required, a license shall be obtained from Natural England and any mitigation shall be carried out in accordance with the terms of the license. A copy of the license shall be submitted to the Local Planning Authority prior to commencement of development on the phase to which that license relates.

31. Prior to commencement of development of a particular phase, a Landscape and Ecological Management Plan (LEMP) for that phase shall be drawn up and agreed in writing by the Local Planning Authority. The LEMP shall accord with the relevant principles set out in the agreed Design and Access Statement and Green Infrastructure Parameter Plan.

The LEMP shall include:

a) Details of all existing important landscape and habitat features to be retained, and managed thereafter (including hedges, scrub, streams).
b) Details of any new landscape and habitat features to be created and managed thereafter (including species-rich grassland (buffers), woodland/scrub and ponds).
c) Habitat Creation: 13.75ha of Parkland (comprising wildflower meadow, SuDS basins and amenity grassland); 0.83ha plantation broadleaved woodland; 0.78km of new and translocated hedgerow; new scattered broadleaved trees, and 0.03ha (three) ponds.
d) SuDs design to include wetland habitat of biodiversity value.
e) A minimum of 10 hibernculae created in suitable locations.
f) A range of nest boxes, including a minimum of 100 boxes on buildings and 50 boxes on retained trees/woodland. The scheme shall include the type and location of all nest boxes and design features, to cover a variety of species including starling, house martin, swift and house sparrow.
g) Additional bat roosting habitat, including a minimum of 100 boxes on buildings and 50 boxes on retained trees/woodland. The scheme shall include the type, location and design of the bat boxes.
h) Inclusion of a hedgehog pass in each boundary fence, and a gap under close board fencing.
i) Project Site boundary management adjacent to the Park Mill Covert SNCI to include fencing and planting within the development site to prevent direct access.
j) Ecological information provided in Homeowner Packs which will include information on key ecological features, and the proposed mitigation and enhancement measures.
k) Where residential gardens abut hedgerows, fencing will be post and wire mesh only.
l) Inclusion of inset kerb stones around gully pots within highway and drainage strategy.

m) Detailed design of public-realm lighting to minimise adverse effects on bats, otters and badgers.
n) A programme of monitoring of all works for a period of 5 years. The programme shall include details of how the aims and objectives of the LEMP will be achieved and maintained, including how any remedial measures will be agreed and implemented if they are required.

All works shall be carried out in accordance with the approved LEMP.

32. Prior to the commencement of development of a particular phase, a Lighting Design Strategy for that phase shall be submitted to and approved in writing by the Local Planning Authority. The Lighting Design Strategy shall address potential impact on biodiversity as described in the Ecological Chapter of the Environmental Statement and shall include:

a) The identification of those areas of the site that are of particular importance to nocturnal animals, including bats. In particular this concerns breeding sites, resting places and important routes used to access key areas of territory and/or for foraging.
b) Details of external lighting to be installed with appropriate lighting contour plans and technical specifications to show how nocturnal animals, including bats, would not be adversely affected.

All works shall be carried out in accordance with the approved lighting scheme.

33. No development shall take place, including ground works and vegetation clearance, until a scheme for offsetting biodiversity impacts to achieve net gain based on the prevailing DEFRA guidance (at the date of the outline planning permission), has been submitted to and approved in writing by the Local Planning Authority. Any subsequent changes to the approved details shall be submitted to and approved in writing by the Local Planning Authority, on the basis that any changes shall still ensure a biodiversity net gain will be achieved across the development.

The development shall be implemented and maintained in accordance with the approved details (including any subsequent approved changes).

34. No development other than ground clearance works shall be carried out until a Public Art Plan for a site-specific scheme of Public Art within the development has been submitted to and approved in writing by the Local Planning Authority. Detailed designs, which shall be in overall accordance with the site-wide Public Art Plan, shall be submitted to and approved in writing by the Local Planning Authority alongside the reserved matters for the relevant phase(s) and shall include a timetable for installation. The Public Art Plan and subsequent details shall be prepared having regard to the recommendations in the Council's Art and Design in the Public Realm - Planning Advice Note. Thereafter the artwork(s) shall be installed in accordance with the approved details and timetable and shall be retained **and maintained in accordance with the artist's instructions.**

35. Prior to or alongside the submission of the first reserved matters application a site-wide waste management and recycling strategy shall be submitted to

and approved in writing by the Local Planning Authority. The strategy shall include measures to control the use, sorting, storage and collection of waste material and recycling from residential and commercial uses on site, including on site composting. The development shall be carried out in accordance with the approved details.

36. The retail/ community hub hereby approved shall only be used for activities within Classes A1, A2, A3 and D2 Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to the Class in any statutory instrument revoking and re-enacting that Order with or without modification.

End of conditions 1-36

IN THE HIGH COURT OF JUSTICE | Claim No. CO/917/2020

QUEEN'S BENCH DIVISION

PLANNING COURT

B E T W E E N

EAST NORTHAMPTONSHIRE COUNCIL

Claimant

-and-

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

Defendant

- and -

LOURETT DEVELOPMENTS LTD

Interested Party

==================================

CONSENT ORDER

==================================

UPON the parties agreeing to the terms hereof

BY CONSENT IT IS ORDERED THAT:

1. Permission is granted and the decisions of the Defendant, dated 24 January 2020 and carrying reference number APP/G2815/W/193232099, to allow the Interested Party's appeal under s.78

of the Town and Country Planning Act 1990, and to make a partial award of costs in favour of the Interested Party, are quashed pursuant to s.288 of the same Act.

2. The appeal is remitted to be determined de novo.

3. The Defendant pay the Claimant's costs in the amount of £8616.66

Dated: This 7th Day of May 2020

PARTICULARS

A. These proceedings concern an application brought under section 288 of the 1990 Act by the Claimant against (1) the decision of the Defendant to allow the Interested Party's appeal against the decision of the Claimant to refuse planning permission for residential development at land to the west of numbers 7-12 The Willows, Thrapston, NN14 4LY and (2) the decision to make a partial award of costs against the Claimant in respect of that appeal.

B. The Defendant has carefully considered the Inspector's decision and the Claimant's Statement of Facts and Grounds and Reply, and the evidence served in support. He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.

C. The Defendant therefore considers that it is appropriate for the Court to make an Order quashing the decisions and remitting the appeal to be determined de novo.

D. The Interested Party agrees that the decisions should be quashed and the appeal remitted to be determined de novo.

……………………………………

East Northamptonshire Council

Cedar Drive

Thrapston

Northamptonsshire

NN14 4LZ

Abby Bradford

For the Treasury Solicitor

Government Legal Department

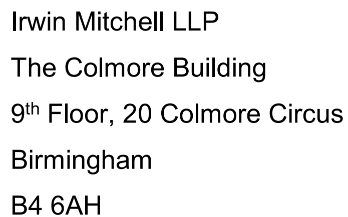
102 Petty France

Westminster

London

SW1H 9GL

Ref: Z2003440/BYD/JD3



Irwin Mitchell LLP

The Colmore Building

9th Floor, 20 Colmore Circus

Birmingham

B4 6AH

WB14

CO/164/2020

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR LEAVE UNDER S.288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

CATESBY PROMOTIONS LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

(2) BEDFORD BOROUGH COUNCIL

Defendants

CONSENT ORDER

Before the Honourable Mr Justice Jay

UPON the Claimant having applied for a planning statutory review pursuant to s.288 of the Town and Country Planning Act 1990;

AND UPON the First Defendant's acknowledgement of service indicating they do not intend to defend the claim;

AND UPON the Second Defendant not filing an acknowledgement of service, and indicating in an email that they do not intend to take part in proceedings;

AND UPON the court being satisfied the parties agreed final order should be made without a hearing, pursuant to CPRPD8C paragraphs 17.1 and 18.2;

IT IS ORDERED by consent:

1. Permission for statutory review is granted, and the Claimant's application for planning statutory review is allowed;

2. The decision of the Planning Inspector dated 9 January 2020 is quashed, for the reasons set out in the statement of reasons attached;

3. The First Defendant shall pay the Claimant's reasonable costs in the claim to date, subject to detailed assessment if not agreed.

Dated this February 2020

Eversheds Sutherland (International) LLP	**Government Legal Department**
1 Wood Street	102 Petty France
London	London
EC2V 7WS	SW1H 9GL
Tel: 020 7497 9797	Tel: 0207 210 3135
Ref: NixonM/175442-000161	Ref: Z2001091/DNH/JD3
Solicitors for the Claimant	Solicitor for the First Defendant

Dated 02 July 2020

....

Statement of Reasons

(1) The Claimant, a developer of homes, challenges the decision of the First Defendant's Inspector dated 9 January 2020 to refuse outline planning permission for a development consisting of 90 residential dwellings. The right of appeal to the High Court arises under s288 of Town and Country Planning Act 1990 ('TCPA 1990'). The Claimant seeks that the decision is quashed and costs are awarded.

(2) By way of background, the Claimant submitted an application for planning permission to the Second Defendant, a Local Planning Authority, in April 2019. The Second Defendant did not make a decision, enabling the Claimant to bring an appeal to the First Defendant under s78 of the TCPA 1990 in July 2019.

(3) The appeal was determined by way of an Inquiry held on dates 12-15, and 21-22 November 2019. A decision was made on 9 January 2020, dismissing the appeal. The Claimant's claim for statutory planning review was issued on 20 January 2020, and served on the Frist Defendant on 21 January 2020.

(4) A principal important controversial issue in the appeal was whether the Council would be able to demonstrate a 5 Year Housing Land Supply ('5YHLS') upon the adoption of the then-emerging (and now adopted) Bedford Borough Local Plan ('LP') (DL77-79). It was common ground that the Council could not demonstrate a 5YHLS judged against the standard methodology at the appeal (DL60). In short, the respective positions of the parties before the Inspector were:

- Bedford BC submitted that it would be able to demonstrate a 5YHLS once the LP was adopted because of the operation of paragraph 74 of the NPPF 2019 [CB/10/342-345];

- Catesby Promotions submitted (a) that paragraph 74 of the 2019 NPPF did not apply in this case because the appropriate buffer was not applied during the examination of the LP, the sites relied on in the LP to establish a 5YHLS were not judged against the 2019 NPPF definition of deliverability, and the Council did not inform the examining inspectors or the public that it intended to rely on the LP to establish 5YHLS under paragraph 74 of the 2019 NPPF; (b) that a finding of 5YHLS under the 2012 NPPF did not equate to a 5YHLS under the 2019 NPPF because of the different definitions of deliverability; and, (c) many of the sites relied on in the examination of the LP to establish a 5YHLS would not satisfy the definition of 'deliverability' under the definition contained in the 2019 NPPF [9/308-315].

(5) After consideration of the grounds, the First Defendant accepts that Ground 1 relating to inadequate reasons is arguable, and the Defendant does not intend to defend the ground. The Inspector did not sufficiently grapple with the detailed arguments raised by the Claimant on the 5YHLS.The First Defendant also accepts that Ground 2 is arguable, and the Inspector misinterpreted paragraph 74 of the NPPF 2019, because he has made no comment on the differences between the 2019 and 2012 tests, the 'appropriate buffer', and any effect on the 5YHLS.

(6) It follows that the claim is now academic. This consent order is without prejudice to the parties' positions as to any future determination of NPPF paragraph 74, whether for the Claimant or elsewhere.

The Planning Inspectorate

Appeal Decision

Inquiry Held on 27-30 April, 4-7, 11 and 12 May 2021

Site visit made on 10 May 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/Q3115/W/20/3265861
Little Sparrows, Sonning Common, Oxfordshire RG4 9NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Senior Living (Sonning Common) Limited and Investfront Ltd against the decision of South Oxfordshire District Council.
- The application Ref P19/S4576/O, dated 12 December 2019, was refused by notice dated 30 June 2020.
- The development proposed is a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas.

Decision

1. The appeal is allowed and planning permission is granted for a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas at Little Sparrows, Sonning Common, in accordance with the terms of the application, Ref P19/S4576/O, dated 12 December 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. At the Inquiry an application for a partial award of costs was made by South Oxfordshire District Council (the Council) against the Appellant. This is the subject of a separate Decision.

3. The appeal follows the refusal of the Council to grant planning permission to a hybrid planning application for development at Blounts Court Road, Sonning Common. The planning application was determined under delegated powers

on 30 June 2020 and there were seven reasons for refusal (RfR) set out in the decision notice.[1]

4. The application was supported by a number of plans, reports, and technical information. A full list of the plans on which the appeal is to be determined is set out at Appendix 4 of SoCG 4 Planning[2] which was agreed by the main parties. A full list of all documents forming part of the consideration of this appeal is set out at Appendix 3 of SoCG 4 which was agreed by the parties.[3]

5. I held a Case Management Conference (CMC) on 4 March 2021. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. In the weeks following the CMC the main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters was minimised at the Inquiry. The following Statements of Common Ground were submitted: SoCG 1 Landscape; SoCG 2 Transport; SoCG 3 Viability; SoCG 4 Planning and SoCG 5 Five Year Land Supply.

6. At the Inquiry a Planning Obligation was submitted.[4] The Planning Obligation is made by an Agreement between Investfront Limited, Lloyds Bank PLC, Senior Living (Sonning Common) Limited, South Oxfordshire District Council and Oxfordshire County Council under s106 of the TCPA 1990. The Planning Obligation secures, amongst other matters, an off-site financial contribution in lieu of on-site affordable housing provision of £7,510,350. The s106 Agreement is signed and dated 26 May 2021 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement[5] and an Addendum to the CIL Statement[6] were also submitted in support of the Planning Obligation. I return to the Planning Obligation later in this decision.

7. In relation to RfR7 (affordable housing), following discussions on viability, the Appellant reached agreement with the Council on the payment of an off-site financial contribution towards affordable housing that is secured through a s106 Agreement. Therefore, it is agreed that having regard to development viability, the appeal proposal would provide an adequate level of affordable housing provision and this matter is no longer in dispute.

8. The application was screened for Environmental Impact Assessment (EIA) prior to submission of the application and the Council determined that EIA was not required on 6 November 2019. I agree with the negative screening that was undertaken by the Council.

Main Issues

9. In the light of the above I consider the main issues are:

(i) Whether the proposed development would be in accordance with the Council's strategy for the delivery of older persons accommodation throughout the district as set out in the development plan;

[1] See Appendix A in CD H.1
[2] CD H.5
[3] Ibid
[4] INQ APP11
[5] INQ LPA7
[6] INQ LPA8

(ii) *The impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common;*

(iii) *The effect of the design of the proposed development on the character and appearance of the village;*

(iv) *Whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.*

(v) *Whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB.*

Reasons

Planning Policy context

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:

    - The South Oxfordshire Local Plan 2035 (Adopted 2020) (SOLP); and
    - The Sonning Common Neighbourhood Plan (2016) (SCNP).

11. The determination of the planning application, the subject of this appeal, took place against the background of a different development plan framework to that now in place. Although the SOLP has been subsequently adopted, the SCNP was based upon the Core Strategy which has been withdrawn, including the out of date housing requirements derived from the old Regional Strategy, significantly reducing the weight that can be afforded to it.

12. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in SoCG 4[7] and INQ LPA6 provides an agreed schedule of the replacement policies for those cited in the decision notice.

13. The SCNP is currently under review. An initial public consultation was held between 29 February - 23 March 2020 but the Plan has not at this stage progressed further and there is as yet no agreed timetable. No weight can be given to that review.

14. SoCG 4 sets out the sections of the NPPF which are relevant in this case.[8] It also sets out a list of Supplementary Planning Documents and Guidance[9] which should be considered in this appeal and specific parts of the National Planning Practice Guidance (PPG)[10] which are considered relevant.

15. The appeal site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). The Chilterns AONB is a `valued landscape' in respect of paragraph 170 of the NPPF. AONBs, along with National Parks and the Broads, benefit from the highest status of protection in relation to conserving and

[7] Paragraph 3.3
[8] Paragraph 3.5
[9] Paragraph 3.6
[10] Paragraph 3.7

enhancing landscape and scenic beauty. Section 85 of the Countryside and Rights of Way Act 2000 (CROW) places a duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB. Paragraph 172 of the NPPF requires "great weight" to be given to those matters in decision making. It is common ground that the appeal proposal involves major development within the AONB and as such should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

16. Paragraph 172 of the NPPF requires particular consideration to be given to: (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and (c) any detrimental effects on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. I deal with these matters under the main issues but at the outset it is important to address whether or not the Council has a five year supply of housing.

Five Year Housing Land Supply

17. Paragraph 73 of the NPPF sets the requirement for Local Planning Authorities to identity and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.

18. Since 2018, Oxfordshire only needed to demonstrate a three-year supply of housing. However, on 25 March 2021 the Minister of State for Housing confirmed that a five-year housing land supply was again required. The Council produced a Housing Land Supply Interim Statement (IHLS)[11] setting out their initial position for the period 1 April 2020 to the 1 April 2025 which asserts a 5.35-year supply. However, at the Inquiry, the Council conceded that the supply had fallen on its own case to 5.08 years. The five-year supply requirement is a minimum requirement and it needs to be deliverable. The definition of deliverable is contained in Annex 2 to the NPPF.

19. The most up-to-date position as regards the difference between the main parties is summarised in the agreed SoCG 5. There is no disagreement as to the housing need (900 dpa) or the time period for the assessment (2020/21 to 2024/25). The five-year requirement including an agreed shortfall of 922 dwellings and 5% buffer is 5,693. The difference between the main parties comes down to the Council's position that there is a 5.08 year supply of deliverable housing sites and the Appellant's assertion that it is instead a 4.21-year supply. Table 3 of SoCG 5 contains a schedule of 15 disputed sites. I have assessed these disputed sites in the context of the test of deliverability set out in Annex 2 of the NPPF. This specific guidance indicates which sites should be included within the five-year supply.

20. I have also had regard to the PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on

[11] CD: K.32 South Oxfordshire Local Plan Housing Land Supply Interim Statement 2021

'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:

> *"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."*

This advice indicates to me the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.

22. It is not necessary for me to go through all of the disputed sites in Table 3 of SoCG 5. In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position. For example, the Council suggests that 100 dwellings would be delivered at Site 1561: Land to the south of Newham Manor, Crowmarsh Gifford whereas the Appellant says 100 dwellings should be deducted. The comments set out by the Appellant for this site in Table 3 are compelling. Similarly, at Site 1009: Land to the north east of Didcot, the Council suggests 152 dwellings would be delivered whereas the Appellant says 152 dwellings should be deducted. The Appellant provides cogent evidence to support its case. Furthermore, at Site 1418: Land at Wheatley Campus, the Council agrees a deduction but only of 62 dwellings whereas the Appellant says the deduction should be 230. There is no clear evidence before me that would suggest that these sites or indeed most of the disputed sites would deliver the completions suggested by the Council in the next five years.

23. Overall, I consider that the Appellant's assessment of supply set out in Table 2 of SoCG 5 is more realistic taking into account the test of deliverability set out in Appendix 2 to the NPPF and the PPG advice published on 22 July 2019. I am satisfied that the Appellant's approach is consistent with national policy, case law, appeal decisions and informed by current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times.

24. My conclusion on housing land supply is that there are a number of sites that together significantly reduce the Council's five-year housing land supply. Many of the sites that the Council includes within the supply cannot be justified applying the current definition of deliverable. Following discussions between the main parties, deductions from the IHLS figure of 6,093 dwellings, have been identified and summarised at Table 1 of SoCG 5 and the impact which this has on the five year housing land supply is summarised at Table 2.

25. I consider that the Council's supply figure should be reduced to reflect the Appellant's position set out in Table 2 of SoCG 5. The Council's supply figure of 5,785 dwellings in Table 2 should be reduced to give a more robust total supply figure of 4,789 dwellings for the five year period. Although the Council maintains there is a 5.08 year supply, the evidence that is before me indicates a housing land supply equivalent to 4.21 years. The implications of not having a five-year housing land supply are significant. Not only is there a shortfall, but it also means most important policies for determining the application are automatically out-of-date. The Council accepts that means all the policies in the SOLP and the SCNP are out-of-date. It also means if the paragraph 172 tests in the NPPF are satisfied then the tilted balance applies.

First Issue - whether the proposed development would be in accordance ***with the Council's strategy for the delivery of older persons*** *accommodation throughout the district as set out in the development plan;*

The Need for Extra Care

26. The Council argues that the appeal proposal would be contrary to Policies H1 and H13 of the SOLP and due to its location in the AONB, outside but next to Sonning Common, brings into play Policies ENV1 and Policy H4 of the SOLP, and Policies ENV1, ENV2, H1, H2 and H2a of the SCNP. It is also claimed that the provision of 133 units of specialist housing for the elderly would be inconsistent with the proportionate growth in general housing planned for Sonning Common at both levels of the development plan.

27. Clearly the need for specialist accommodation for older people is recognised in the SOLP, which promotes the identification of suitable sites in the neighbourhood planning process and the inclusion of specialist accommodation on strategic sites,[12] and favours specialist housing for the elderly over conventional housing on unallocated sites.[13] Although extra care housing is referred to in the supporting text,[14] the SOLP does not prescribe particular levels of provision by type of accommodation, which allows flexibility in provision, adapting to what is an evolving sector. I note that no attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. No quantum for extra care accommodation is set out in the SOLP. Although Table 4f of the SOLP shows an outstanding requirement for 96 units over the plan period for Sonning Common it makes no reference to the needs arising from within existing households arising from their ageing.

28. Quantification of the need for open market extra care housing is not straightforward, in part because whether an owner-occupier moves to extra care housing is ultimately a matter of choice, in part because there is no prescribed or generally accepted methodology. The Government very clearly supports the identification and provision of extra care accommodation as a recognised form of specialist accommodation for the elderly.[15] Moreover, it is important to bear in mind that the NPPF definition[16] of `older people' does not

[12] See CD: C.4 Policy H13(2), (3)
[13] See CD: C.4 Policy H1(3)(ii)
[14] See CD: C.4 paragraph 4.70
[15] See paragraphs 59 and 61 of the NPPF
[16] See Annex 2

exclusively mean the very frail elderly rather it embraces a wide range of people in that category both in terms of a very wide age range and significant variation in issues surrounding matters like mobility and general health.

29. Within the PPG on `Housing for older and disabled people' it states that:[17]

> "*The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6 million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Therefore, an understanding of how the ageing population affects housing needs is something to be considered from the early stages of plan-making through to decision-taking"*

30. The Government plainly recognises that the need is `critical' and the importance of 'choice' and addressing 'changing needs'. Offering greater choice means a greater range of options being offered to people in later life and that the range of options should at the very least include the categories the Government recognises in its guidance. This includes extra care. The PPG also advises what `range of needs should be addressed'. It recognises the diverse range of needs that exists and states that:[18]

> "*For plan-making purposes, strategic policy-making authorities will need to determine the needs of people who will be approaching or reaching retirement over the plan period, as well as the existing population of older people".*

31. Plainly, when compared with Government guidance, the development plan is left wanting in terms of addressing a need for extra care. There is no reference in Policy STRAT 1 to the PPG insofar as assessing the needs of older people. There is no reference in Policy STRAT 2 to the accommodation needs of those local residents who will make up more than a quarter of the total population of South Oxfordshire by 2035. Policy H13 in the SOLP expressly deals with specialist housing for older people. It covers all forms of specialist housing for older people, but it is completely generic as to provision. No attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. The needs of all older people are simply lumped together. Nor is there any engagement with the market constraints and viability considerations relating to specialist accommodation for older people evidenced by Mr Garside during the Inquiry.

32. Paragraph 3 of Policy H13 suggests that provision be made within strategic allocations. The strategic sites are mostly focused around Oxford or in the more northern part of the District. Only one such strategic site has planning permission – Wheatley Campus but no extra care is proposed. The Council want to see it on Ladygrove East. That is not a strategic allocation in the SOLP. But in any event the Council is seeking affordable extra care there and the developer (Bloor Homes) is resisting it. The Council conceded that the strategic sites do not really feature at all in its five-year housing land supply calculations. The Council also accepted that landowners and developers would achieve a better return if they build market houses.

[17] See paragraph 001 Reference ID: 63-001-20190626
[18] See paragraph 003 Reference ID: 63-003-20190626

33. Reference is made to encouraging provision through the neighbourhood planning process.[19] However, without a more definitive district wide requirement it would be difficult for neighbourhood plan groups to assess the levels of provision required, which will vary; and neighbourhood plan groups generally lack the expertise to fully appreciate the requirements and the different housing models available and their viability and practicality.[20]

34. The Appellant's primary evidence on need is given by Mr Appleton, the principal author of two key publications in this area: *More Choice: Greater Voice (2008)*[21] and *Housing in Later Life (2012)*.[22] Both of these publications seek to address how best to quantify the need for specialist housing for the elderly. They advocate a method which is based on the population and other nationally available data to look at the characteristics of an LPA area.

35. The PPG highlights the need to begin with the age profile of the population. I note that the proportions of people aged 65 and over within South Oxfordshire District currently sits above the national average.[23] Furthermore, there is presently a population of 15,000 in South Oxfordshire District, who are aged 75 years or older which is forecast to increase to 21,100 by 2035.[24]

36. In terms of care needs, 4,019 people in this population have difficulty managing at least one mobility activity on their own at present, set to rise to 6,046 by 2035.[25] They are overwhelmingly owner occupiers, with 81.23% of people aged 75-84 and 75.25% aged 85 and over owning their own home compared with 13.74% and 17.42% respectively Council or social rented.[26] Importantly, South Oxfordshire sits significantly above the national trend toward owner occupation as the dominant tenure for older people.

37. For the Appellant it is argued that there is a significant under-supply of retirement housing for leasehold sale to respond to the levels of owner-occupation among older people in the District.[27] There is a total of approximately 1,641 units of specialist accommodation for older people. However, there is a very marked disparity in the availability of specialised housing for older homeowners compared with the supply available to older people in other tenures.[28] The current rate of provision favours those in tenures other than home ownership with nearly four times as many units available to them in sheltered, retirement and extra care housing than are currently available for their peers who are homeowners.[29] At present, it is submitted that there are 120 units of affordable extra care housing and 113 units of market extra care housing.[30]

38. Mr Appleton sets out a provision rate for private extra care of 30 per 1,000 of the 75 and over population in the District based on a total provision of 45 extra care units per 1,000 (4.5%) across both the affordable and private sectors, but split on a ratio of one third for social rented and two thirds for

[19] See CD: C.4 Policy H13 paragraph 2
[20] POE of Simon James paragraph 5.1.11
[21] CD: K.44
[22] CD: K.45
[23] See APP 2.3 Nigel Appleton Section 6
[24] See APP 2.3 Nigel Appleton Table One
[25] See APP 2.3 Nigel Appleton Table Five
[26] See APP 2.3 Nigel Appleton Table Twelve
[27] See APP 2.3 Nigel Appleton paragraph 9.2
[28] See APP 2.3 Nigel Appleton Table Fourteen
[29] See APP 2.3 Nigel Appleton paragraphs 9.7-9.9
[30] See APP 2.3 Nigel Appleton Table Fourteen

sale. This takes into consideration the research in ***"More Choice: Greater Voice"*** **and revisions in "***Housing in Later Life***".** I note that the 45 units per 1,000 is to be divided as suggested in order to bring supply into closer alignment with tenure choice among older people.[31] That is 450 units now. Projecting forward, an indicative provision of 633 units of market extra care would be required by 2035.[32] The Council refers to the **Oxfordshire's Market** Position Statement[33] which assumes a lower need figure for extra care housing but the focus there appears to be on social rented extra care housing. The Council also suggests that the SHMA[34] evidence is to be preferred. However, I note that it does not identify figures for extra care, nor does it relate to the present PPG.[35] In my view, **Mr Appleton's** provision rate is preferred and the need for more private extra care is overwhelming.

39. At present even a very modest level of provision of 30 units per 1,000 in the 75 and over population seems unlikely in South Oxfordshire District, especially as the SOLP now requires affordable housing to be provided, when previously it was not required. No other extra care market proposals are coming forward. The Rectory Homes proposal at Thame, refused on appeal for not providing an affordable contribution has been resubmitted but the s106 Agreement is not signed. Nor is Rectory Homes Ltd a provider of care.

40. In my view, there is a strong case that **Mr Appleton's** 45 per 1,000 overall, with 30 per 1,000 to market extra care, should be far more ambitious given not only the true tenure split in the District but also what it could mean for the ability to contribute towards addressing the housing crisis. Mrs Smith conceded that the figure of 30 per 1,000 was hardly ambitious and, if anything, was underplaying the scale of the potential need.

41. Turning to supply, with only 113 units of market extra care units of extra care housing existing in South Oxfordshire and a current need of 450 units this leaves a shortfall of 337. As to the existing pipeline, Mr Appleton analysed the same at Figure Two of his Needs Report, which was updated at INQ APP12. The total `pipeline' supply of extra care not already included in **Mr Appleton's** tabulation of current supply are the proposed 110 units in Didcot and Wallingford, and the 65 units proposed at Lower Shiplake. This gives a total gain of 175 units. However, both Wallingford and Didcot sites have been confirmed as affordable extra care. The Council did not dispute the 175 figure and Mrs Smith accepted that she did not know if the 110 units in Didcot and Wallingford would be affordable or market. I consider that only 65 units can reasonably be considered as pipeline.

42. The pipeline needs to be set against the current shortfall of 337 which still leaves 162 units even if Didcot and Wallingford are included and 272 if they are not. That is a substantial unmet need now which will only further climb and in respect of which there is nothing in the pipeline and no prospect of any strategic allocated site delivering in the five year housing land supply.

43. There is plainly a very limited supply of extra care housing for market sale (leasehold) in South Oxfordshire. Adding further concern, it is of note that

---

[31] See APP 2.3 Nigel Appleton paragraph 11.6
[32] See APP 2.3 Nigel Appleton Table Seventeen
[33] See CD: K.27 Market Position Statement for Oxfordshire in relation to Care Provision and Extra Care Housing Supplement assumes a need for 25 units of extra care housing for every 1,000 of the population aged 75+ page 9
[34] See CD: 14 HOUS5 Oxfordshire Strategic Housing Market Assessment April 2014
[35] Ibid

from 2012 to date just 133 units have been delivered despite there being in the same period permissions for a net gain of 447 additional Care Home beds This runs completely contrary to the policy set out in the Market Position Statement of reducing reliance on Care Home beds and increasing capacity in extra care. The case for more market extra care provision now is very clear. Furthermore, the need is set only to grow.

44. The Council sought to undermine the Appellant's need case with reference to earlier data from Housing LIN and the @SHOP tool. This on-line tool is highlighted in the PPG as a basis for calculating need. But the fact is it only provides a figure based on existing prevalence and then seeks to project that forward with a proportion increase based on the increase in the 75+ age group in the District. This is not a measure of need.

45. The Council provided a list of specialist accommodation for older people[36] most of which is not market extra care, but mostly affordable extra care. Oxfordshire County Council has two sites with market extra care, but those schemes are in Banbury and Witney and not in the District.[37] In short, the pipeline adds up to very little. I consider there is hardly any market extra care housing in the District. The stark fact is that choice is largely unavailable.

Policy Compliance

46. Plainly the proposed development would make a substantial contribution toward the provision of a more adequate level of provision for older homeowners looking for an environment in which their changing needs could be met. The fact that the need is proposed to be met at Sonning Common seems entirely appropriate. Sonning Common is one of just 12 larger villages where a need for extra care provision has been identified in the SCNP, and where there is the oldest 65 and over population in the County. The SCNP expresses support for a small scale development of extra care housing in Policy H2a but no site is allocated for such use. The Sonning Common Parish Council (SCPC) accepted that SCNP policies referred to in the RfR are out of date due to a lack of five year housing land supply. That includes Policies ENV1, ENV2 and H1, which is only expressed as a minimum.

47. Policy H13 (1) in the SOLP gives support to extra care on unallocated sites. This adds to the weight that can be given to the need case. Policy H13 is the key policy in respect of specialist accommodation for older people. Though the appeal site is not a strategic site, nor allocated in the SCNP, Policy H13 does not itself require it to be. I have already discussed the difficulties associated with any of the strategic sites coming forward with market extra care either within the five year housing land supply period or at all.

48. Policy H13 (1) is clear that encouragement will be given to developments in locations "with good access to public transport and local facilities." The Council accepted that public transport for staff on the site would be more likely to take the form of bus services and they would perhaps have no difficulty walking. For residents there is a choice and it depends on their mobility. I saw that most of the site is flat. It does have a gradual gradient to the west then a steeper gradient close to Widmore Lane. The presence of a hairpin in the proposed design is to deal with the gradient which requires a

[36] See Nicola Smith's Appendix 1
[37] CD: K.27 page 5

longer path to accommodate people with disabilities. I note that a minibus service is proposed which would take residents to the local supermarket. With regard to other trips, for example to the post office or to other facilities, residents could walk or take the minibus. Importantly, the core building has all facilities centrally. Residents could cook in their premises and meals would be provided on site. There would also be a small convenience shop on site and staff would be on hand to not only care for but also to assist people. Garden maintenance would be provided and there would be a wellbeing centre to help people's health and fitness. Overall, the facilities would take care of a considerable amount of day-to-day needs. In my view all of this would comprise "good access to public transport and local facilities."

49. With regard to matters of principle I accept that Policies ENV1 and STRAT 1 (ix) of the SOLP affords protection to the AONB and in the case of major development, it will only be permitted in exceptional circumstances and where it can be demonstrated to be in the public interest. I give these matters detailed consideration in other issues. The proposal fully accords with Policy H1 3ii) of the SOLP. With regard to Policy H4 of the SOLP, although the timeframe for review of the SCNP does not run out until December 2021 that does not bring the SCNP back into date. Whilst the review of the SCNP has commenced, it is at its earliest stage and no weight can be given to it. I conclude on the first issue that the appeal proposal would conflict with some but would comply with other elements of the Council's strategy for the delivery of older persons accommodation throughout the district.

Second issue - the impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common

50. SoCG 1 Landscape has been agreed between the parties and addresses landscape and visual matters. The appeal site is within the Chilterns AONB which is a `valued landscape' in respect of paragraph 170 of the NPPF. The Chilterns AONB Management Plan 2019-2024[38] defines the 'special qualities' of the AONB and the most relevant to the appeal site and its context are summarised at paragraph 3.5 of SoCG 1.

51. In essence, the Council, supported by the SCPC, the Chilterns Conservation Board and others, consider that the proposed development would create a prominent and incongruous intrusion into Sonning Common's valued rural setting, relate poorly to the village, and cause material harm to the landscape character of the AONB. It is also claimed that the proposal would not conserve or enhance the landscape and scenic beauty of the AONB and would fail to protect its special qualities.[39] The policy context at the time of the decision notice referenced policies in the South Oxfordshire Local Plan 2011 which is now superseded by the adopted policies in the SOLP.[40] Policies ENV1 and ENV2 of the SCNP are also relevant. I note the illustrative Masterplan,[41] the LVIA and the Landscape Appendix[42] submitted by the Appellant.

[38] CD: F4 pages 10 and 11
[39] See RfR 2
[40] See LPA INQ6 which sets out the relevant SOLP policies including STRAT1 (ix), ENV1 and ENV5 and Design policies DES1, DES2, DES3 and DES5
[41] See Appendix 4.3.1 of James Atkin Drawing reference 1618_L_01_01 Rev3
[42] CD: A.9 and CD A.10 Landscape and Visual Impact Assessment and Landscape Appendix

52. To address these points, it is necessary to understand what the special qualities of the Chilterns AONB are and the extent to which those special qualities relate to the appeal site and its context. From the evidence that is before me and from my site visit, I do not consider the appeal site or its local landscape context to be representative of the special qualities as set out in the Chilterns AONB Management Plan. Where the appeal site does exhibit some such qualities, they are generic. In all other respects, they are entirely absent.

53. Planning policy and statute give equal protection to all parts of the AONB. However, it would be unrealistic to expect the appeal site and its immediate context to share all or even most of these special qualities. It is important to have a balanced interpretation of how such special qualities relate. To that end, Mr Atkin's Table 1[43] summarises that relationship, drawing together judgements on the landscape and the extent to which the appeal site is characteristic, or otherwise, of the AONB. In summary, Mr Atkin's analysis demonstrates that the appeal site does not reflect the majority of the special qualities and, where there is a connection, the association is limited. It seems to me that the appeal site is more typical of an agricultural landscape that is commonplace around many settlement fringes. Plainly the appeal site and its local landscape context is less sensitive than other parts of the AONB.

54. The core characteristic of the appeal site and its context, and the most relevant of the special qualities to it, is the extensive mosaic of farmland with tree and woodland cover. However, this is probably the broadest and most generic of the special qualities acting as a 'catch all' for the extensive areas of farmland across the area. Other parts of the AONB are more distinct. The ancient woodland of Slade's Wood is located off site, outside of the AONB designation, though it does form part of its setting. As to extensive common land, this is not representative of the appeal site. In its local landscape context, Widmore Pond is designated as common land but is not an 'extensive' area contrasting with other parts of the AONB.

55. At my site visit I saw that the appeal site, being directly adjacent to the relatively modern settlement fringe of Sonning Common, detracts from any potential tranquillity. This is particularly so due to the neighbouring JMTC complex and associated car parking. It is common ground that the JMTC is `institutional in scale'. In terms of ancient routes, there is no formal access to the appeal site. In the local landscape context, the closest rights of way are the public footpaths to the north-west and east both of which give access to the wider landscape to the north and east of Sonning Common where the characteristics of the AONB are more readily apparent.

56. The Council agreed that new development can be accommodated in the AONB and as a matter of principle can be an integral component. Indeed, the SCNP allocates development within its boundaries. I saw that the AONB in this location already contains a significant amount of built development. That contrasts significantly with the deep, rural area of countryside within the AONB some of which is located to the north east of the appeal site where the road turns east down the valley bottom heading to Henley-on-Thames. There, there is no settlement or village, no industrial buildings or surface car parks

[43] See James Atkin's Appendix 4.1 pages 18-20

with 100 plus spaces. It is simply deep countryside with very limited urban development and is very attractive. That cannot be said about the appeal site.

57. Having considered how the special qualities of the AONB relate to the appeal site, I now consider the landscape character of it. The appeal site is partly located on an area of plateau between two valleys, within a landscape identified in the South Oxfordshire Landscape Character Assessment (2017)[44] as semi-enclosed dip slope, which in turn forms part of the broader Chilterns Plateau with Valleys Landscape Character Area (LCA10). The eastern part of the site is located above the 95m contour on the plateau area.[45] The southern and western parts of the site fall towards a shallow valley which contains neighbouring parts of Sonning Common. At a further distance to the north is a deeper valley which separates Sonning Common from Rotherfield Peppard.

58. The Landscape Assessment for the Local Plan 2033 for the semi enclosed dip slope LCT states:

> *"…this part of the Chilterns dip slope has a surprisingly uniform character, despite its irregular pattern of plateaux and valleys and its mosaic of farmland and woodland. This complexity is a consistent and distinctive feature of the area, and the most obvious differences in landscape character are between the very intimate, enclosed wooded landscapes and those which have a more open structure and character."*

It is clear to me that there is a difference between the parts of the AONB in the dry valley and those on the plateaus.

59. What is distinctive about this part of the landscape and relevant to the landscape of the appeal site and its context is the uniformity across a larger scale area of the landscape characterised by a complex mosaic of farmland and woodland. It is this complex mosaic at the larger scale which is more closely aligned with the special qualities of the Chilterns AONB and not the appeal site itself. It isn't the loss of a part of this mosaic that is important, which in the case of the appeal site would be a relatively small agricultural piece of the mosaic; rather, it is the implications for the wider mosaic and whether that would be disrupted in terms of a reduction of its scale, or would result in the creation of a disbalance between particular parts of the mosaic.

60. SCPC referred to the Sonning Common Character Assessment and Design Statement 2013.[46] I accept that this formed part of the evidence base to the SCNP, but it appears to still be in draft form only many years later. Its main purpose was to provide comparative comment on sites identified for potential future development limited to only the shortlisted sites. It does not address the wider appeal site. I have also taken into account the Oxfordshire Historic Landscape Characterisation Project[47] and the various landscape capacity assessments cited by Mr Jeffcock that have looked at the appeal site.

61. As I perceive it, Sonning Common is very much part of the local landscape context, just as much as the adjacent agricultural land and the wider mosaic of the AONB. The appeal site performs a role of a brief transition and gateway between the suburban and rural environments. In its local context, the settlement fringes of Sonning Common, including the residential areas across the valley and on the plateau to the west and south are influential in terms of

[44] CD: D.23, section 15.
[45] See John Jeffcock's Appendix 1, Figs 2, 7, 8
[46] CD: C.7
[47] CD: I.5

the local landscape character, as is the prominent built form of the JMTC to the north. Adjacent to the appeal site is the JMTC car park which further erodes **the sense of more 'remote' or rural countryside. To the south the** settlement extends some distance along Peppard Road and there is a clear experience of entering the suburban character of the village, long before the appeal site is perceptible. There are specific locations where the settlement edge is less apparent notably along Blounts Court Road from the east and in this direction the more rural aspect of the site is more dominant.

62. **The Council's LCA draws a very clear distinction between the character of** development on the plateau and the character found in the dry valleys.[48] The landscape strategy set out there suggests that development on the plateau is in keeping whereas into the valley is a negative thing. It seems clear to me that Sonning Common has grown up developmentally on two plateaus either side of the dry valley.

63. It is common ground that, like any development anywhere, physical impacts on the landscape fabric will be limited to those which occur within the appeal site itself. However, landscape character impacts and the consequent effects would not be limited to the appeal site. It is agreed that there are not likely to be significant effects on the wider landscape or visual effects further afield than a localised area set out in the SoCG 1.[49]

64. Although there would be localised losses of vegetation due to the access off Blounts Court Road and the proposed pedestrian connection to Widmore Lane, the proposed development would largely involve the loss of open agricultural land and the construction in its place the built development of the appeal proposals. On the most elevated part of the site, there would be a substantial, cruciform core building, 2.5 storeys (about 11.2m)[50] in height, with a footprint of approximately 3,900m^2, and four apartment blocks with ridge heights of between 10.3m and 11.2m, the largest two of which would have footprints of about 550m^2 each. However, the recent application submitted for the JMTC shows that the present buildings making up the complex are between 8.7m and 10.6m depending on ground levels with block 4 up to nearly 11m in height. I accept that there would be a physical loss to the mosaic, but in character terms, the appeal site is not essential to its character and the built elements of the scheme would be consistent with the settlement fringe.

65. There would be potential impacts arising from the 15m woodland belt along the southern and eastern edges of the appeal site. This would be beneficial in terms of moderating the effect of the development. It would also provide a green infrastructure link between Slade's Wood and the green infrastructure network in the surrounding landscape. This would have a positive impact on the 'wooded' aspects of the mosaic. The woodland belt would create a further **'layer' in the landscape which** would physically and visually contain the site.

66. The overall consequence of this is that there will be a highly localised impact **on the 'mosaic' in terms of agricultural l**and use, but not to a point where, given the scale of what makes this distinct, the mosaic is disrupted or undermined. At a local and wider scale, this would not constitute 'harm' to the Chilterns AONB. Only a small part of the mosaic would be impacted, and this

[48] CD: D18 page 572 which deals with Sonning Common at 9.10
[49] CD: H.02 SoCG 1 Landscape paragraphs 3.21-3.22
[50] **See John Jeffcock's POE paragraph 4.3.3.**

would not alter the overall character of the wider mosaic or the LCT. Plainly such limited impacts would not cause 'material harm' to the landscape character of the AONB, nor would it conflict with the aims of protecting its special qualities. The appeal site would, in being development on a plateau, be in keeping with the landscape character.

67. I accept that the appeal site and the immediate landscape context within the Chilterns AONB form part of a valued landscape[51] this is primarily on the basis of the landscape designation and related less to the demonstrable physical attributes of the appeal site.[52] Although the Appellant's LVIA determines landscape value to be 'high' with some localised variations, I consider that the appeal site in its local landscape context is of 'medium to high' value taking into consideration that it is in the AONB but also the site's own merits. There is, frankly, a considerable difference between this area and more typical, characteristic parts of the AONB.

68. As to landscape susceptibility, this can be appropriately described as `low to medium' in the appeal site's local landscape. This is a medium scale enclosure that has capacity to accommodate some form of development across the majority of the site. The settlement of Sonning Common provides some reference and context for development and the presence of the JMTC in this part of the AONB reduces landscape susceptibility to new development. The landscape sensitivity is appropriately judged as `medium' with the AONB designation having a high sensitivity. Mr Jeffcock considers that the appeal site has a high landscape value and high sensitivity to change. However, his assessment is overstated. In my view the appeal site has a medium to high value, and low to medium susceptibility with medium sensitivity overall.

69. The appeal site is located on the very fringe of the AONB, and Sonning Common is excluded from it. This is not a core part of the Chilterns AONB and its special qualities are largely absent. Of relevance is the mosaic of wooded farmland that characterises much of the plateau and dip slope. The appeal proposals would result in a change to this characteristic at a very localised level, with the loss of an open agricultural field to built development but balanced with the introduction of further woodland and green infrastructure. This would not disrupt, or unduly influence, the mosaic. I agree that the 'slight to moderate adverse' effect on landscape character would not represent a significant impact in respect of the Chilterns AONB.[53]

70. As for visual effects, these would differ depending on the viewer and the viewpoint. The landscape witnesses provided a number of example viewpoints and I carried out an extensive site visit with the parties to see these and other views for myself. I have also taken into account the ZTV[54] and LVIA information provided by the Appellant.

71. SoCG 1 Landscape records that the physical impacts of the proposed development would be limited to the appeal site, and that consequent impacts on landscape character would be limited to a relatively small number of areas including viewpoints to the south (the route of the B481 Peppard Road); to the south west (Sonning Common village e.g. Grove Road); to the north

[51] Within the meaning of paragraph 170(a) of the NPPF
[52] See James Atkin's Table 2 POE pages 27-28
[53] See James Atkin's POE page 33 paragraph 6.48
[54] Zone of theoretical visibility

(footpath 331/16/20) close to the southern edge of Rotherfield Peppard); to the west (the settlement edge of Sonning Common) and to the east and north east (the routes of public right of way 350/11/20 and 350/10/10). Outside of these areas it was agreed there would not likely be any significant effects on the wider landscape or on visual receptors further afield.[55]

72. In terms of visual amenity, the evidence demonstrates that potential views of the appeal proposals would be limited to a small envelope, largely related to the immediate context of the appeal site and not extending further into the Chilterns AONB landscape. This limited visibility reduces the perception of change to landscape character. The ZTV demonstrates that, aside from some locations very close to, or immediately adjacent to the appeal site, potential visibility from the wider landscape (and AONB) is limited. In my view this accords with t**he landscape character guidance which refers to the 'semi-** enclosed dip **slope' as having a 'strong structure of woods and hedgerows'** which provi**de 'visual containment and results in moderate to low intervisibility'.** This strong structure of woods and hedgerows provides containment in the landscape.

73. What is clear, is that only a small number of nearby locations would have direct views of the appeal proposals. This includes a very short section of Peppard Road, short sections of public footpaths to the east (350/11/20 and 350/11/40) and the approach to the settlement along Blounts Court Road. In each of these instances, impacts could be moderated by appropriate landscape works and particularly the inclusion of the woodland belt. The contained nature of the appeal site and the limited extent of landscape effects mean that the overall character of the semi-enclosed dip slope LCT would not be fundamentally altered and the effects on landscape character at this scale would not be significant. Plainly, the appeal proposals would not give rise to significant visual effects overall; either in the local landscape context of Sonning Common or in respect of the scenic quality of the Chilterns AONB.

74. **The most relevant assessment is that of 'Year 15' once the** tree planting proposals have had the opportunity to thrive. Those proposals are a specific and positive part of the proposed development which would deliver additional environmental functions to that of visual screening. It is common ground that the planting would be significant. It is reasonable to expect that the growth of native species would reach good heights in the medium term and mature heights that are comparable to the existing trees and woodland in the area. There would be glimpses of the built development through the perimeter planting. However, it would provide a substantial screen in the long term and help to integrate the appeal proposals into the landscape particularly when viewed from the east and from the south.

75. For the above reasons I conclude on this issue that the proposed development would have some localised landscape and visual effects, but these would not result in unacceptable impacts on the AONB or the landscape setting of Sonning Common. As such, in respect of this issue I consider the appeal proposal would conflict with Policies STRAT 1 (ix) and ENV1 of the SOLP together with Policy ENV1 of the SCNP. However, for the reasons set out above those adverse effects would be limited. I shall consider this further in the planning balance.

[55] CD: H.2 SoCG 1 Landscape paragraphs 3.21-3.22

Third Issue - the effect of the design of the proposed development on the character and appearance of the village

76. The Council's concerns about the design of the proposed development are based on RfR4 and are supported by the SCPC. In summary these are: (i) the development would not integrate with the village by reason of scale, massing, layout and character; (ii) it would result in a dominant and intrusive form of development having a significant urbanising effect on the settlement edge; and (iii) the layout and design would result in poor amenity for residents by virtue of the lack of access to private amenity space and publicly accessible green space, an overdominance of car parking and limited space for tree planting. I address each of these concerns in turn.

77. The main parties agreed a section on design within SoCG 4 Planning.[56] Amongst other matters it is agreed that: the detailed layout (Phase 1) is the proposed layout for that part of the site; the proposed masterplan is provided to demonstrate how the development could be laid out to respond to the physical and technical constraints and opportunities of the site; the layout for Phase 2 will be subject to future reserved matters (appearance, landscaping, layout and scale) and remain in the Council's control; the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed; and the extent of existing tree retention and the selection of proposed plant species, grass, hedge and shrub planting is agreed.

78. It is also noteworthy that policies within RfR4 relate in the main to the previous South Oxfordshire Core Strategy 2012 and South Oxfordshire Local Plan 2011. The corresponding policies are set out at INQ LPA6. Policy D1 of the SCNP 2016, the South Oxfordshire Design Guide[57] and the NPPF (in particular paragraphs 127, 130 and 131) also apply.

79. I turn first to integration with the village in terms of scale, massing, layout and character. The Council and the SCPC are concerned that the scale and layout of the proposed development are being driven by operational requirements and the business model of the Appellant. Reference is made to the large apartment blocks and the village core which it is claimed are at odds with the more modest scale of development in Sonning Common. However, I consider it is important at the outset to understand the existing context and character of Sonning Common. At my site visit I saw that Sonning Common is not the archetypal Chilterns Village, and it clearly lies outside the AONB. It was developed in a more planned manner with the character being 'plotlands' and later infill housing termed 'estates'.

80. The local vernacular consists of a mix of building types, but the immediate neighbouring existing development is comprised of the estates typology - Churchill Crescent, Pond End Road and the northern edge of Widmore Lane. The existing context has a range of design components that help create its character. In particular, I note that Sonning Common: is primarily 2 storeys but with elements of 2.5 storeys; is primarily domestic in scale; has predominantly traditional architecture; is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape; and has occasional larger built form such as the school or JMTC. Furthermore,

[56] CD: H.5 SoCG 4 Planning Section 6
[57] CD: C.8

Sonning Common has: brick walls; painted rendering on walls; clay roof tiles; chimneys; and a mix of gables, hipped roofs and porches.

81. The Design and Access Statement (DAS)[58] describes the appeal proposals as domestic in scale and character. I accept that the scheme is largely domestic in form and with detailing consistent with residential houses in the area.

82. In terms of *height*, the proposed buildings would reflect the heights of buildings within Sonning Common. Both plotlands and estate buildings include two storey buildings and two storey buildings with roof rooms. The proposed apartment buildings would be two storeys with the Village Core rising to two and a half storeys in places. The Village Core has accommodation in the roof space to keep the overall ridge height low. The height to the ridgeline from ground level of the Village Core Centre building is up to 2.5 storeys dropping to single storey on the eastern side. This must be seen in the context of the height of the adjacent JMTC, typically equivalent to 3 storeys, and groups of 2.5 storey dwellings on the northern side of Blounts Court Road to the west of the site. Most of the proposed development would be two storeys in height as is the overwhelming majority of built development in Sonning Common.

83. As to *massing*, the initial indicative sketch elevation demonstrates that the apartments and the Village Core would have the appearance of semi-detached buildings or groups of buildings combined into short terraces with a varying roofline which are reflective of the existing residential buildings in Sonning Common.[59] The massing of the apartments is derived from a variety of footprint depths which, when formed into larger blocks, allows for the scale and mass to be broken down into roof elements with simple breaks in the roofline. Appropriate equal roof pitches would give each apartment building an elegant scale. There would be elements of hipped roofs, and chimneys incorporated into the roof plane. The apartment buildings would have balconies, single and double gables further breaking down the overall mass. The Village Core would have accommodation in the roof space and the roof planes would be broken down with larger single gables, smaller double gables with a central gutter and small dormer windows.

84. In my view the *layout* of the proposed development would reflect the way existing `plotlands' and `estates' buildings in Sonning Common are orientated, with the arrangement of buildings fronting the main vehicular route with active frontages. A number of apartments would be arranged around the Village Core. Buildings fronting Blounts Court Road would be positioned so that they would replicate the linear street scenes typical of development within Sonning Common.[60] I note that the proposed building line would be setback some 15m-20m from the road edge to retain an element of openness along the streetscape allowing boundaries to be defined by planting and hard landscaping. This would reflect the layout of the 'plotlands' buildings within Sonning Common. Buildings along the main access route and internal streets would similarly front the street with setbacks from 6m-15m allowing boundaries to be defined by planting and hard landscaping. The setback for 'estate' residential buildings ranges from about 4m-14m. In my view, the proposals would be in a similar range.

[58] CD: A.31
[59] See Mr Carr's Appendix UD4
[60] See CD: C7 Sonning Common Character Assessment and Design Statement

85. The Council and SCPC argued that the appeal proposal could be smaller in scale. However, it was accepted that greater economies in scale could be achieved with larger retirement village developments with extensive communal facilities. It is noteworthy that the Appellant is proposing a development which is half the size of the optimum.[61]

86. With regard to *character* it is clear that the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed, as recorded in the SoCG 4. In any event, the proposed development would accord with the local vernacular which consists of a mix of building types found within the key character areas. In summary, Sonning Common has predominantly traditional architecture and the proposed development would have traditional architectural detailing; it is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape and the proposed development would have similarly substantial planting in the streetscape as well as proposed and existing large scale tree planting creating a tree lined backdrop. Sonning Common has also occasional larger built form such as the school or JMTC and the proposed development has a Village Core.

87. It is fair to say that Sonning Common has an eclectic architecture which is quite conventionally suburban. There is a significant amount of 1970s housing. It has a fairly bland architecture, evidenced by the images in the Sonning Common Character Assessment and Design Statement.[62] Given that the site is within the Chilterns AONB, the design should not just duplicate Sonning Common, but use materials such as flint panels and dark stained boarding and design components that respond to the AONB setting.

88. In my view, the architecture would reflect a varied composition with gables, projections and porches. The proposed elevations would respect the traditional patterns, style and scale of buildings and the fenestration would be inspired by traditional Chiltern building with a solid wall area balanced with the window and door openings, relatively pitched roofs with a ridgeline, use of 'L' and 'T' building shapes, chimneys and prominent flint panels.

89. It is clear to me that the proposed new buildings would plainly add to the sense of place and local character **and would 'belong' to the Chilterns**. The proposed development would also create a soft edge to the countryside[63] and would not 'turn its back' on it; particularly given the lack of any rear garden fences defining the edge of the settlement.

90. I recognise that this is a hybrid application and there is therefore an outline element to the proposals. However, to demonstrate their commitment to provide the same level of detailing and materials as presently indicated, the Appellant has produced a Design Commitment Statement.[64] Importantly, this could be conditioned to provide reassurance and an additional way of ensuring that the future reserved matters keep to the quality required in this setting.

91. The Council contended that the proposal would be a dominant and intrusive form of development and it would have an urbanising effect on the settlement edge. I disagree. The apartments and cottages proposed as part of the appeal scheme would be largely consistent with a domestic form and would be very

[61] See INQ LPA 2 page 13.
[62] See CD: C7 page 16
[63] See CD: K4 Chilterns Building Design Guide principle item 3.16 page 25
[64] See Mr Carr's Appendix UD7

similar in size and form to houses in Sonning Common and the wider AONB. It is logical to site the Village Core building where it is, on a predominately level area, avoiding any large man-made cuttings and embankments to facilitate it. Plainly having the core building on a level area is appropriate for residents in their later years of life who would want facilities to be very easy to access.

92. The NPPF emphasises the importance of making efficient use of land.[65] Clearly where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. I accept that it is imperative that sites such as the appeal site are optimised when developed. However, optimising does not mean fitting in as much as you can regardless, but it does mean using land efficiently. As this would be an apartment based development then I accept that it would have a greater density than a conventional residential scheme.

93. The Council argued that the proposal would have an urbanising effect. However, the proposed development would be very different to an urban character. There would be a significant landscape setting breaking up the built form and the countryside edge, when read in the context of the proposed planting, would be assimilated in townscape terms. Much has been made of the AONB designation in which the appeal site falls; but this does not mean preservation without any change. The proposed development would in many ways be read as part of the evolution of the area's character.[66] In my view the proposed development would create an appropriate designed edge to the settlement and an appropriate robust transition with a manged landscape that is a better edge than the back gardens adjoining the settlement boundary that can be found at the settlement edge around parts of Sonning Common.

94. I turn now to the Council's concerns that the layout and design would result in poor amenity for residents by virtue of a lack of access to private amenity space. It is common ground that in policy terms, there is no private amenity requirement prescribed for a retirement community care village. Nonetheless, the proposed development would provide a total of 1,300 msq of private amenity space[67] comprising: private balconies totalling 0.03 hectare; and directly accessible private landscape and terraces totalling 0.1 hectare.

95. Over and above the private amenity space there would be an extensive amount of publicly accessible green space provided. Again, I note that there is no policy requirement for a retirement community care village yet there would be: landscaped space amongst and between the built form (including foot and cycleways) totalling 1.7 hectares; and a native tree belt and woodland buffer totalling 1 hectare. Combined with the private amenity space there would be 2.83 hectares of amenity land which would be ample given that the site totals 4.5 hectares. That is 62.8% of the appeal site and equivalent to 212.78 msq for each of the 133 units.

96. All of the above is in the context of extra care developments being very different to general housing. I accept that residents do not want the work of managing their own garden. In my view, the layout of the development would

[65] NPPF paragraph 123.
[66] See Michael Carr's POE paragraph 7.20
[67] See Appendix UD5 of Michael Carr's POE

be safe, attractive and inclusive with plenty of natural surveillance of the landscaped spaces which is important given the age restriction of the development and why people would choose to live there.

97. The appeal proposals include access to landscaped spaces and woodland opening up an area that would otherwise be inaccessible private land. This maximises the public benefit of the scheme and would positively contribute to the health and well-being of both residents and the community, to which weight is given in the NPPF as part of the social objective. The Council agreed that there may well be community integration and intergenerational activity through the facilities on site.

98. With regard to car parking, the appeal proposals have been designed to avoid what would otherwise be unplanned 'ad hoc' parking through a formal provision. This is not in one place, rather the design would disperse the necessary parking across the proposed development in a series of clusters. These would be set back and visibly screened from the main routes through the development and would avoid harsh urban parking courts. The proposed 15m woodland belt is a relevant consideration. The proposed planting would buffer and screen views of parked cars and both soften and integrate the parking areas so that they are read as designed landscaped courts. The Council raised concerns about the space available for tree planting. However, in my view there would be ample space on site to accommodate the tree planting the final details of which would be under the Council's control.

99. Overall, I consider the proposal would be in broad accordance with the SOLP policies including DES1, DES2, DES3, DES4 and DES5, SCNP policies D1 and D1a and other design guidance and the NPPF. I conclude on the third issue there would be no reason to dismiss the appeal due to the effect of the design of the proposed development on the character and appearance of the village.

Fourth Issue - whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development

100. This issue relates to the absence of a completed s106 Agreement to secure infrastructure to meet the needs of the development. At the time of the decision, agreement could not be reached with the Council on the requirements for a planning obligation. Since then, agreement has been reached and a s106 Agreement was submitted at the Inquiry. I have considered the s106 Agreement in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.

101. The NPPF indicates that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.[68] Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.

[68] NPPF paragraph 54

102. The Council's need for additional infrastructure and services is set out in relevant SOLP policies which include H9 Affordable housing; INF1 Infrastructure; DES 1 Delivering High Quality Development; TRANS2 Promoting Sustainable Transport and Accessibility; TRANS4: Transport Assessments, Transport Statements and Travel Plans; and TRANS5: Consideration of Development Proposals. The Council's SPD (2016) is also relevant. Based on the SPD and the relevant policies, the appeal proposal should provide: (i) a financial contribution towards local primary health care (£73,735); (ii) a recycling and waste contribution (£24,738); (iii) a street naming contribution (£2,977); (iv) a District S106 monitoring fee (£2,686); (v) an affordable housing contribution (£7,510,350); (vi) a public transport services contribution (£117,000); (vii) a travel plan monitoring contribution (£2,040); and (viii) a County S106 monitoring fee (£1,500).

103. The primary care contribution is directly related to the development because it results from the additional pressure on local health services as a result of the future residents. It is fair and reasonable as the amount has been calculated based on the number of future residents. The recycling and waste contribution is necessary for the development to be served by waste infrastructure and the calculation is directly related to the bins needed for this development. It is necessary for the development to be served by street naming plates and the calculation is directly related to the name plates needed for this development. The completion of a planning obligation requires the Council to administer and monitor those obligations. The monitoring fee contribution is necessary to cover the Council's costs and is directly related to the nature of the obligation.

104. The proposal will deliver affordable housing which is required under Policy H9 of the SOLP. It will do so via a contribution in lieu of on-site provision. The s106 Agreement secures the payment of £7,510,350 to be paid by the owners. A financial contribution towards off-site affordable housing is necessary to equate with a 40% affordable housing provision under Policy H9. It is directly related to the development and fairly and reasonably related in scale and kind. The financial contribution has been calculated based on the open market value of a unit to be delivered on the site.[69] The s106 Agreement requires the total affordable housing contribution to be used towards the provision of off-site affordable housing within the District.

105. The relevant policies which support the transport contributions are set out in the CIL Compliance Statement.[70] A contribution is required to provide an improved bus service (service 25) for residents, visitors and staff associated with the proposed development as an appropriate and viable alternative to the use of private cars and to promote travel by public transport. The contribution required would be used towards increasing the frequency of the existing service operating between Sonning Common and Reading to every 30 minutes between 0600 - 2030, Monday to Saturday and an hourly service in the evenings (up to 2300) and on Sundays (0800-1800). The contribution is directly related to the number of residential units but excludes the proposed 16 high care units, as these residents are unlikely to use public transport. A

---

[69] INQ LPA7 provides the methodology for the calculation of the commuted sums based on the open market value of a unit to be delivered on the site.
[70] INQ LPA7 NPPF paragraphs 102, 103, 108 and 111; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 1 Policy and Overall Strategy Updated 2016 Policy 3 and Policy 34; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 2 Bus & Rapid Transit Strategy (2016) paragraphs 91, 93-95.

travel plan monitoring fee is required to monitor the implementation of the travel plan and an administration and monitoring fee is required to monitor the planning obligation.

106. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision. I conclude on the fourth issue that the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.

Fifth Issue - whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB

107. There is no dispute that the appeal scheme would be a major development in the AONB. The tests relating to allowing such development are set out clearly in paragraph 172 of the NPPF. The relevant factors which must be considered are then listed in paragraph 172 a) to c) but it is not an exhaustive list. Great weight must be given to conserving and enhancing landscape and scenic beauty in AONBs and planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

The need for the development and the impact on the local economy

108. I have already discussed the need for the development in detail under the first issue. That discussion is not repeated in detail here, but it is plainly relevant to paragraph 172 a) of the NPPF. There is an immediate unmet need for extra care market housing. This arises not from some ambitious target for extra care. The target for need suggested by Mr Appleton is in fact very modest. It is just 4.5% of the District's population of people 75 years of age and over. It arises because there is hardly any of it available. There are only two schemes which have been built offering 113 units. The only future supply which is available is the market extra care that would be provided at Lower Shiplake for 65 units. Retirement Villages has now sold that site and want a larger site. Whether the Lower Shiplake scheme gets built is therefore uncertain. But even with it the supply of extra care that is available is only 178 units.

109. This against a need, based on a modest aspiration of 4.5% - that is 450 units across the whole District for an overall population of 15,000 in this age category, gives rise to an immediate shortfall of 272. The figure is 337 if the Lower Shiplake proposal is excluded. The stark fact is there is hardly any choice or to put it another way choice is largely unavailable.

110. I am in no doubt that the development of 133 units is needed. Firstly, it is needed to address the immediate shortfall in the five year housing land supply in the District which is only equivalent to some 4.21 years. Secondly, it is needed in this District where at present a population of 15,000 who are aged 75 years or older is forecast to increase to 21,100 by 2035. The demographic evidence indicates a `critical' need for extra care housing in the District. In this case, the proposed development should be of sufficient size to support the communal facilities that are necessary to ensure an effective operation.

111. Thirdly, it is important to recognise the fact that extra care accommodation, together with all other forms of specialist housing for older people can assist in `freeing up' existing family and other housing by allowing them to `right size' by moving to more appropriate accommodation. This type of specialist housing could significantly contribute towards the easing of the present housing crisis in this District where under occupancy amongst older households is greater than for England as a whole. The sale of the 133 units in the appeal proposals would release 133 family houses of three bedrooms or more.[71] The appeal scheme would be likely to free up 39 family dwellings locally but it could be as high as 64.[72] Significant weight can be given to this.

112. Fourthly, the health and well-being benefits of the appeal proposal should also be recognised and given significant weight. Such benefits to elderly people are entirely obvious. I accept that such health and care benefits apply and also that they are separate from housing delivery. The benefits specialist housing for older people can bring include addressing concerns about suitable supervision, frailty, care, assistance, recreation, loneliness and isolation.

113. I do not consider the impact of refusing the proposed development would be seriously damaging to the local economy, there is no clear evidence to that effect. There is no requirement that has to be demonstrated. However, I do accept that the proposal would deliver economic benefits to the local economy and jobs as well.[73] The Appellant has also proposed a local employment and procurement condition which I accept is plainly relevant.[74] I am satisfied that there is a need for the development and that it is in the public interest.

The cost and scope of developing elsewhere or meeting the need in another way

114. With regard to paragraph 172 b) of the NPPF, the Council's case is that with Policy H1 and H13 the need for specialised housing for the elderly can be met outside of the AONB. The Council refers to the Oxford County Council's Market Position Statement Extra Care Housing Supplement 2019-2022 and to the SHMA. However, the Council does not quantify a need for extra care, albeit the SHMA does recognize it as a category of need and distinguishes between market and affordable extra care housing.[75] The Council also suggests that the need can be met in people's homes and that needs can be met by 2035. In my view, there is a specific need for extra care provision and market extra care housing. The needs which have been identified are modest and the idea that they be met at home is misplaced. The most relevant need is the immediate need and Mr Appleton's evidence demonstrates what this is.

115. I note that at both the application and appeal stages the Appellant relied upon a sequential assessment of alternative sites to show a lack of suitable sites. The Council questioned this assessment but never really suggested any alternative sites. At the Inquiry reference was made to 8 extra care sites in Mrs Smith's Appendix 1. However, all of those sites have been addressed by Mr Appleton and that information was updated during the Inquiry to reveal that there were no sites with planning permission in the pipeline other than

[71] Paragraph 6.24 of Roland Bolton's POE
[72] Paragraph 6.27 of Roland Bolton's POE
[73] See CD: A.6 Economic Benefits Assessment Report, it is calculated that operation of the site would provide up to circa 70 jobs (FTE). This does not include construction jobs, which are assessed to be of the order of 108 over a period of 4 years, although in practice this maybe higher dependent upon individual project needs.
[74] See Verdin v SSCLG [2016] EWHC
[75] See CD: D.14 Table 6 page 25

Lower Shiplake which is now uncertain. Therefore, it seems to me that the Council's own evidence supports the Appellant on the lack of alternatives.

116. Moreover, when the Appellant persuaded the landowner to agree to pay the full affordable housing contribution, that significantly strengthened the Appellant's case in respect of paragraph 172 b). That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP now requires for C2 uses. Mrs Smith accepted that there are no other sites in the District with planning permission for extra care market housing. The problem is a combination of land economics and SOLP Policy H9 which requires affordable housing on extra care housing schemes. Given this context the appeal proposal does connote rarity and uniqueness.

117. Extra care housing undoubtedly operates in a very different market. Mr Garside provided detailed evidence to the Inquiry how the market for land operates to the detriment of extra care operators. Extra care housing providers cannot compete with house builders or with other providers of specialist housing for older people because of the build costs, the level of the communal facilities and the additional sale costs including vacant property costs. The communal facilities must be provided before any units can be sold and sales tend to be slower.[76] However, I accept that extra care schemes can charge a premium for the specialist accommodation provided and also benefit from an income from deferred management fees.

118. It seems to me that these factors, all mean that age restricted developments and in particular extra care communities are less viable than traditional housing schemes. Ultimately, age restricted developers are less able to pay the same price for land as residential developers and it is much harder for age restricted developers, and in particular those seeking to deliver extra care, to secure sites for development and meet the housing needs they aim to supply.[77] Viability is clearly a relevant factor which supports the case under paragraph 172 b) of the NPPF. There is also a strong case for the appeal scheme given the lack of alternative sites in the light of Policy H9 of the SOLP.

119. I note that the SOLP does not allocate any sites for extra care housing, unlike for example in Central Bedfordshire. I also note that the need for extra care housing is recognised in the SCNP, which supports, as was agreed, extra care housing on unallocated sites due to Policy H2a. I am satisfied that the Appellant's need could not be met elsewhere or in any other way and that it would be in the public interest for this to happen on the appeal site.

Detrimental effect on Environmental, Landscape and Recreation opportunities, and the extent to which they could be moderated.

120. This factor has been considered in the second issue above. That discussion is not repeated here but it is plainly relevant to paragraph 172 c). Suffice it to say that I have concluded that there would only be localised landscape and visual effects on the AONB. These limited impacts would not cause material harm to the landscape character of the AONB, nor would they conflict with the aims of protecting its special qualities. I have concluded there would be localised landscape and visual effects on the AONB that could be moderated.

[76] See section 4 of Richard Garside's POE
[77] See paragraph 4.65 of Richard Garside's POE

Other Benefits

121. The scheme would deliver other benefits. In my view, these can also form part of the exceptional circumstances and public interest. It is the collective benefits and harms which are relevant to paragraph 172 of the NPPF. Both Mr James and Mr Garnett gave evidence as to numerous other significant benefits, individually and cumulatively, which should be weighed in favour of the proposals. These include contributing to the overall supply of housing which is under five-years; savings in public expenditure (NHS and adult care);[78] creating new employment and other economic investment (construction and operation);[79] providing new facilities and services further reinforcing the role and function of Sonning Common; and additional net revenues from Council tax and new homes bonus receipt. Mrs Smith accepted the economic benefits and that bringing facilities to the area, particularly for the older population would be a benefit. It was also accepted that there could be benefits in supporting existing facilities in that residents of Inspired Village sites having the option to support those businesses if they wanted to. No good reason was provided by the Council for discounting the benefits evidence by Mr James or Mr Garnett. The social and economic benefits are matters to which I attribute significant weight. There is a very strong case on exceptional circumstances and public benefits here.

Conclusion

122. Section 85 of the CROW Act 2000 seeks to conserve and enhance the natural beauty of an AONB and paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB. This is not the same as requiring that every development proposal engenders enhancement. Indeed, if that were the case it is difficult to see how major development in an AONB could ever be permitted. It is clearly a matter of balance, but in undertaking that exercise the NPPF makes clear that conserving and enhancing the designated resource is a matter of great weight. In this case I have given great weight to conserving and enhancing landscape and natural beauty of the AONB. The need for the development and the conclusion that there are presently no alternatives outside the designated area are also matters of substantial importance in the public interest. The social and economic benefits attract significant weight. Overall, the benefits would outweigh the localised landscape and visual effects to the AONB. For these reasons I conclude on this issue that exceptional circumstances are demonstrated and that the development would be in the public interest.

Other Matters

123. I have taken into account all other matters raised including the concerns raised by the SCPC, the Rotherfield Peppard Parish Council, the representations made by interested persons including those who gave evidence at the Inquiry and those who provided written submissions. I have already dealt with many of the points raised in the main issues.

124. The SCPC and others objected to the proposed development in the context of the neighbourhood planning process. However, the review of the SCNP has

---

[78] See paragraphs 6.16 to 6.33, PoE of Stuart Garnett. See also CD: K7, CD: K8 (Appendix 1 at page 20 onwards), CD: K12 (pages 2-3), and CD: K30 (pages 6, 12, 13, 20 and 24-26 in particular).
[79] See paragraphs 6.10 to 6.15, PoE of Stuart Garnett

been ongoing since around 2018 but there are no concrete proposals. It is suggested that the proposal is not small scale. However, site SON2 is in fact 3.3 hectares and broadly of the same scale.[80] The SCNP expressly supports extra care housing at Policy H2a albeit no site is allocated. The SCNP policies are now out of date because of the lack of a five year housing land supply to which I attach significant weight. The concerns about the neighbouring planning process are not sufficient to warrant dismissing this appeal.

125. A number of interested persons cited concerns over impacts on local services in particular the doctor's surgery and parking capacity within the centre of Sonning Common. With respect to impacts on local health services, Mr Garnett's evidence provides details of both operational efficiencies and associated social benefits of extra care, which includes the financial benefits arising from savings to the NHS and social care. I consider that extra care housing benefits elderly people in terms of health and wellbeing. The secure community environment and sense of independence can reduce social isolation and encourage greater fitness and healthy lifestyles. It is reasonable to assume that these factors would likely result in a lower number of visits to the GP, reduced hospital admissions and overall savings to the NHS. This is borne out in the research submitted to the Inquiry.

126. A number of objectors raised concerns over parking capacity within the centre of Sonning Common. However, the appeal site lies within an acceptable walking distance of a number of the facilities within the village centre. Trip generation associated with the proposals would not have a materially negative impact on the road network. I note also that a Travel Plan has been submitted in relation to the proposals.[81] I consider that this matter is capable of being secured by means of an appropriately worded planning condition. In addition to the 'supported transport provision' that would be provided for residents, it would be reasonable to expect that a number of residents would use the existing footpath links to access the village centre.

127. A number of objectors also raised concerns over transport safety and the sufficiency of parking on the appeal site. I note that a number of matters are agreed between the Council and the highway authority in SoCG2 Transport. A new vehicular access would be constructed to the east of the existing access on Blounts Court Road. The proposed scheme would provide for off-site highway improvements comprising works associated with the proposed site access, proposed works to pedestrian facilities along the site frontage either side of the site access, widening of the carriageway and a gateway feature along Blounts Court Road, and provision of a zebra crossing on Widmore Lane. Provision would also be made within the scheme for 93 car and 58 cycle parking spaces (12 visitor, 10 staff and 36 resident) that would be provided in relation to the full aspect of the development. Notwithstanding the original RfR5 the highway authority raises no objection to the proposal subject to the agreed conditions and the contributions contained within the s106 Agreement. In my view the concerns raised about transport issues would not provide a reason for rejection of this appeal.

128. A number of objections relate to the impact on local ecology. The appeal site contains habitats of a lower biodiversity value, which are common and

[80] See CD: K.18 page 580
[81] See CD: A.8

widespread throughout the District. The appeal scheme provides for a net increase in biodiversity across the site, specifically an increase of 51% for the detailed element. The Ecological Impact Assessment[82] was accepted by the Council as demonstrating net benefit[83] and I attach significant weight to this.

129. At the Inquiry reference was made to numerous appeal decisions. I have taken these into account as appropriate in coming to my decision in this case.

Planning Balance

130. I have concluded that the appeal proposals would be a major development in the AONB where exceptional circumstances apply, and which would be in the public interest. I have given great weight to conserving and enhancing landscape and scenic beauty in the AONB. In terms of paragraph 172 a) of the NPPF I am in no doubt that there is a need this development of 133 units to address the immediate shortfall in the five year housing land supply; to address the critical need for extra care housing in the District; to assist in the freeing up of family housing within South Oxfordshire and to provide the health and well-being benefits to elderly people.

131. The Council argued that with Policy H1 and Policy H13 the need for specialist housing for older people could be met outside the AONB; could be met in people's homes and that needs could be met by 2035. However, I have concluded that there is a specific and immediate need for extra care provision and market extra care housing. From the up-to-date evidence provided at the Inquiry it is clear to me that there are no sites with planning permission in the pipeline other than the Lower Shiplake site which is now uncertain. The case under paragraph 172 b) has been met. That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP Policy H9 now requires for C2 uses. In my view extra care housing cannot compete with housebuilders or even other forms of specialist housing for older people because of the build cost, the level of communal facilities and additional sale costs including vacant property costs.

132. In terms of paragraph 172 c) I have concluded there would be localised landscape and visual effects, but these would be relatively small. Only a limited part of the mosaic would be impacted, and this would not alter the overall character of the wider mosaic of the LCT. Plainly such limited impacts would not cause material harm to the landscape character of the AONB, nor would it conflict with the aims of protecting its special qualities. In terms of visual impact, only a small number of nearby locations would have direct views of the appeal proposals where glimpses of the development would be filtered and moderated by perimeter planting and particularly by the woodland belt. Overall, I have concluded under paragraph 172 of the NPPF that the circumstances in this case are exceptional and that the grant of planning permission would be in the public interest.

133. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case where the test in paragraph 172 of the NPPF

[82] See CD: A32
[83] See PoE of Simon James Appendix 11

has been met it is difficult to see how a decision maker could nonetheless refuse to grant planning permission applying paragraph 11 of the NPPF. However, in terms of the development plan I accept that the proposal conflicts with some elements of the development plan, but it also complies with others. Policies in the SOLP are up-to-date and can be given full weight. The appeal proposal conflicts in part with the SOLP, in particular in terms of the overall strategy (STRAT1) and with relevant policies relating to the AONB (ENV1) However, there is partial accord with Policy H13 and full accordance with Policies H1 3ii, H4, H9, H11, DES1, DES2, DES3, DES4 and DES5.

134. With regard to the SCNP, this was made in 2016, against a different housing requirement albeit it is still within the grace period allowed by Policy H4(2) of the SOLP. The SCNP policies can only be given limited weight in the context of the NPPF as it was based on a Core Strategy which is now withdrawn, and it is out of date for that reason. Its policies reliant on the AONB are also out of date given the lack of a five year housing land supply. The proposal would conflict with Policy H1 in so far as the limitation of development is concerned but the policy is expressed as a minimum and the base target has been increased through the SOLP quantum of housing so the appeal scheme would contribute to that. There would be conflict with Policy ENV1 which aims to protect the AONB but there are exceptional circumstances here. There would be broad accordance with Policy H2a, D1 and D1a and ENV2 albeit that three storey development is an exception and must be justified. I conclude that the appeal proposal is in overall accordance with the development plan and there are no material considerations which indicate otherwise.

135. Even if I had decided that the proposal was in overall conflict with the development plan this is a case where there is no five year housing land supply and therefore the most important policies for determining the appeal are out of date.[84] As to which policies are out of date, it is agreed that the most important for determining the appeal are set out in the RfR. Thus, the tilted balance would be triggered by way of footnote 7 of the NPPF unless paragraph 11 d) i. is satisfied. In this case under paragraph 11 d) i. the adverse effects would not provide a clear reason for refusing the proposed development. It follows therefore that even if the appeal proposal was contrary to the development plan and the tilted balance under paragraph 11 d) ii. of the NPPF applied then the many and varied benefits of the proposals set out above would significantly and demonstrably outweigh any adverse effects. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

Planning Conditions

136. The Council submitted a list of conditions which I have considered in the light of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions except for Condition 27 which relates to a Procurement and Employment Strategy. The Appellant has also given consent in writing that Conditions 7-27 may be applied as pre-commencement conditions.[85] Conditions 1, 4 and 5 relate to required time limits and Conditions 2 and 3 are necessary to determine the scope of the application and for the avoidance of

[84] NPPF paragraph 11 d) footnote 7
[85] See INQ APP14

doubt. Conditions 6, 7 and 29 are necessary to secure net gains for biodiversity and Condition 8 is required to minimise the impacts of the development on biodiversity. Condition 9 is necessary to limit the local impact of construction work and Condition 10 is required to ensure that electric vehicle charging is provided. Condition 11 is required in the interests of highway safety and Condition 12 is necessary to ensure adequate car parking.

137. Condition 13 is required in the interests of sustainability and to encourage the use of cycling. Condition 14 on sample materials and Condition 15 on ground levels are required in the interests of visual amenity. Condition 16 is required to ensure adequate provision for the management of waste. Condition 17 is necessary to ensure high standards of sustainable design and construction. Condition 18 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Conditions 19 and 20 are necessary to ensure that the development is assimilated into its surroundings. Condition 21 is necessary to safeguard the trees which are visually important on the site. Condition 22 is required to safeguard heritage assets of archaeological interest. Condition 23 is necessary to prevent pollution and flooding. Condition 24 is required to ensure the proper provision of foul water drainage. Condition 25 is required to prevent pollution and flooding. Condition 26 is necessary to ensure that the development is not unneighbourly.

138. Condition 27 relates to a procurement and employment strategy. The Council considers that the condition would fail the test of necessity as there is no policy support for this requirement and there would be problems about enforcement. However, it seems to me that a local employment and procurement condition is plainly relevant following the Verdin judgment.[86] Employing local people and using local produce, to save miles travelled seems to epitomize the principle of sustainable development. Moreover, the strategy would put in place arrangements to ensure that the information was regularly provided to the Council to demonstrate the performance and effectiveness of the initiatives. The condition would not impose unreasonable or unjustified demands on the Council. The condition would meet the tests in the NPPF.

139. Condition 28 is required to ensure the provision of adequate pedestrian and cycle access to the site in the interests of highway safety. Condition 30 is necessary to ensure that sustainable transport modes are taken up. Condition 31 is necessary to avoid sewage flooding and potential pollution incidents. Condition 32 is necessary to ensure that the development is not unneighbourly or detrimental to highway safety. Condition 33 is required to protect the occupants of nearby residential properties from noise disturbance. Condition 34 is required to mitigate any impacts on air pollution.

Overall conclusion

140. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

[86] See INQ APP15 Verdin v SSCLG [2016] EWHC

SCHEDULE OF PLANNING CONDITIONS (1-34)

Time limit and approved plans relating to the full planning permission

Commencement – Full

1) The development subject to full planning permission, comprising the areas shown as shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] must be begun not later than the expiration of three years beginning with the date of this permission.

Approved Plans

2) That the element of the development hereby approved full planning permission, as shown within the areas shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] shall be carried out in accordance with the details shown on the following approved plans, except as controlled or modified by conditions of this permission:

URB SC [08] 00 01 Rev D02 (Site Location Plan)
URB SC [08] 00 03 Rev D04 (Proposed Block Plan)
02 Rev 03 (Landscape Plan)
03 Rev 03 (Hard Landscaping)
04 Rev 03 (Soft Landscaping)
URB VC [08] 70 01 Rev D02 (Village Core Elevations)
URB VC [08] 70 02 Rev D01 (Village Core Elevations)
URB VC [08] 70 03 Rev D01 (Village Core Elevations)
URB VC [08] 70 04 Rev D01 (Village Core Elevations)
URB VC [08] 00 01 Rev D02 (Village Core Ground Floor Plan)
URB B01 [08] 70 01 Rev D01 (Block 1 Elevations)
URB B02 [08] 70 01 Rev D01 (Block 2 Elevations)
URB B03 [08] 70 01 Rev D01 (Block 3 Elevations)
URB B04 [08] 70 01 Rev D01 (Block 4 Elevations)
URB B01 [08] 00 01 Rev D00 (Block 1 Floor Plans)
URB B01 [08] 20 01 Rev D00 (Block 1 Roof Plan)
URB B02 [08] 00 01 Rev D00 (Block 2 Floor Plans and Roof Plan)
URB B03 [08] 10 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 00 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 20 01 Rev D00 (Block 3 Roof Plan)
URB B04 [08] 00 01 Rev D00 (block 4 Floor Plans)
URB B04 [08] 20 01 Rev D00 (block 4 Roof Plan)
URB SS [08] 00 01 Rev D00 (Substation)
OX5025-11PD-004 Rev H – Road Carriageway Widening
OX5025-16PD-006 Rev A - Cross Sections of Proposed Widening along Blounts Court Road
OX5025-16PD-004 Rev C - Proposed Off-Site Improvements
OX5025-16PD-002 Rev C - Proposed Site Access Arrangements
OX5025-16PD-003 Rev D - Proposed Internal Layout
OX5025-11PD-007 Rev F - Review of Revised Masterplan (6 Metres Internal Carriageway)
OX5025-11PD-009 Rev F Proposed Zebra Crossing at Widmore Lane

Outline Plans

3) That the element of the development hereby approved outline planning permission, as shown within the areas shaded blue on Drawing No. URB SC [08] 00 01 D02 (Site Location Plan) shall be carried out in general accordance with the details shown on the following documents:

Illustrative Masterplan PW.1618.L.01 Rev 03
Design and Access Statement May 2020
Design Commitment Statement URB-SC A3 90 02-D00 April 21

Reserved matters and time limit relating to the outline planning permission

Reserved Matters

4) Within a period of three years from the date of this permission all of the reserved matters shall have been submitted for approval in writing by the Local Planning Authority. The reserved matters shall comprise: details of the layout, scale, appearance and landscaping of the development. All reserved matters for any one phase shall be submitted concurrently. No development shall commence within any one phase until there is written approval of all of the reserved matters for that phase and the development shall be carried out in accordance with all of the approved reserved matters.

Commencement – Outline

5) The site subject to outline planning permission, comprising the area shown as shaded blue on Drawing No. URB SC [08]00 01 D02 (Site Location Plan) [Phase 2], shall be begun not later than whichever is the later of the following dates:

(i) 3 years from the date of this permission: or
(ii) 2 years from the approval of the final reserved matters application.

Biodiversity Enhancement Plan – Outline

6) Concurrent with the submission of any reserved matters application related to this outline planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the outline details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:

(a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
(b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
(c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.

(d) Selection of specific techniques and practices for establishing vegetation.
(e) Sources of habitat materials (e.g. plant stock) or species individuals.
(f) Method statement for site preparation and establishment of target features.
(g) Extent and location of proposed works.
(h) Details of a biodiversity metric assessment

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Pre-commencement conditions

Biodiversity Enhancement Plan – Full

7) Prior to the commencement of the development subject of full planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:

(a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
(b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
(c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.
(d) Selection of specific techniques and practices for establishing vegetation.
(e) Sources of habitat materials (e.g. plant stock) or species individuals.
(f) Method statement for site preparation and establishment of target features.
(g) Extent and location of proposed works.

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Construction Environmental Management Plan for Biodiversity

8) Prior to the commencement of any development (including vegetation clearance) a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

(a) Update ecological surveys for relevant habitats and species, update surveys shall follow national good practice guidelines (badgers surveys shall be no older than 6 months).
(b) Risk assessment of potentially damaging construction activities.

(c) Identification of biodiversity protection zones.
(d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction.
(e) The location and timing of sensitive works to avoid harm to biodiversity features.
(f) The times during construction when specialist ecologists need to be present on site to oversee works.
(g) Responsible persons and lines of communication.
(h) Use of protective fences, exclusion barriers and warning signs.

Thereafter the approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Phasing

9) Prior to the commencement of any development subject to full planning permission or submission of the first Reserved Matters for the development subject to outline planning permission, a phasing plan shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved phasing plan.

Electric Vehicle Charging

10) Prior to the commencement of each phase of development a scheme to provide that phase with Electric Vehicle Charging Points shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Electric Vehicle Charging Points shall be implemented prior to the first occupation of that phase.

Estate Roads and Footpaths

11) Prior to the commencement of each phase of development, details of the estate roads and footpaths within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before first occupation of any unit within that phase, the whole of the estate roads and footpaths (except for the final surfacing thereof) shall be laid out, constructed, lit and drained.

Car Parking Plan

12) Prior to the commencement of the reserved matters phase of the development plans showing car parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the agreed car parking provision shall be provided before first occupation of that part of the site and be retained as such thereafter.

Cycle Parking

13) Prior to the commencement of each phase of development, details of cycle storage, for that phase shall be submitted to and approved in writing by the

Local Planning Authority. The agreed cycle parking shall be provided before first occupation of that part of the site and be retained as such thereafter.

Materials

14) Prior to the commencement of each phase of development, details of all materials, including samples where required, to be used in the external construction and finishes of the development within that phase shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved details.

Site Levels

15) Prior to the commencement of any development, detailed plans showing the existing and proposed ground levels of that phase, together with the slab and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Refuse and Recycling

16) Prior to the commencement of each phase of development, details of refuse and recycling storage for that phase shall be submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage shall be implemented in accordance with the approved details prior to the occupation of the development in each phase and retained thereafter.

Energy Statement

17) Prior to the commencement of each phase of development, an Energy Statement demonstrating how the development within that phase will achieve at least a 40% reduction in carbon emissions compared with code 2013 Building Regulations, and details of how this will be monitored, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

External Lighting

18) Prior to the commencement of each phase of the development approved in full, and accompanying the first Reserved Matters application for the development approved in outline, a detailed lighting scheme (including street and pathway lighting) for that phase, including a programme for its delivery, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme.

Landscaping

19) Prior to the commencement of each phase of development, a scheme for the landscaping of that phase including the planting of trees and shrubs, the

treatment of the access road and hard standings, and the provision of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority.

The details shall include schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme.

The scheme shall be implemented prior to the first occupation or use of that phase of development and thereafter be maintained in accordance with the approved scheme.

In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Landscape Management Plan

20) Prior to the commencement of the first phase of development, a maintenance schedule and a long term management plan for the soft landscaping works for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include those areas of the site which are to be available for communal use as open space. The schedule and plan shall be implemented in accordance with the agreed programme.

Tree Protection

21) Prior to the commencement of any site works or operations (including the removal of any vegetation or trees) required in relation with the full or outline planning permission, an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period shall be submitted to and approved in writing by the Local Planning Authority. The matters to be encompassed within the arboricultural method statement shall include the following:

(a) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities.
(b) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection.
(c) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage.
(d) The means of demolition of any existing site structures, and of the re-instatement of the area currently occupied thereby.

(e) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees.
(f) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels.
(g) The details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the root protection area, which is to be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage.
(h) Provision for the supervision of any works within the root protection areas of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.
(i) The details of the materials and method of construction of the pedestrian and cycle access to Widmore Lane, which is to in part be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of surface required in relation to its usage.
(j) A specification of the foundation design for the pedestrian and cycle access to Widmore Lane demonstrating absolute minimal soil excavation, soil compaction or soil contamination within the root protection area of the adjacent trees.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

Implementation of Archaeological work

22) Prior to any earth works forming part of the development or the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a programme of archaeological mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Ground Investigation

23) Prior to the commencement of each phase of development the results of an intrusive ground investigation, analysing the potential for dissolution features and mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The results shall then be implemented in accordance

with the approved programme and used to inform the surface water drainage design.

Foul Drainage

24) Prior to the commencement of each phase of development, a detailed foul water drainage scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the foul water drainage works to serve that phase have been completed.

Surface Water Drainage

25) Prior to the commencement of each phase of development, a detailed surface water drainage scheme relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. This should be based on the principles contained within Flood Risk Assessment and Drainage Strategy reference 3424 Dec 2019 by Scott Hughes Design, sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

The scheme shall include:

(a) Discharge rates.
(b) Discharge volumes.
(c) Catchment plans.
(d) Maintenance and management of SUDS features.
(e) Sizing of features – attenuation volume.
(f) Site wide infiltration tests to be undertaken in accordance with BRE365.
(g) Ground Investigation Report.
(h) Detailed drainage layout with pipe/chamber/soakaway numbers & sizes.
(i) Proposed site levels, floor levels and an exceedance plan.
(j) Detailed network calculations to include the worst case 1:100 + 40% event.
(k) SUDS features and sections.
(l) Details of proposed Primary, Secondary and Tertiary treatment stages to ensure sufficient treatment of surface water prior to discharge.
(m) Drainage construction details.
(n) A compliance report to demonstrate how the scheme complies with the **"Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire."**
(o) A range of SuDS techniques throughout the site to manage water quantity and maintain water quality.

The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the surface water drainage works to serve that phase have been completed.

Construction Method Statement

26) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

(a) the parking of vehicles of site operatives and visitors;
(b) loading and unloading of plant and materials;
(c) storage of plant and materials used in constructing the development;
(d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
(e) wheel washing facilities;
(f) measures to control the emission of dust and dirt during construction;
(g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
(h) details of measures for the control of noise during construction works;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction methods.

Procurement and Employment Strategy

27) Prior to the commencement of development, a Local Employment and Procurement Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. The Strategy shall include:

(i) Details of recruitment within the development to achieve a minimum of 25% of village staff from within a 5 mile radius of Sonning Common;
(ii) Details of the use of local businesses, including purchase of food, beverage and other items to achieve a minimum of 50% of fresh produce (meat, bakery, dairy, fruit and vegetables) from within a 5 mile radius of Sonning Common;
(iii) The timing and arrangements for the implementation of these initiatives; and
(iv) Suitable mechanisms for monitoring the effectiveness of these initiatives.

All parts of the approved Local Employment and Procurement Strategy shall be implemented in full and retained thereafter.

<u>Pre-occupancy conditions</u>

Pedestrian and Cycle Access

28) Prior to occupation of any development subject to full or outline planning permission, details of the pedestrian/cycle access to the site from Widmore Lane, including a 3.5m wide combined pedestrian/cycle path through the site, associated street lighting facilities and a zebra crossing along Widmore Lane shall be submitted to and approved in writing by the Local Planning Authority. The details shall be based on those shown on plan OX5025-11PD-009 Rev F, subject to the tree protection measure shown in condition 21. The works shall

be carried out and completed in accordance with the approved details before occupation of any part of the site, and permanently retained as such thereafter.

Landscape and Ecology Management Plan

29) Prior to the first occupation of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:

(a) Description and evaluation of features to be managed.
(b) Ecological trends and constraints on site that might influence management.
(c) Proposals for ecological enhancements for habitats and species as agreed in the Biodiversity Enhancement Plan.
(d) Aims and objectives of management.
(e) Appropriate management options for achieving aims and objectives.
(f) Prescriptions for management actions.
(g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
(h) Details of the body or organization responsible for implementation of the plan.
(i) Ongoing monitoring and remedial measures.

The LEMP shall include details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall be implemented in accordance with the approved details and management prescriptions implemented across the site for a timeframe to be agreed within the LEMP.

Green Travel Plans

30) Prior to the occupation of the first phase of the development hereby approved a full and detailed Travel Plan and Travel Information Packs shall be submitted to and approved in writing by the Local Planning Authority. These documents will be updated upon the submission of subsequent phases of the development. Thereafter, that part of the development shall be implemented in accordance with the approved documents and the associated Travel Information Packs issued to each resident upon first occupation.

Wastewater

31) No properties shall be occupied in any phase until confirmation has been provided that either:

(i) All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or-
(ii) A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied.

Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Service and Delivery Management Plan

32) No building shall be occupied until details of a comprehensive servicing and delivery management plan has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Deliveries and service areas shall be managed in accordance with the agreed scheme.

Compliance conditions

Construction Hours

33) The hours of operation for construction and demolition works shall be restricted to 08:00-18:00 Monday to Friday and 08:00-13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written permission of the Local Planning Authority.

Air Quality

34) The air quality mitigation measures outlined in the Air Quality Assessment (Ref REP-10111755A-20191212) shall be carried out in accordance with the recommendations and specifications in the report and implemented prior to occupation of each unit. Thereafter, the mitigation measures shall be retained as approved and in accordance with manufacturer's instructions.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of Counsel	Instructed by the Solicitor to South Oxfordshire District Council
He called:	
Mr John Jeffcock BA (Hons) MA CMLI NZILA	Associate of Michelle Bolger Expert Landscape Consultancy
Mr Julian Kashdan-Brown B Arch (Hons) Dip Arch MSc MA RIBA	Architect and Urban Designer
Mrs Nicola Smith BSc (Hons) MSc	Principal Major Applications Officer
Mrs Emma Bowerman BA (Hons) MSc	Principal Major Applications Officer

FOR THE APPELLANT:

Mr Christopher Young QC Ms Leanne Buckley Thompson of Counsel	Both instructed by the Appellant
They called	
Mr Nigel Appleton MA (Cantab)	Executive Chairman of Contact Consulting (Oxford) Ltd
Mr Stuart Garnett BSc Dip TP MRTPI	Planning Director Inspired Villages
Mr James Atkin BSc (Hons) Dip LM CMLI	Director (Landscape) Pegasus Group
Mr Michael Carr BA (Hons) Dip LA Dip UD RUDP	Director (Design and Master Planning) Pegasus Group
Mr Roland Bolton BSc (Hons) MRTPI	Senior Director, DLP Planning Ltd
Mr Richard Garside RICS	Director and Head of Development Consultancy at Newsteer
Mr Simon James BA Dip TP MRTPI MIEMA	Managing Director DLP Planning Ltd

FOR SONNING COMMON PARISH COUNCIL:

Mr Ben Du Feu of Counsel	Instructed by the Parish Council
He called	
Mrs Emily Temple BSc (Hons) MSc MRTPI	Director ET Planning Ltd

FOR OXFORDSHIRE COUNTY COUNCIL:

Mr Dave Harrison BSc (Hons) MSc CMILT M Inst TA	Senior Public Transport Planner
Ms Judith Coats LLB	Infrastructure Funding Team Leader

Interested Persons

Mr Tom Fort	Chairman of Sonning Common Parish Council
Ms Julia Whitelaw	Local Resident
Dr Kim Emmerson	General Practitioner
Ms Georgina Forbes	Local Resident
Mr Jonathan Berger	Acting Chair of the Rotherfield Peppard Parish Council
Mrs Joanne Shanagher	Local Resident
Dr Michael Stubbs PhD MSc MRICS MRTPI	Planning Adviser, The Chilterns Conservation Board

DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority Documents

INQ LPA1	Opening Statement
INQ LPA2	Factsheet 6 Design Principles for Extra Care Housing (3rd edition)
INQ LPA3	Proof of evidence Erratum sheet, Nicola Smith
INQ LPA4	Appendix 1 update, Nicola Smith
INQ LPA5	Five-year Housing Land Supply Erratum, Nicola Smith
INQ LPA6	Replacement Policies Schedule
INQ LPA7	CIL Compliance Statement
INQ LPA8	CIL Compliance Statement Addendum
INQ LPA9	Costs application
INQ LPA10	Conditions
INQ LPA11	Closing Submissions

Appellant Documents

INQ APP1	Opening Statement
INQ APP2	Summary and comparison of landscape and visual effects
INQ APP3	Correction sheet to JWA06
INQ APP4	Open letter to Boris Johnson
INQ APP5	Briefing Note Errata to Contextual Study of James Atkin
INQ APP6	Service Charges Note of Stuart Garnett
INQ APP7	References to height Johnson Matthey Planning Statement

INQ APP8 NPPF consultation document
INQ APP9 Mr Doyle email
INQ APP10 Extracts from Village News by Tom Fort
INQ APP11 s106 Agreement
INQ APP12 Nigel Appleton's Note
INQ APP13 Central Bedfordshire Policy H3 Main Modifications
INQ APP14 Pre commencement note
INQ APP15 Verdin Judgment
INQ APP16 Closing Submissions
INQ APP17 Appellant's response to the Costs application

R6 Party Documents

INQ PC1 Opening Statement
INQ PC2 Closing Submissions

Interested Persons Documents

IP1 Statement by Mr Tom Fort
IP2 Statement by Ms Julia Whitelaw
IP3 Statement by Dr Kim Emmerson
IP4 Statement by Ms Georgina Forbes
IP5 Statement by Mr Jonathan Berger
IP6 Statement by Mrs Joanne Shanagher
IP7 Statement by Dr Michael Stubbs

Ministry of Housing,
Communities &
Local Government

Patrick Downes
Harris Lamb Ltd
75-76 Francis Road
Birmingham
B16 8SP

Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.

2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gov.uk

Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.

6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:

   - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.

   - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.

   - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.

   - The revised National Planning Policy Framework, published on 19 February 2019.

   - Updated guidance for councils on how to assess their housing needs.

   The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.

15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.

18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.

19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.

21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.

22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.

23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.

28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.

29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.

34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.

35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.

36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.

38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A

Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019

Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019

Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019

Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019

Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019

Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019

Cheshire East Council	8 November 2019

Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019

Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019

Cheshire East Council	13 January 2020

Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020

Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020

Cheshire East Council	12 February 2020

Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

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

2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

   Mixed Use and Access Applications Diagram – dwg SK15 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK16 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK17 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK19 Rev D (11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:

   a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
   b. a scheme to limit the surface water run-off generated by the proposed development
   c. a scheme for the management of overland flow
   d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
   e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
   f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

   g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

a. the hours of construction work and deliveries

b. the parking of vehicles of site operatives and visitors

c. loading and unloading of plant and materials

d. storage of plant and materials used in constructing the development

e. wheel washing facilities

f. measures to control the emission of dust and dirt during construction.

g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes

j. waste management: there shall be no burning of materials on site during demolition/construction.

8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.

9. Prior to the commencement of development:

a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.

b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.

c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.

11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.

12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:

    - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
    - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

    The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.

    a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
    b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority

21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.

22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

    The landscaping scheme shall be completed in accordance with the following:-

    a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.

24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.

25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.

26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)

27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
   a. Site Location Plan reference no. BIR.3790_13
   b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).

3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.

5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.

   (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
   (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
   (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
   (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved n writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.

11.No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under t this permission.

0000000000

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Inquiry Held on 20-24 February 2018

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire
Land off Peter Destapeleigh Way, Nantwich, Cheshire

File Ref(s): APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

Contents

List of Abbreviations	2
Procedural matters	4
Site and surroundings	6
Planning Policy	7
Planning History	8
The Proposals	10
Other Matters Agreed Between the Parties	12
The Case for the Muller Property Group	13
Appellant's supplementary Comments on the rFramework	26
The Case for the Council	42
Council's supplementary Comments on the rFramework	72
Case for the Interested Parties	81
Written Representations	82
Conditions	83
Planning Obligations	84
Inspector's Conclusions	85
Planning Balance	95
Recommendation	97
Schedule of Conditions	98
Appearances	106
Inquiry Documents	107
Documents Received after the Adjournment of the Inquiry	107
Core Documents	108

List of Abbreviations

5YS 5 year housing land supply
appx Appendix
AF Adrian Fisher – 5YS witness for CEC
BMV Best and most versatile agricultural land
b/p bullet point
CEC Cheshire East Council
Cllr Councillor
CNRLP Crewe and Nantwich Revised Local Plan 2006
DPD Development Plan Document
FN Footnote
FOI Freedom of Information
GLVIA Guidelines for Landscape and Visual Assessment (3rd edition)
HMU Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB Jon Berry – landscape architect for Appellants
LCA landscape character area
LCT landscape character type
LDS Local Development Scheme
LHA Local Highway Authority
LP Local Plan
LPA Local Planning Authority
LPI Local Plan Inspector – Stephen Pratt
LPS Local Plan Strategy
LPpt2 Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPDPD
LVIA Landscape and Visual Impact Assessment
MW Matt Wedderburn – 5YS witness for the Appellant
NP Neighbourhood Plan
NPPG National Planning Practice Guidance
OAN Objectively Assessed Needs (usually housing)
OPP Outline Planning Permission
PD Pat Downes – planning witness for Appellant
PoE Proof of evidence
PP Planning Permission
PTQC Paul G Tucker QC – counsel for the Applicants
PPG Planning Policy Guidance
ReX re-examination
RfR reason for refusal
rNPPF revised National Planning Policy Framework
RJ Reasoned Justification of the Development Plan
RM reserved matters
RTQC Reuben Taylor QC – counsel for LPA
RT Richard Taylor – planning witness for the LPA
SADPD the Site Allocations and Development Plan D (aka LP pt2)
SHLAA strategic housing land availability assessment
SOCG statement of common ground
SoS the Secretary of State for the Ministry of Housing Communities and Local Government
SPB Spatial Planning Board – CEC's planning committee

SPD Supplementary Planning Document
TA Transportation Assessment – here undertaken by SCP
XC examination in chief
XX cross examination
XX'd cross examined
WB William Booker – the Appellant's highway consultant
WMS Written Ministerial Statement

Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5 7DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.

2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.

4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.

5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).

6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.

7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated and amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.

8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take then into account in the determination of this case.

9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.

10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.

11. **Although concerns over highway safety do not form part of the Council's** case, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.

12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destapleigh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.

14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.

15. To the north of Peter Destapleigh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.

16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing development constructed in the 1970's. Audlem Road turns into Broad Lane south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.

17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.

18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.

20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destapleigh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.

21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.

22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destapleigh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.

23. The site will connect to the Peter Destapleigh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.

24. Planning permission was granted on the 4th January 2001 for the "construction of new access road into Stapeley Water Gardens" (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destapleigh Way /Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG[1].

27. As a result of a Referendum held on the 15 February2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now considered 'made', and thus now forms part of the Development Plan.

28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.

29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement[2], Suffolk Coastal Supreme Court[3], St Modwen Appeal Court Judgment[4], and the Shavington High Court Judgement[5].

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the planning officer's recommendation[6].

31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter dated 17th March 2015, the Secretary of State rejected this Inspector's recommendation and refused both appeals. (The '**Original Decision'**) The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The '**Second Decision'**).

32. In the Second Decision the Secretary of State refused planning permission Appeal A on two grounds, the first being that, '*the proposals would cause*

[1] Paragraph 5.1 ID2.
[2] CDQ1.
[3] CD C12.
[4] CDQ2
[5] [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.
[6] CD K2

harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, ***the Inspector's conclusions and the parties' subsequent*** *representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.*

33. The *Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*

34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the polices and the Framework taken as a whole*.'

35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:

    a) Progress of the Emerging Cheshire East Local Plan Strategy;
    b) The current position regarding the five year supply of deliverable housing **sites in the Council's area;**
    c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be **material to the Secretary of State's** further consideration of this application.

36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.

37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.

39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)[7]. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.

41. These would comprise five elements as follows:

- Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
- Parcel 2 is located to its south and could have up to 62 dwellings.
- Parcel 3 is to the south of the employment area could deliver 15 dwellings.
- Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
- Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.

42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) **and a children's equipped play area i**n the form of a LEAP. The primary school site will be reserved for future education expansion.

43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

[7] CD H12.

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.

45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission[8].

46. Appeal B proposes an access onto Peter Destapleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.

47. Planning permission was granted on the 4th January 2001 for the "construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).

48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

[8] Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis[9] in relation to key facilities and services in the context of the site, which include:

- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
- Secondary Schools – Brine Leas Secondary School;
- Health Facilities – Kiltearn Medical Centre, a pharmacy and numerous dentists;
- Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops

50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original application that '*on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms*'. The Council has reaffirmed this position in the report to committee of 22nd November 2017.

51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.

52. In addition to the topics set out above further additional matters are agreed between the parties;

- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
- Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
- Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
- It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
- It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

[9] 4.13 Planning SoCG ID2.

- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
- The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.

53. The Housing Land Supply SoCG also covers other significant areas of agreement. This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.

54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.

56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

> *"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."*

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of the LPA's standard methodology on lead in times and build rates has gone wrong immediately. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.

58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall realism of CEC's claimed supply (past and future). The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.

59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.

60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should still be allowed, since on the LPA's best case the position is a marginal one given its substantial under-delivery compared to the position endorsed by the LPI.

62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there is a range which is just above or just below 5 years but the LPA can't demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:

    a. Deliverable sites include those with permissions in the LP, unless there is clear evidence that the site won't be implemented within 5 years. From this:

        i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear the "robust, up to date evidence" is required on the deliverability – i.e. the yield. It is difficult to see how an assessment of supply can be undertaken if that an assessment of yield is not undertaken. On AF's approach the decision maker would be obliged to accept the LPA's judgments when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this particular LPA's predictive ability over many years.

ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.

iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.

b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.

c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. Ie it self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.

d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
   i. A robust annual assessment;
   ii. A timely annual assessment;
   iii. Using up to date and sound evidence;
   iv. Considering the proposed and actual trajectory of sites in the supply;
   v. Considering the risks to a proposed yield;
   vi. Include an assessment of the local delivery record;
   vii. All of the above assessments must be realistic; and,
   viii. The approach must be thorough.

64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The questions seemed to be put on the basis that the word "*robust*" is not included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If the Council's approach was right (which no Inspector has to our knowledge endorsed) then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.

65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

> *One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing* ***trajectory for the plan period".***

67. CEC were unable to say whether or not they were **identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites** assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved **around the meaning of the term "deliverable"– a point which just doesn't** arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to **the appellant's approach to "probable yield". If CEC's** position **is merely what the site is "capable of delivering" then it is bound to be higher** than what is probable and therefore betrays a fundamental error on the part of CEC which ma**y explain why the LPA's predictive ability has proven to be** wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:

i. **The appellant's** assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:

ii. LPS 1 and the **Crewe opportunity area is not a "***specific deliverable site***" in NPPF§47 terms and should not be** included within the supply.

iii. The **Appellant's** assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. **Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach.** Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a self-**serving data set in Mr Fisher's** rebuttal **proof of evidence (Appendix 2). Mr Fisher's assessment is** partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).

iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. **Whilst that may be a correct statement that doesn't mean it** comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – "*we increasingly see single builders doing 50+ units a year on a site*"**. The Council's own** assessment of build out rates in the 2017 HMU (Appendix MW17) **does not support Mr Fisher's statement. Statements such as this** cannot be g**iven any weight when the Council's only evidence does** not support them.

v. The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered. As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.

vi. MW and the Inspectors in the WMQ[10] and Willaston[11] inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.

vii. AF at one point made the bold point that both Mr Inspector Rose in the White Moss Quarry ("WMQ") inquiry[12] and Mr Inspector Hayden in the Willaston inquiry[13] both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was that of 'precaution', in fact both Inspectors reached an orthodox conclusion with regard to paragraph 47[14], having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both Inspectors' reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies himself with the conclusions of those previous Inspectors' that time and again the Council failed to bring forward evidence to rebut the Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.[15]

Even if the Council is correct on their least attractive argument that they are not required by policy to rely upon "robust' evidence to demonstrate a 5YS, they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

---

[10] C.D29 Appendix MW1.
[11] CD D29 Appendix MW2 at [103].
[12] Ibid.
[13] Ibid.
[14] Subsequently paragraph 11 incorporating footnote 7.
[15] CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]– [89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not produced any evidence to rebut the Inspectors' conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were on the verge of being made haven't resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).

ix. The Council has adopted a hybrid "Sedgepool 8" approach to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector[16]. The LP Inspector concludes at paragraph 72:

"CEC therefore proposes to fully meet the past under-delivery of housing within the next 8 years of the Plan period ("Sedgepool 8"). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations."

It is plain from this part of the LP Inspector's report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

16

methodology should be applied. Had the Inspector wanted the 8 year period in Sedgepool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgepool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road Inspector didn't agree with this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local Plan Strategy ("CELPS") in the first year after that assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.

xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory[17]. However, he somewhat inexplicably sought to argue against the 2955 figure being CEC's realistic prediction on the basis that there was no adopted plan during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgepool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

[17] CD A40 paragraph 68.

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The **yardstick of the LPA's judgment is of course its own predictive ability,** and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:

    (i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 246617 as AF now maintains, that is still 27% below the level it should have been;

    (ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of **2466 on AF's case or 2955**, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?

    (iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;

    (iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;

    (v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;

    (vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

to pre-2017 rates. The LPA's case was tough before the LPI but is now implausible. In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.

(vii) Importantly, the failure of the LPA's predictive ability has been in the first year of delivery – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with manageable planning harms to come forward. The Council's closing submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.

72. The Council's closing go on to say that if the SoS concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.

73. The Council sought to argue that lapse rates shouldn't be applied, when it accepts that permissions do in fact lapse at a rate which is presently unknown. It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't – one relates to appraising supply, whereas the other relates to establishing the requirement.

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.

Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgepool 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years. It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 if the rFramework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;
b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the base date and then close one's mind to knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong:

i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;

ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

iii. It is not the approach of Inspectors in countless appeals across the Country;

iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);

v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-judicial review to review the LPA's assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions[18] both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.

76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.

77. The Inspector's decision in Shavington is being challenged, as the Council is eager to point out. The basis of challenge seeks, through the Shavingon decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

---

[18] Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very long process to secure adoption of the LPS only to discover that houses aren't being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

> *"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".*

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("the LPS"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS was used in the appellant's evidence heard at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. The appellant's approach is therefore considered appropriate with regard to the revised NPPF.

Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to apply to the assessment. The appellant's evidence on 5 year HLS applied a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the Local Planning Authority's Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

> "*The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:*
>
> - *5% to ensure choice and competition in the market for land; or*
> - *10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
> - *20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the* ***planned supply."***

82. Footnote 39 of the rFramework **explains that from November 2018 "***significant under delivery***" of housing will be measured against the Housing Delivery Test**, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

> ***"For the purposes of paragraph 73B and 74 a plan adopted between 1st*** *May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until* ***31st October in the same year".***

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as ***"recently***

adopted" until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.

88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.

89. The Framework is clear that the measurement of what amounts to "significant" under-delivery will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.

90. Whilst footnote 39 may not apply until November 2018, and because the Framework is silent on how one should determine what is "significant in the interim, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.

91. "Significant" under-delivery is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. The appellant's 5 year HLS calculation is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be addressed, however it does set out the Government's objective of "*significantly boosting* ***the supply of homes"*** (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: *"How should local planning authorities deal with past under-supply?"* provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will need to work with neighbouring authorities under the 'Duty to Co-operate', presumably with adjacent authorities looking to help to address the backlog by making immediate provision.

94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance is consistent with the appellant's position given in evidence and maintained at the inquiry. The appellant's position was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the 'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework is particularly relevant to the appellant's 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where *'deliverable'* was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of *"Deliverable"* is set out in the Glossary at Annex 2, and this states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:

- Category A - Sites that are not major development (i.e. 9 dwellings or less[19]) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
- Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging the LPA's 5 year HLS, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.

99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the appellant's position and undermines the Council's approach to the supply in the evidence before this appeal.

100. In general, it does not alter the appellant's position on the sites that were challenged in the appellant's evidence in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the appellant's approach at the inquiry was

[19] As per the definition of "major development" within Annex 2 of the rFramework.

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with ***"clear evidence that housing completions will begin on site within five years"*** (and without seeking reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name/ Reference	Category A	Category B
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

5899 Elmbank House, Sandbach		✓

102. The change in approach to considering whether a site is deliverable does however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen* Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.

103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).

105. It is considered that, given the reference to a 10% buffer in rFramework para 73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.

Updated version of **Table 16 of the Appellant's Proof of Evidence "Conclusions on 5 year land supply CEC / Appellant" to reflect the** concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant's position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appe**llant's position** when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	Net annual requirement (2010 to 2030)	1,800	1,800
B	Housing requirement 1 April 2017 – 31 march (A x 5)	9,000	9,000
C	Shortfall 1 April 2010 - 31 March 2017	5,365	5,365
D	Shortfall to be addressed in 5 years	3,832	3,832
E	Requirement + shortfall (B+D)	12,832	12,832
F	Buffer (20% of E)	2,566	n/a
	Buffer (10% of E)	n/a	1,283.2
G	Requirement + buffer (E+F) = supply required	15,398	14,115.2
H	Assessment of Supply (updated)	13,101	13,101
I	Supply demonstrated (H/G x 5) in years	4.25 years	4.64 years

106. The table above sets out that, where **the appellant's** approach to supply is preferred, even if a 10% rather than 20% buffer is applied the **Council's 5** year HLS figure remains below the requirement.

107. **The appellant's position in the light of the** rFramework therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the latest revisions to the illustrative masterplan. In JB's view the appeal site is an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary to officer's recommendations) as a result of the adjacent development (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr Gomulski CEC's landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. The Council's case is in essence that there is no need for additional housing and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') whose policies should be treated as not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.

111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). As set out in appendix 2 to PD's POE (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site "would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinatve (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.

113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPDPD/LPpt2, which will also consider allocating additional sites so as to meet CEC's needs, for a plan whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text27.

114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring it's out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

> *"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPDPD or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."*

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.

117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, **RT was unable to answer the "so what?" point –** i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into **the 'harmful' side of the scales. In XC it was argued that the position is** directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.

119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.

120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.

121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited30, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.

123. The first attack was both an attack "ad hominem", or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have compromised AF's credibility. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) hadn't delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.

124. The argument was then put that based upon MW's delivery rates, and assuming that the SOS wouldn't issue his decision quickly that the delivery rates for the site would be low. AF's picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;

    (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;

    (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.

125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.

128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. It is the Appellant's case that the LPA can demonstrate at most 4.25 YS (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further[20]. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.

130. Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS, then that does not mean that the appeal should necessarily be dismissed:

a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;

b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;

c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;

d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,

e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

[20] These account for the revised figures submitted after the revisions to the Framework have been accounted and differ from the Appellant's assessment in closings after the Inquiry.

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). The Council's arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.

132. Furthermore, the Council's claim that permitting this site would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably (the Council conveniently don't show their working) arrived at by taking the 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.

133. The Scheme also provides significant employment, housing and social benefits set out in Mr Downes' evidence. Despite the Council's protestations in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understand that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.

134. A section 106 agreement has been concluded providing for affordable housing education, public open space and transportation.

135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.

137. The Development Plan consists of:

 a. Saved Policies of the Crewe and Nantwich Plan 2011;
 b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
 c. The Cheshire East Local Plan Strategy 2017 ("the CELPS").

138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:

> "I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:

 a. Lead-in times; and
 b. Deliverability of sites.

140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:

> "CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy…
>
> I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (Examination Inspector's Report p19 para 69)

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at Willaston. The Inspector's in those appeals reviewed the evidence presented to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.

142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.

143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.

145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:

> "where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
> – specific policies in this Framework indicate development should be restricted."

146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.

147. As Lord Carnwath explained in *Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 at paragraph 59:

> "The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed".

148. It is submitted that, as a result of the words of paragraph 14 and Hopkins Homes, in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.

150. Paragraph 47 of the NPPF provides that local planning authorities are to "identify and update annually a supply of specific deliverable sites sufficient to provide five-years' worth of housing against their housing requirements…"

151. Footnote 11 of the NPPF then explains what a "specific deliverable site" is as follows:

> "To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

152. Further guidance is provided in the National Planning Practice Guidance:

> "What constitutes a 'deliverable site' in the context of housing policy?
>
> Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.
>
> However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe".

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply." (emphasis added)

154. In St Modwen, Lindblom LJ explained at paragraph 38:

"The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be " available now"; second, that they should "offer a suitable location for development now"; third, that they should be " achievable with a realistic prospect that housing will be delivered on the site within five years"; and fourth, that "development of the site is viable " (my emphasis). Each of these considerations goes to a site's capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to "[sites] with planning permission". This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words "realistic prospect" in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been "a record of persistent under delivery of housing". Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a " realistic prospect" – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as "deliverable" it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years."

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required in produce a housing trajectory "of the expected rate of delivery":

"One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. *St Modwen* has been applied in an important Inspector's decision in the East Riding of Yorkshire. In that decision an Inspector, in the light of St Modwen explained:

"the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."[21]

158. *Accordingly*, *St Modwen* clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. *Assuming* that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. *The* Framework does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

[21] Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position that the local planning authority had to present "robust and up to date" evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.

164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence that the Council's approach to sites with planning permission or with an allocation is unrealistic (see the East Riding of Yorkshire case).

165. The part of the NPPG that the Willaston Inspector relied upon as the foundation of his test for "robust and up to date evidence" is not dealing with sites with planning permission or with an allocation as Mr Weddernburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.

166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:

- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.
- If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as "the more central issue" in housing land supply cases (see Wedderburn p26 footnote 19). He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.

168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the approach really were "the more central issue" and really did form part of National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.

169. The second point is that the Appellant's approach is totally logically inconsistent.

170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.

171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.

172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.

173. Indeed, as can be seen from the analysis above, to apply the Appellant's approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.

174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant's approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.

176. **Mr Wedderburn's assessment of the likely contribution of** sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.

178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP **and Policy PG6 both seek to restrict housing in the "open countryside".**

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.

180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

> "Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The "open countryside" is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADPDPD, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADPDPD. This is an appropriate and effective approach, given the strategic nature of the CELPS. " (Examination Inspector's Report p28 para 111)
>
> He concluded:
>
> "Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy." (Examination Inspector's Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

> "Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:
>
> A) meet the criteria for infilling contained in policy NE.2; or
>
> B) are required for a person engaged full time in Agriculture or forestry, in which case permission will not be given unless…"
>
> The Policy then lists a series of exceptions.

184. The proposed development is located in the "open countryside" as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found to be "appropriate, effective, positively prepared, justified, soundly based and consistent with national policy"

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

> "In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability."

187. The Examination Inspector explained at paragraph 79:

> "This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2."

188. At paragraph 82 of his report the Examination Inspector concluded:

> "the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy."

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

> "a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement. Since that time, there is no fundamental or compelling new evidence which suggests that these conclusions should be reviewed." (Examination Inspectors Report para 83 – Emphasis added)

193. The Examination Inspector's overall conclusion in relation to the Spatial Distribution contained in the CELPS at paragraph 92 of his report was:

> "Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan. I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report." (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination Inspector's Report):

> "Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing needs."

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADPDPD.

197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the Council's administrative area in the remaining plan period.

198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.

199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.

200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

"Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

a. Whether there is a need for the development proposed?

b. If so, has it been demonstrated that development of BMV is "necessary" i.e. that there is no area of poorer quality agricultural land to locate the development upon?

204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.

205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.

206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.

207. It follows that it has not been established that the proposed development is needed.

208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.

209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.

210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.

211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.

212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.

214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

> "Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.
>
> Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other relevant policies of this Plan."

217. The proposed development is outside the settlement boundary. As such as Policy H5 provides it is subject to Policy PG6 and "other relevant policies of this Plan". Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. Nevertheless, it appears to be the Appellant's case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given "very limited weight" (see Downes XX and Taylor Proof p 18 para 5.6). This is a remarkably brave contention.

220. In summary, the Appellant contends that:

a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;

b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;

c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;

d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

> "Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC." (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

> "CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using **developers' information where available and responding to** specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy. The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

"On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted."

227. He concluded in terms that the provision for housing and employment land within the CELPS including the 5-year housing land supply position "is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

The Inspector's Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

    a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;

    b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to demonstrate that it has a "robust" five-year housing land supply. Nor is there any policy requirement that a "precautionary approach" should be adopted to five-year housing land supply considerations.

The Housing Monitoring Update August 2017

230. The Council's Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the Examination Inspector as resulting in a "robust, comprehensive and proportionate assessment" housing delivery (Examination Inspector's Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.

235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgefield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.

236. Further and more significantly, Mr Wedderburn's point was taken and rejected in the Willaston appeal where the Inspector concluded (document D30 para 45):

> "The Sedgepool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgepool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgefield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgepool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgefield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the Plan process. The Appellant's case in this regard must be rejected.

Build Rates

238. Mr Wedderburn's position accepted the build rates on sites adopted by the Council (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.

239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.

240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promotors cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.

241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly higher than the Council's methodology assumed in many cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.

242. It is submitted that Mr Wedderburn's evidence on this issue should be rejected. Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken. This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.

244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.

246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).

247. These are all reasons why the timing adopted in the past is relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Weddderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.

248. Indeed, they cannot be viewed as such given that the lead-in times utilised in the Council's evidence were accepted by the Examination Inspector as appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.

249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?

250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. **But of course, unlike Mr Wedderburn, the Council's appraisal is not simply** reliant upon the application of generic time periods from a study of 70 sites in the past.

252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.

253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in **Appendix 2 to Mr Fisher's rebuttal.**

254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.

255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this **illustrates the reasonableness of the Council's approach and that sites are not** only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.

256. A further and important point to note **from Mr Fisher's analysis of this data is** that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.

257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that **Mr Wedderburn's approach is seriously unrealistic.**

258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.

259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.

260. These are all matters known by site owners/promoters and no-one else. Yet Mr Wedderburn's approach was to ignore this. He negated all of this by asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.

261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.

262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.

263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5% Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.

265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly. Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.

267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.

268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.

269. Even more significantly, however, Mr Wedderburn's approach if adopted would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to "to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land". Thus the 20% buffer rate is already applied in order to achieve the objective of Mr Wedderburn's discount. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.

270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.

271. The dangers of applying a discount for the decision maker can be seen in the case of *Wokingham Borough Council v Secretary of State* [2017] EWHC 1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. In that case the Secretary of State agreed with the Inspector's reasoning on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that "the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites". He added:

> "there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation."

272. The same reasoning applies to the present case. For all these reasons Mr Wedderburn's suggested 5% lapse rate must be rejected.

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking at the "allocation" for windfall for the Crewe area.

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produce on behalf of the Appellant to illustrate the points being made. These points were put forward as a basis for suggesting that the Council's identification of housing land supply is suspect in some way. The comparison in fact does not such thing.

275. As the Court of appeal emphasised in St Modwen, paragraph 49 of the NPPF requires a local planning authority "demonstrate a five-year supply of deliverable housing sites". This is not the same things as comparing against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period" as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertake is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come forward in an earlier year in significant number. That is why the Council's trajectory in the HMU for next year increases; that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. For the reasons set out above, the Appellant's case on housing land supply must be rejected. If the White Moss and Willaston Inspectors had applied the correct legal approach and not the unlawful "precautionary" one that they did, they would have concluded that the Council had a 5-year housing land supply. Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.

278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in circumstances is to fall into error and worse to undermine the public's faith in the plan led system; what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption. It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.

280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.

281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.

283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of **deliverable housing sites then there can be no basis for such "flexing".**

285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.

286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.

287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.

291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have addressed Nantwich's housing needs, including through the strategic allocations at Kingsley fields and Snow Hill.

292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.

293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.

294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.

295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.

296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.

298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.

299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. **If, contrary to the Council's case it is concluded that there is no five**-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.

301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.

302. It is then necessary to carry out an exercise of:

Examining harm against benefits in order to apply the tilted balance; and

Undertaking the exercise required by section 38(6) of the 2004 Act.

303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.

305. As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.

306. However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.

307. It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.

308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.

309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

> "Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above." (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.

316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

> **"One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out**-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy **–** such as the protection of **a "green wedge" or of a gap between settlements. There will be many** cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment **(see paragraphs 70 to 75 of Lindblom J.'s judgment in Crane, paragraphs 71 and 74 of Lindblom J.'s judgment in Phides, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in** Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 **(Admin))."**

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.

320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.

321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.

322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)
- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the borough's Principal Towns and Key Service Centres to maximise use of existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. The Council's evidence demonstrates that the development will result in harm to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

> 'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.

332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. The appellant's case is that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

> *'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'*.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The Council's 5 year housing land supply assessment is based on a very generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:

a) approving development proposals that accord with an up-to-date development plan without delay; or
b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
c) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
d) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered **to be 'substantially below' the housing requirement will equate to delivery** below 25% of the housing required over the previous three years.

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.

346. The number of net homes required, will be the lower of the latest adopted housing requirement (excluding any shortfall3) or the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	Adopted annual CELPS Requirement	Household projections (annual average over 10 year period)4	Net additional dwellings
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the Council's proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.

348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or
b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.

351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a realistic prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission o planning permission in principle, allocated in the development

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed scrutiny of sites undertaken by the appellant. The Council's evidence has been fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the Inspector's Decision Letter is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
- Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
- Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
- Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobold, Chairman of Stapeley &District Parish Council[22], seeks to emphasis the newness of the Stapely and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobold goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)

358. Councillor Theobold goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

---

[22] ID10 and ID32.

359. Mr Patrick Cullen[23], a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.

360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.[24] Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road[25]. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense the submission of the Appellant's evidence local bus services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.

361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development[26]. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.

363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

---

[23] ID11.
[24] ID12.
[25] APPEAL ref: APP/R0660/W/15/319474.
[26] ID13.

364. There themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.

365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.

366. **Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data** as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.

367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users[27].

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:

4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
6: protection of archaeological remains
7, 8 & 10: residential and visual amenity and sustainability
11, 12, 13 & 27: highway safety and sustainability
14 & 15: sustainability
16-20: protected and other species mitigation
21-25: reserved matters clarification and implementation

[27] ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1& 2, control is required over matters in the other conditions for the following reasons:

3-6: the visual amenity and landscape quality of the area
7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more the case in view of Mr Cullen's concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the precious applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes with be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and children's play areas, justified on the basis of the increased numbers of people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also ow makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.

378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;

b) the loss of BMV agricultural land and;

c) the effect of the development on the safety of highway users and;

d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.
The relevant preceding paragraphs for the Council are 310-312 & 327-329.

The relevant preceding paragraphs for the other parties are 357-359.

382. Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary. It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that ...'the intrinsic character and beauty of the countryside will be recognised'.

383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.

384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.

385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.

386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.

387. It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy. However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'. Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the **Neighbourhood Area'.**

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.
The relevant preceding paragraphs for the Council are 201-212, 312-314 &328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.

390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.
The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.
The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry[28]. It confirms as a starting point that that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.

394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence[29].

395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply. This number should include a buffer of either:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

[28] CD3.
[29] White Moss Quarry and Park Road, CD29 &CD30.

recently adopted plan, to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected,1800 target . Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period. However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)[30]. This has to be the right approach unless where express circumstances dictate otherwise[31]. Whilst such an approach would not be consistent with that applied in Park Road Appeal[32] it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

[30] CD40 Examining Inspector's Report paragraph 72.
[31] PPG/NPPF ref.
[32] Ibid.

meet past under-delivery within the next 8 years of the plan period[33]. Whilst not supported by the Wrenbury decision[34], a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the Government's policy commitments to boost significantly the supply of new homes.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Councils calculation is preferred, in combination with anticipated delivery rates, the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years. That said, as in the two other recent appeals[35] the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgepool8 methodology, a difference of 2,807 dwellings. These respective positions are reached on the one hand by standard methodology (previously referred to as the 'in principle' approach)[36] and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (previously defined as above as 'performance') by the appellant. These matters are now considered below.

Supply

400. With regard to the 'in principle' differences between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

[33] Paragraph 72 Local Plan Inspector's Repot (CD A40).
[34] Appeal Ref: APP/R0660/W/17/317649.
[35] Ibid
[36] CD29, Paragraph 13 White Moss Appeal.

escape the conclusions of the two previous Inspectors[37] that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.

403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (the 'in principle' expectation time of 2.5 years), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances . With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.

404. However, by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, and the 'in principle' evidence, needs to be considered against that presented (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific analysis the sum of the appellant's conclusions on lead in time to construction anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion[38] .

405. With such lead-in times applied to the 41 sites identified in the appellant's case and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

---

[37] Those who determined White Moss and Park Road.
[38] Paragraph 51, APP/R0660/W/17/3168917.

406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term 'deliverable' in relation to the supply of housing, setting this out in Annex 2 therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites re no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case[39] that preoccupied the evidence on housing delivery heard at the Inquiry.

407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. This being so, to Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust. Whilst the conclusions reached by the Inspector in the Wrenbury case[40] take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the rFramework and the weight to be conferred it is very significantly reduced as a result.

408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approached, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case[41] (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful. Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

[39] St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.
[40] APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.
[41] [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by policy. This would amount the Council suggest to 'very significant levels of unplanned growth'. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations. This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 &325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to considerer in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.
The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the Council's view that the employment component of the scheme is not required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.

413. The provision of a new primary school site to meet future educational provision, the children's play area, and extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.

414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.

415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.

416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence that would convincingly rebut the appellant's view, not challenged by the

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case[42], that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the **'tilted balance' in** sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramwork dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the boarders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.

419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.

420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

[42] Ibid.

421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.

422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.

423. The first is that despite the conflict with countryside policies, the degree of harm to visual amenity is in fact limited, and reflected in the Council's position on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.

424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal[43].

[43] Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

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

2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

   Mixed Use and Access Applications Diagram – dwg SK15 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK16 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK17 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK19 Rev D (11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:

   a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
   b. a scheme to limit the surface water run-off generated by the proposed development
   c. a scheme for the management of overland flow
   d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
   e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
   f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

   g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
   h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

   - plans showing the extent and layout of the buffer zone
   - details of any proposed planting scheme (for example, native species)
   - details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

   This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

   a. the hours of construction work and deliveries

   b. the parking of vehicles of site operatives and visitors

   c. loading and unloading of plant and materials

   d. storage of plant and materials used in constructing the development

   e. wheel washing facilities

   f. measures to control the emission of dust and dirt during construction.

   g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

   h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes

j. waste management: there shall be no burning of materials on site during demolition/construction.

8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.

9. Prior to the commencement of development:

   a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.

   b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.

   c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.

11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.

12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:

    - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
    - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

    The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.

    a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
    b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority

21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.

22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

    The landscaping scheme shall be completed in accordance with the following: -

    a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
    b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.

24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.

25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.

26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)

27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
   a. Site Location Plan reference no. BIR.3790_13
   b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).

3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.

5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.

    (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
    (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
    (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
    (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved n writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.

11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel	**Instructed by the Solicitor to** Cheshire East Council

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's Counsel	instructed by Patrick Downes, Harris Lamb on behalf of Müller Property Group

Assisted by Mr Philip Robson of Counsel

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald	Stapeley & District Parish Council
Mr P Cullen	Resident
Councillor P Groves	Cheshire East Council
Mr P Staley	Resident
Ms J Crawford	Resident
Ms G Barry	Resident

Mr K Roberts	Resident
Councillor A Martin	Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. Appellant's housing evidence amended table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobold comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H THompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

1a Final list of Core Documents
2a Closings Appellant
3a Closings Council
4a Grounds for Claim to High Court (Shavington case) – Council
5a Comments on rFramework – Appellant
6a Comments on rFramework – Council
7a Final comments on Council's submissions - Appellant

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) (“CNRLP”)
A12	Secretary of State’s Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 (“LPS”)
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4th December 2013
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner’s Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector’s Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector’s Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector’s Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin)
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterton Lane, Barthomley, Crewe CW1 5UJ. 8th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England’s Application of the ‘Three Tests’ to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25th May 2012

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector's Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer's Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)	
N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)	
O1	1st Planning Officers Report to Planning Committee
O2	2nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)	
P1	Removed

Appeal Court Judgements (Q)	
Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment

Ministry of Housing,
Communities &
Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

The Planning Inspectorate

Appeal Decision

Inquiry held on 3 – 6 August, 9 – 12 August and 14 September 2021

Site visit made on 13 August 2021

by O S Woodwards BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th May 2022

Appeal Ref: APP/L3815/W/21/3270721
Land within the Westhampnett / North East Chichester Strategic Development Location, North of Madgwick Lane, Chichester

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by CEG and the Landowners (D C Heaver and Eurequity IC Limited) against the decision of Chichester District Council.
- The application Ref WH/20/02824/OUT, dated 30 October 2020, was refused by notice dated 1 March 2021.
- The development proposed is for residential development comprising up-to 165 dwellings, including an element of affordable housing; together with an access from Madgwick Lane as well as a relocated agricultural access, also from Madgwick Lane; green infrastructure, including the enhancement of the Lavant Valley Linear Greenspace; sustainable drainage systems; and associated infrastructure.

DECISION

1. The appeal is allowed, and planning permission is granted for residential development comprising up-to 165 dwellings, including an element of affordable housing; together with an access from Madgwick Lane as well as a relocated agricultural access, also from Madgwick Lane; green infrastructure, including the enhancement of the Lavant Valley Linear Greenspace; sustainable drainage systems; and associated infrastructure, at Land within the Westhampnett / North East Chichester Strategic Development Location, North of Madgwick Lane, Chichester, in accordance with the terms of the application Ref WH/20/02824/OUT, dated 30 October 2020, subject to the conditions set out at Annex C.

PRELIMINARY MATTERS

2. The appeal is for outline planning permission with all matters reserved except for access. The appeal is supported by land use and buildings heights parameters plans, as well as full details of the proposed access points that have been applied for in full. A series of illustrative drawings have also been submitted in support of the appeal which I have had regard to as appropriate, allowing for their illustrative status.

3. The Goodwood Estates Ltd (The Estate) had Rule 6 status at the inquiry. The relationship of the site and the proposal to The Estate is a key component of the appeal, as set out throughout this Decision.

4. The appeal is supported by a s106 Planning Obligation. Following the related discussions at the inquiry, this required amending. I therefore agreed a short extension of time following the close of the inquiry for the parties to deal with that. The revised s106 Planning Obligation was duly received on 29 September 2021 (the s106).

5. There was no reason for refusal in relation to heritage matters, but The Estate submitted evidence in relation to the effect of the proposal on the setting of the Old Place Farmhouse. I have therefore assessed this factor in my Decision.

6. The reason for refusal in relation to noise is only with regard to aircraft noise from the aerodrome. However, The Estate submitted evidence in relation to helicopter and motor circuit noise, and all of these aspects of noise were considered in depth at the inquiry. I have reflected this in my Decision.

7. The fourth reason for refusal is in relation to access and highway safety, specifically in relation to pedestrian access to the south of the site, pedestrian access to the central parts of the site from Madgwick Lane, and the northern agricultural and non-motorised access to Stocks Lane. However, the appellant submitted further information to the Council in the lead up to the inquiry. In light of that additional information, the Council did not pursue this reason for refusal.

8. The fifth reason for refusal is in relation to the provision of affordable housing and infrastructure obligations. The s106 secures provision for these factors and, in light of this, the Council did not pursue this reason for refusal.

9. At the time of the inquiry, the Council agreed with the appellant that it could not demonstrate a five-year supply of housing land, albeit the extent of shortfall was in dispute. After the inquiry closed, further evidence was released which led the Council to change its position and to argue that it could, in fact, demonstrate a five-year supply of housing land. I afforded the main parties the opportunity to comment on the updated position and this is reflected in my Decision.

10. After the inquiry closed, Natural England (NE) updated its advice in relation to nutrient level pollution. I consulted the main parties on the implications of this advice. The appellant submitted a Deed of Variation to the s106 on 13 April 2022 (the DoV) with regard to changes to the proposed off-site nitrate mitigation land. I have reflected this in my Decision.

11. Two appeal decisions[1] were bought to my attention after the inquiry closed. I afforded the main parties the opportunity to comment on those decisions and I have reflected them as appropriate in my Decision.

MAIN ISSUES

12. In light of the forgoing and reflecting the evidence at the inquiry, the main issues were agreed as:

    - whether or not the appeal site is an appropriate location for development of this type, particularly with regard to the wider masterplanning for the Westhampnett/North East Chichester Strategic Development Location

[1] Refs APP/L3815/W/21/3284653 and APP/L3815/W/21/3286315.

(SDL), physical integration with the existing settlements of Chichester and Westhampnett, and reliance on the car by future occupiers;

- the effect of the proposed development on the character and appearance of the area, particularly with regard to the Lavant Valley landscape and visual integration with the existing settlements of Chichester and Westhampnett;
- the effect of the proposed development on the special interest of the nearby listed buildings, in particular Old Place Farmhouse and Chichester cathedral, with regard to the effect on their settings;
- whether or not the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to noise from the aerodrome and motor circuit; and,
- whether or not the proposed development would create potential future risks to the operation of the aerodrome and/or motor racing circuit, including with regard to the efficient operation of the highway network in the vicinity of the appeal site with regard to events traffic related to major events at the motor racing circuit.

REASONS

Planning policy

13. The Development Plan for the area includes the Chichester Local Plan Key Policies 2014-2029, adopted July 2015 (the LP). The LP was adopted subject to a requirement to a review being undertaken within five years in response to a flawed transport evidence base. The Council has not yet undertaken this review. It is therefore common ground that the housing policies in the LP are to be considered as out-of-date. Paragraph 11d of the Framework is therefore engaged. I reflect this as appropriate in the 'planning balance' section of this Decision.

14. The Chichester Local Plan Review 2035: Preferred Approach – December 2018 (the emerging LP) is in the early stages of production. It is due to undergo further extensive public consultation and is likely to be the subject of modifications before adoption. It therefore carries limited weight. This is common ground between the Council and the appellant, as agreed through cross-examination.

Location/principle

15. The appeal site is a relatively small part of the SDL. Policy 17 of the LP is in relation to development in the SDL. The policy explicitly allocates 500 dwellings, community facilities, and open space to the SDL. It directs development to two areas, one to the south of Madgwick Lane (now built out as Phase 2) and one to the eastern edge of Chichester (now built out as Phase 1). The appeal site does not fall within either location. The dwellings allocated for the SDL have now been delivered in the two locations as set out in the policy. Whether or not this renders the policy, or parts of it, 'spent' was the subject of much debate at the inquiry. However, this is a needless distraction. The relevant consideration is that the policy does not explicitly allocate for more than 500 homes within the SDL and does not direct development to the appeal

site. The proposal therefore conflicts with Policy 17 and the wider masterplanning for the SDL.

16. The proposed housing would be to the centre of the site, set away from existing surrounding built form. There would be a degree of separation from the immediately adjoining built-up areas through the proposed landscaping to the borders of the site. However, to the east and south it would only be separated from the existing built development by the proposed managed landscaped area, rather than open, agricultural land. There would be a degree of physical separation from Chichester and Westhampnett, but this would be tempered because the appeal site sits in an area with an edge-of-settlement, hinterland character, with residential and commercial development close by.

17. In terms of accessibility, the appeal site sits nearby to Chichester, which is a sub-regional centre and offers a plethora of services and facilities. New walking and cycle routes would be provided providing connectivity to Chichester. The appeal site lies within a short walk along safe footpaths of bus stops along Westhampnett Road, which are served by bus route 55 which provides a half hourly service to Chichester, Tangmere, and Chichester Bus Station and Chichester Rail Station. The appeal site would therefore provide alternative options to journeys by car. In principle, the appeal site is in an appropriate location in terms of reducing the reliance on the car by future occupiers.

18. Overall, whilst future occupiers would not be overly reliant on the private car to access the services and facilities that would be required on a daily basis, the development proposed would be separated from the immediately adjoining built up areas, and would conflict with the approach to masterplanning of the SDL. The proposal would therefore conflict with the relevant parts of Policies 7, 17 and 33 of the LP in these respects. The proposal fails to comply with Policy AL4 of the emerging LP, which largely reflects Policy 17 of the LP. The proposal also conflicts with Criterion 1 of the Interim Position Statement for Housing Development, November 2020 (the IPS), which is with regard to the integration of housing development with existing settlements.

Character and appearance

19. The appeal site is agricultural land, with the River Lavant forming the southern boundary. Properties in the Old Place Farmhouse complex form the eastern boundary with the Phase 2 housing development further away on the opposite side of Madgwick Lane. Remaining agricultural fields lead up to the motor racing circuit to the north, and to the west are relatively small amounts of open space either side of the river, with the built envelope of Chichester beyond.

20. Although the appeal site itself is open agricultural land, it sits near to significant built form on the edge of Chichester and the village of Westhampnett which is, particularly following the construction of Phase 2, effectively joined-up to Chichester. In the vicinity of the appeal site are substantial retail outlets such as Aldi, a hotel, residential estates, and the city of Chichester beyond. The appeal site is located in a corridor of open agricultural land separating Chichester from the motor racing circuit, but this has already been partially eroded with the construction of Phases 1 and 2. The character of the area is of an edge of settlement, transitional area leading outwards from Chichester, but with the circuit nearby to the north rather than significant areas of open countryside.

21. It is proposed to develop the site for housing. The scheme is in outline, with only access applied for in detail. However, parameters plans have been submitted which confirm that the built development would be a mixture of up to 2 and 2 ½ storey housing, concentrated to the centre of the site and away from the boundaries. This is at least partially a product of the physical constraints on the appeal site, in particular the need for a 400m off-set from the motor racing circuit in relation to noise (a matter to which I return later) flooding from the river, the need to preserve a view of the cathedral from the junction of Stocks Lane and Madgwick Lane, and to respect the setting of the nearby grade II listed Old Place Farmhouse complex.

22. There would be some harm to the landscape character of the area through the loss of the existing agricultural land and replacement with a residential development, whatever its eventual precise layout and form following consideration of reserved matters. This would negatively alter the character of the appeal site by the introduction of built form and lighting to what is currently tranquil, agricultural land. However, as set out above, the appeal site is on the edge of the built-up area of Chichester and Westhampnett, and the motor racing circuit, a large built-up facility, lies to the north. The closeness and the extent of the nearby built-up areas, and that the areas are to all sides of the site, are key aspects of the appeal site and its setting. It is in a transitional character area and is perceived as such both from nearby and from distance, partially mitigating the harm to landscape character from the proposal.

23. A new northern boundary to Chichester would be created, likely with fairly significant landscaping and/or built form. However, there needs to be a northern boundary to Chichester at some point, and I do not see moving this slightly further forward from its current position as being unduly harmful to the character and landscape of the area, given the context set out above. I particularly note that the appeal site would not be materially any closer to the boundary of the circuit than Phases 1 or 2 and a ring of open land, between Chichester and the circuit, would be maintained. There would be some loss of hedgerow along Madgwick Lane where the new access is proposed. However, this would be relatively limited in extent and the character of the lane has already changed to be more open and suburban as a consequence of the Phase 2 development and its access to the east. These factors partially mitigate the harm from this element of the proposal.

24. The proposed extensive landscaping would be of a suburban character and form and would therefore also harm the existing agricultural landscape character. As noted above, the proposed open space would form a ring around the proposed built form, which is the opposite of the general urban grain in Chichester with open space located to the centre and forming the focus of urban development. However, this would be less harmful than might otherwise be the case because to the south of the site the open space would border the river, providing a pleasant and open aspect along this feature, also reflecting the character of built form being set away from the river along this valley. To the east, the proposed open space would eventually be seen as in the middle of the existing development to the east of Madgwick Lane and the proposed development, albeit divorced to a degree by the road and associated hedgerow, rather than as a ring around the proposed development in isolation.

25. The harm that I have identified above would be appreciated by a number of nearby receptors, including not only the sensitive receptors of the occupiers of the western edge of the Phase 2 development and the farmhouse buildings directly adjacent to the appeal site, but also for the users of surrounding public rights of way and in viewpoints from further afield, looking over the river valley. Drivers would also be afforded views of the proposal from Madgwick Lane, although these would be fairly fleeting through gaps in the hedgerow. A degree of harm would be caused to these receptors from the harm to the character and appearance of the area that I have identified above. However, this again must be considered in the context of the transitional character of the appeal site itself, and the urban nature of much of the surroundings, which would mitigate the harm.

26. If the development were to use the Lavant Waste Water Treatment Works then a 2.56 ha area of land to the north and east of the appeal site would need to be planted with trees, at a minimum canopy cover of 20%, in order to meet nutrient neutrality objectives. It is not certain, however, that this will be required, because there is an alternative, indeed preferred, option using Tangmere Waste Water Treatment Works, which would not require this planting. That said, if the planting were required it would introduce a fairly significant area of tree planting, likely of managed, rather than naturalistic/woodland, appearance. This would be in an area which is currently open agricultural land. This would cause harm to the character and appearance of the area, but only to a limited degree because tree planting, even if of a manged appearance, is not an unusual countryside feature.

27. Overall, the proposal would harm the character and appearance of the area and the Lavant Valley landscape. I judge the level of harm to be moderate, because of the existing transitional, edge-of-settlement character of the immediate surroundings and the partially mitigating factors set out above. The proposal would therefore fail to comply with Policies 7, 17 and 48 of the LP, which, amongst other criteria, require high quality design and to protect local landscape character. The proposal fails to comply with Policy AL4 of the emerging LP, which largely reflects Policy 17 of the LP. The proposal also conflicts with Criteria 1 and 5 of the IPS which relate to the integration of housing development with existing settlements and landscape character.

28. The proposal would be visible from key views within the South Downs National Park (SDNP). The South Downs National Park Authority has objected to the proposal on the basis of harm to the setting of the SDNP, including night time views and light pollution. However, the proposal is significantly distant from the SDNP and would be perceived in the context of the surrounding existing built form. I observed on site that the appeal site is barely discernible from the key viewpoints in the SDNP. The proposal would therefore have a negligible effect on the landscape and scenic beauty of the SDNP, and I find no conflict in this regard with paragraph 176 of the Framework, and Policies 48 of the LP and Criteria 5 of the IPS, all of which seek to protect or enhance the SDNP.

Heritage

29. To the east of the appeal site lies the grade II Listed Old Place Farmhouse and its curtilage listed outbuildings and immediate grounds. This group of buildings has been converted into houses. Despite the change of use, the buildings have partially retained their historic setting and association with the former

agricultural land, through the fields to the north and the east. Windows in the farmhouse and some of the outbuildings overlook that land, albeit largely to secondary elevations. In my view, the overall group of buildings retains a connection to this land, which is recognisably agricultural land adjacent to, and associated with, the former farmhouse. As such, the listed complex derives part of its heritage significance from the setting provided by that land.

30. However, this setting has already been partially eroded through the Phase 2 development to the east, various elements of further development on the outskirts of Chichester to the south and west, and the motor racing circuit further to the north. Nevertheless, the proposed development would place substantial built form on agricultural land historically associated with the farmhouse. The proposed open space corridor immediately adjacent to the farmhouse complex would be of a landscaped, recognisably suburban character, at odds with the agricultural appearance of the land. The proposal would therefore further erode the setting of the historic complex, harming its special interest and heritage significance. I assess this level of harm to be at the lower end of less than substantial. The proposal therefore fails to comply with Policy 47 of the LP which, amongst other criteria, seeks to conserve and enhance the settings of listed buildings.

Living conditions of future occupiers - noise

31. A significant amount of evidence, both technical and otherwise, was before the inquiry with regard to acoustic matters. Concerns have also been raised by The Estate regarding the seaming retrofitting of some noise considerations to the proposal. However, the key planning consideration on this matter is whether or not the proposed development, however it has been arrived at, would provide satisfactory living conditions for future occupiers.

32. In this regard, paragraph 185 of the Framework cross-refers to the Noise Policy Statement for England, 2010. This document sets out two relevant thresholds of noise impact - Significant Observed Adverse Effect Level (SOAEL) and Lowest Observed Adverse Effect Level (LOAEL) – which equate to a significant adverse impact and a minimum adverse impact respectively. Paragraph 174 of the Framework makes it clear that development should not be adversely affected by unacceptable levels of noise pollution with paragraph 185 making it clear that mitigation can play a part in this assessment.

33. There are two principal sources of noise that would affect the future occupiers – Goodwood Aerodrome, split into fixed-wing and helicopter movements, and Goodwood Motor Circuit.

Fixed-wing aircraft

34. There are no set LOAEL or SOAEL levels in planning policy. In the absence of any definitive policy or guidance, it is therefore up to me as the decision maker to decide what the appropriate LOAEL and SOAEL levels for aircraft noise should be with regard to the particular circumstances of the appeal. In this regard, there are an extensive array of studies, documents, reports and assessments to attempt to establish what the levels should be for aircraft noise.

35. The first question to consider is what type of decibel (dB) reading should be adopted. There was general consensus that for fixed wing aviation, LAeq 16 hr

should be used, because it best reflects the noise pattern from an airfield in operation during daytime hours. I have no reason to disagree.

36. The Government's Aviation Policy Framework, dated March 2013, which is a material consideration in this case[2], sets a noise level of 57 dB LAeq 16 hour as the onset of significant community annoyance from aircraft noise, which in my view can fairly be treated as the SOAEL as set out in that report, which is, by definition, the level at the onset of significant observed adverse effects.

37. The Survey of Noise Attitudes 2014: Aircraft document[3] (SONA) finds that 7% of people would be highly annoyed by aviation noise at 51 dB LAeq 16 hour, rising to 9% at 54dB, 13% at 57dB and 17% at 60dB. The report centred on the United Kingdom and was specifically commissioned to consider the relationship between airports and development. I place significant weight on this document, albeit I note that it does not set a specific SOAEL level. Rather it highlights the dB levels at which a certain percentage of people are likely to become highly annoyed.

38. As set out at paragraph 245 of Appeal Ref APP/R5510/A/14/2225774, dated 2 February 2017, in relation to works at Heathrow Airport, the SOAEL for aviation was set at 63 dB LAeq 16 hour. This is a level that was agreed between the parties and was adopted as part of an extensive inquiry into an airport expansion. I therefore place significant weight on this decision, even though it pre-dates some more recent reports considering noise from aircraft, which I take account of as appropriate in my assessment.

39. A Department of Transport (DfT) report from 2017[4] sets out a LOAEL of 51 dB LAeq 16 hours. The report is detailed and followed a wide-ranging consultation. I therefore place significant weight on it.

40. The World Health Organisation (WHO) has issued guidance[5] that the SOAEL for transport aviation should be set at 45 dB LAeq 16 hour. However, this is not policy in the United Kingdom. The guidance's primary focus is on avoiding even low level annoyance to people, rather than considering the issue in the round. Concerns have been raised by the Government, in its Aviation 2050 The Future of UK Aviation document, dated December 2018, that the WHO approach does not consider a full cost/benefit analysis of the impact of setting a SOAEL at this level. I therefore place limited weight on this guidance.

41. A number of reports and updates from the Independent Commission on Civil Aviation Noise and the Civil Aviation Authority were presented at the inquiry, but these are not formally adopted reports by Government, and are advisory only, which limits their weight. The conclusions in many of these reports, including in SONA, appear to show that people have become more sensitive to aviation noise over the past few decades. However, there is no compelling evidence that this trend will necessarily continue, and the SONA advice already accounts for the changes up until 2014.

42. Taking all of the above into consideration, the starting point for considering the SOAEL should be 63 dB LAeq 16 hour, as established through the Heathrow

---

[2] Paragraph: 015 Reference ID: 30-015-20190722
[3] Published by the Civil Aviation Authority in 2017
[4] Consultation Response on UK Airspace Policy: A framework for balanced decisions on the design and use of airspace, October 2017
[5] WHO Environmental Noise Guidelines for the European Region, 2018

decision. However, this is based on Transport Aviation (TA). The Goodwood Aerodrome is instead used by General Aviation (GA) planes. These are smaller, fly lower, are more likely to be propeller rather than jet engine, and have a different overall noise profile. I still believe that the primary measure of the likely level of disturbance should be the overall noise level, ie the dB level. However, a discount should be applied to take account of the different character of the noise. I have decided to apply a 5 dB discount, as set out in DfT report Study of Community Disturbance caused By General and Business Aviation Operations Report, July 1988 (the GABA Report)[6], resulting in adopting a SOAEL of 58 dB LAeq 16 hour.

43. As a sense check, the results from SONA, which indicate that at 60 dB 17% of people would be highly annoyed and at 57 dB it would be 13%, and the conclusion in the Aviation Policy Framework of 57 dB as the onset of significant community annoyance, indicate that 58 dB LAeq 16 hour is a reasonable position to adopt. My attention has been directed to a previous appeal decision[7] which placed SOAEL at 52 dB LAeq 16 hour in apparently similar circumstances. However, that decision was issued before the SONA report was published, which is a material change in the evidence base.

44. I have adopted a LOAEL of 51 dB LAeq 16 hour, based on the DfT Report and that this is the level where only 7% of people would become highly annoyed, as set out in SONA. I have not undertaken the same discount to LOAEL to reflect GA noise as I have with SOAEL, because the GABA Report highlights that, below 50 dB, any reductions in noise would be difficult to discern.

45. Noise contours confirm that the appeal site would be the subject of an overall noise profile of 48 to 51 dB LAeq 16 hour on a typical summers day, ie when the aerodrome is most busy and noisy. This is a very similar noise profile to that affecting both Phase 1 and Phase 2, which is perhaps to be expected given that all three sites are a similar distance from the aerodrome. The three sites are to the south east, south and south west of the aerodrome. The prevailing wind is from the south west and therefore blowing away from all of these sites. Therefore, all of the appeal site, and all of the future occupants of the proposed dwellings, would not be subject to unacceptable noise levels from aircraft, likely not even breaching LOAEL levels.

46. If the aerodrome were to increase usage up to its maximum of 70,000 movements per annum as allowed for by its s52 agreement[8], then the noise profile would increase to between circa 50 to 53 dB LAeq 16 hour. In my view, this is unlikely, given the broadly downward trend of total aircraft movements in the period 1985 to 2020, and, in any event, would only bring the site into the lower levels of LOAEL effects.

47. There would occasionally be greater noise levels from louder aircraft. However, evidence has been provided that these events are unlikely to number more than two per day. Therefore, whilst each event would potentially cause harm to the living conditions of the future occupiers, the infrequency and short duration mean that this would be acceptable.

[6] Table 3.9, page 62
[7] Ref APP/L3815/A/13/2200123, dated 11 February 2014
[8] As confirmed in a Section 52 (T&CPA 1971 – Section 126 of the Housing Act 1974) Agreement, amended 1987

Helicopters

48. Helicopters use two different landing sites in the aerodrome. In addition to normal flights there are also two different training routes, which are used by the aerodrome for helicopter pilot instruction – the northern route and the southern route. The standard helicopter flights and the northern training route are not in proximity to the appeal site and their noise can be taken account of as part of the assessment above. However, the southern training route flies directly over the appeal site and needs to be considered separately.

49. Helicopters make a markedly different noise from fixed-wing aircraft, including a percussive element. Helicopters have the potential to harm living conditions to a greater extent for any given dB reading than fixed-wing aircraft. Having carefully taken on board the evidence on this issue, I conclude that there is no reliable way of reflecting the effect of this on living conditions through dB levels, although LAmax readings are helpful to provide quantitative background information, because they best reflect the noise profile of an overhead helicopter flight. It instead needs to be taken on board as part of the general qualitative assessment of the likely effects of helicopter movements on future residents.

50. The submitted noise assessment confirms that the helicopter flights would generate noise levels at the site of between 68 and 81 dB LAmax. These are significantly in excess of the SOAEL level, even before adding in the qualitative element of the percussive nature of the sound. The flight routes are also over the appeal site and the noise would come from above and from many directions as the helicopters fly over. Each individual helicopter flight is likely to lead to annoyance to a significant proportion of the future residents of the appeal site.

51. However, the southern training circuit is only used when runways 14/32 are not in operation. These are the preferred runways due to prevailing wind conditions. Therefore, only somewhere between one quarter and one third of helicopter training flights use the southern training route. Using the data provided, this has, in recent years, resulted in an average of nine fly-overs per day of the appeal site in the summer, and as low as two per day in the winter. In addition, the fly-overs are restricted by the s52 agreement to 0900 to 1800 hrs or sunset, and not at all on Sundays, although with two evenings per week up to 22:00 hrs.

52. The number of fly-overs could increase if the aerodrome were to increase its helicopter flights up to the maximum allowed by the s52 agreement, but there is no indication that this is likely to occur and the number of helicopter movements has remained broadly stable in the period 1985 to 2020. In any event, even if increased to the maximum movements as allowed for by the s52 agreement, helicopter fly-overs would remain infrequent.

Motor racing circuit

53. The motor racing circuit hosts five Category 1 event days each year where there are no noise restrictions. During these events it is likely that the appeal site would be exposed to high levels of noise, easily in excess of any SOAEL level and would be likely to cause high annoyance to future residents. However, these days are of great value to The Estate, the local community, and the wider general public. The Revival, in particular, is one of the pre-eminent motorsport events in the entire country. They bring great economic

benefits to the area. They are for only five days a year. The planning permission for the circuit[9] specifically allows the Category 1 days, despite being disruptive to the local area in a number of ways, given their many benefits. I therefore do not consider the Category 1 days as part of my noise assessment, although they are, of course, still a material planning consideration.

54. The LP sets out a 400m limit from the circuit where housing should not generally be located, although it does explicitly state that limited development may be possible subject to appropriate noise mitigation measures. It is not entirely clear from the proposed drawings, and because of the illustrative nature of the layout plans, but the proposed housing would likely fall outside this 400m limit, with the possible exception of the northern facade to some of the dwellings to the northernmost part of the site. However, the 400m limit is a guide for the location of noise sensitive development, such as housing. Detailed noise assessment is also necessary and has been undertaken.

55. On the basis of the evidence before me, LAeq 30 min should be used to measure noise from use of the circuit, because it best reflects the noise pattern which includes moments of noisier activity but also a general blend of background noise. As with aircraft noise, there are no fixed LOAEL and SOAEL levels for motorsport noise. The appellant has adopted 50dB LAeq 30 min as LOAEL and 55dB LAeq 30 min as SOAEL, based on WHO Guidelines for Community Noise from 1999 related to steady, continuous noise and serious annoyance (SOAEL) and moderate annoyance (LOAEL). I acknowledge that I have previously placed limited weight on a different set of WHO guidance. However, the 1999 guidance is a useful starting point for considering motorsports noise, which is of a different character to aircraft noise. I am content to adopt the figures in the WHO report, however, caveated by the qualitative consideration that not all motorsports noise is steady and continuous, and there would be louder elements, such as screeching tyres.

56. Category 2 event days are the days where the noise limits for cars using the circuit are highest (excluding the unlimited Category 1 days). These are therefore the most robust days to assess. On Category 2 days, the appeal site would be subject to between 46 and 51 dB LAeq 30 min. The level of noise would fall fairly rapidly once behind the northern façade of the northernmost buildings, which would act as an acoustic screen. I acknowledge this is only an illustrative layout, but the parameters plans do provide some certainty that there would be this 'buffer' of building along a high proportion of the northern boundary. The overall noise levels washing across the appeal site would be similar to those at the Phase 1 and Phase 2 developments.

57. Overall, given that the majority of the site would be below the LOAEL, and all of it comfortably below the SOAEL, the noise from use of the circuit, even allowing for occasional more noisy and intrusive elements, would be within acceptable limits to ensure that the living conditions of future occupiers would not be unduly harmed. The one possible exception to this would be the northern façade of the northernmost dwellings, which may require noise mitigation measures. These measures could include ensuring the layout keeps the buildings beyond the 400m barrier, ensuring double aspect dwellings, detailed layout of private outside amenity areas, the ability to ventilate with closed windows, and a number of other considerations.

[9] Ref WH/10/00235/FUL, dated 20 May 2010

58. It is possible that the mitigation may include the need to close windows. However, this is only likely to be necessary to the northern façade of the northernmost dwellings, which would be the most affected by the motor circuit noise, and even then likely only for relatively short periods of time. This may be able to be designed out entirely, depending on the final layout and treatment of the landscaping to the northern boundary. I do not, therefore, see this as an unacceptable expectation of the future detailed design.

59. Given the relatively low levels of noise I have identified, and in particular noting that it is only at LOAEL and not SOAEL levels, I do not foresee the mitigation measures being extensive or in themselves harming the living conditions of future occupiers. These could all be controlled effectively by condition.

Cumulative

60. Noise from the aerodrome and the motor racing circuit often occurs simultaneously. The cumulative effect must therefore be considered. This was discussed in detail at the inquiry, but no firm conclusions were provided regarding specific dB deductions to make to LOAEL and SOAEL levels to accommodate this factor. However, it is clear that annoyance from noise from The Estate could be exacerbated by the different types, tones, frequencies, and nature of the noise from fixed-wing, helicopter and motorsport sources. I have considered this carefully, and I am comfortable that the combined noise effects would remain within a LOAEL range, in the sense that they would not result in a significant adverse impact, given the headroom before SOAEL levels of noise would be likely to be experienced by the future occupiers.

Other

61. It was raised at the inquiry that the fourth bullet point to Policy 17 of the LP could also mean that the development itself should be designed to reduce the effect of noise on existing communities. However, no matter how eloquently put this position was, planning policy should not be read legalistically and instead from a common sense approach of its clear intended meaning. In this case, the common sense reading of Policy 17 is that any proposals in the SDL should mitigate their effect from noise on the proposal itself, not on surrounding existing communities.

Overall

62. Overall, the noise from fixed-wing aircraft would be either below, or at the lower end of, the LOAEL. The noise from helicopter flights, despite their relatively loud noise and qualitative annoyance, would be infrequent. Given that the majority of the site would be below the LOAEL, and all of it comfortably below the SOAEL, the noise from the motor racing circuit, even allowing for occasional more noisy and intrusive elements, and noise considered in combination, would be within acceptable limits. Modest mitigation measures to counteract effects at a LOAEL level may be required at the detailed design stage, and these could be secured by condition.

63. Consequently, the proposal would provide satisfactory living conditions for future occupiers, with particular regard to noise from the aerodrome and circuit. This is either as it operates currently or as it is likely to do so in the future, and it would not unacceptably harm the living conditions of the future

occupiers. The proposal is therefore acceptable in these respects and complies with Policy CP17 of the LP, which requires that proposals reduce the impact of noise associated with the motor circuit and aerodrome, and Policy 33, which requires that proposals provide a high quality living environment.

Agent of Change – risk to operations at The Estate

64. Paragraph 187 of the Framework introduces the concept of the 'agent of change' principle. The key test is that existing businesses should not have unreasonable restrictions placed on them as a result of new development. In this instance, the two relevant businesses are the Goodwood Motor Circuit and Goodwood Aerodrome.

Noise

65. There have been relatively few complaints over the past few years regarding noise from The Estate, and many of the complaints have come from Summersdale, to the west of the aerodrome, and from a few households within that area. Concern has been raised that new residents to the area would not be as accommodating regarding noise disruption as existing residents. However, the existence of The Estate would be known to any potential future purchasers – Goodwood is a famous venue. I view it likely that the majority of future residents would be aware of the potential of noise pollution from events and activities at The Estate, and would factor that into their decision on whether or not to purchase a property. Also, as identified above, the proposal would provide satisfactory living conditions for future occupiers, with particular regard to noise from the aerodrome and circuit.

Aircraft safety

66. The proposal would involve building underneath the southern training helicopter circuit. This would reduce the amount of open land which could be used by helicopter pilots when making an emergency landing. Evidence was provided at the inquiry from an aircraft safety expert. He presented circles of possible landing points for helicopters in an emergency situation. Under cross-examination, it was revealed that in any individual given circumstance the area would be smaller and cone-shaped or similar, based on prevailing wind conditions and other factors.

67. However, the evidence from the only aircraft safety expert witness at the inquiry was that the appeal site would not prevent safe landing options due to remaining safe landing options and the 'stepping stones', where the pilots identify the next emergency landing spot they would head to if necessary, that are part and parcel of how a helicopter pilot would react to such a situation. On this basis, it has been demonstrated that the proposal would not lead to unacceptable safety concerns that could lead to the closure or re-routing of the southern helicopter circuit. The appellant provided an alternative route for the southern helicopter circuit, but this would likely not be required because of my conclusions on noise and safety above.

68. Some concern has also been raised by pilots in written submissions about the safety of taking off or landing in a fixed-wing aircraft However, there are agreed Noise Preferred Routeings (NPRs) for aircraft, as set out in the existing s52 agreement[10]. The NPRs for runways 06, 10 and 28 are to the centre and

[10]

north of the aerodrome, away from the appeal site. The NPR for runways 14/32 is closer to the appeal site, but does not fly over it, and is of approximately equal distance to Phase 2. I do not, therefore, consider this to be a safety risk.

Air displays

69. Air displays are part of The Revival. Restrictions imposed in 2015, following the Shoreham accident, have curtailed the displays, but The Estate has confirmed that they still form an important part of the entertainment offering at The Revival. I have no reason to doubt this. However, the air displays follow a circular route that would not be affected by the appeal site, as confirmed in cross-examination. The practice air displays potentially follow a route that includes flying over the appeal site, and may therefore need to be diverted.

70. However, even if small changes were required to the air display routes, there is no compelling evidence before me that this could not be accommodated, or that any changes would result in any meaningful diminution in the quality of The Revival's entertainment and overall offer. The key test in paragraph 187 of the Framework is that there should not be any unreasonable restrictions on operations, and I do not view any potential small alterations to the air display routes, if there would be any at all, as an unreasonable restriction.

Events traffic

71. One of the four key entrance routes to the major events at The Estate is along Madgwick Lane. It is possible that the development proposed could cause some disruption to this route through vehicles exiting the appeal site and in particular wanting to turn right, across traffic, to access Chichester and other destinations in that direction. However, traffic is carefully managed for the major event days, including a Traffic Management Scheme to be agreed with the Council. Ensuring that traffic from the appeal proposal is effectively controlled could form part of that scheme in the future, and this could be secured by condition. In particular, the amount of disruption likely to be caused would, it seems to me, be self-limiting, because future residents may well be unlikely to want to travel when the traffic is at its busiest on major event days.

72. Overall, there could be some negative effects on traffic on major event days, and I do not deny the importance of this to the smooth running of the event and to The Estate. However, it would likely be minor. The proposal would not therefore materially effect of the efficient operation of the highway network in the vicinity of the appeal site with regard to major events traffic.

Overall

73. In light of my findings above, I consider that the proposal would not create potential future risks to the reasonable operation of the aerodrome or the motor racing circuit, and conclude that the proposal complies with paragraph 187 of the Framework.

OTHER MATTERS

Housing land supply

74. The Council claims it can demonstrate a five-year supply of deliverable housing sites, at 5.3 years. The appellant claims the true figure is 3.71 years.

75. My attention has been drawn to two recent appeal decisions, Refs APP/L3815/W/21/3284653 and APP/L3815/W/21/3286315, both of which assess housing land supply. I have taken account of these decisions as appropriate in my assessment below, but I have primarily relied upon the evidence before me as submitted for this appeal.

Need

76. Need has been calculated using the 'standard method' because the LP is more than five years old, as set out in paragraph 74 of the Framework. The 'standard method' calculation is 759 dwellings per annum (dpa), a significant increase from the LP target of 560-575 dpa.

77. However, a discount needs to be made for the housing to be provided in the part of the District covered by the South Downs National Park. I conclude the discount should be 125 dpa, based on the 125 dpa need figure for the Chichester part of the national park as identified in the South Downs National Park Housing and Economic Development Needs Assessment, September 2017. This is the only figure before me in relation to housing need in the National Park, as disentangled from delivery and 'policy on' considerations. This equates to an overall need of 634 dpa. A 5% buffer is then required, which is uncontested in principle, equating to a final annualised requirement of 666 dpa. I note that this is either the same, or very similar (670 dpa), to the conclusions on need in the two recent appeal decisions.

Supply

78. The delivery of small sites (up to 9 dwellings) is considered as a combination of permissions and a windfall allowance. A significant amount of data and varying supply figures have been provided in relation to these two supply factors. However, critically, the Council and the appellant are in agreement that the historic delivery rate is 64 dpa. This is then raised to 71 dpa by removing the two highest and lowest completion years from the past 10 years. The appellant contests the logic of this approach, but ultimately adopts the figure, which I therefore take to be common ground.

79. The Council has partially double counted permissions and windfall provision, resulting in more than 71 dpa being included in the supply, without a robust evidence base. The combined contribution from these two factors should be 71 dpa equating to 355 dwellings overall versus the 459 dwellings as included in the Council's supply. Therefore, 104 dwellings need to be removed from the supply. I am mindful, in this regard, of paragraph 71 of the Framework, which requires compelling evidence that windfall sites can be a reliable source of supply.

80. The Council's supply also includes a windfall allowance for large sites, at 280 dwellings in total. This primarily relies on unallocated greenfield sites coming forward, 'other' sites which are not defined in detail, or brownfield 'residential' sites. Any such sites would be in the housing land supply allocation if known. Therefore, they are, by definition, unknown. They are also likely to be difficult to bring through to delivery within five years because obtaining planning consent is likely to be difficult, and/or potential land ownership and other practical constraints on brownfield sites in particular. I highlight again here paragraph 71 of the Framework. The 280 dwellings should therefore be removed from the five year supply.

81. There is one disputed large site under construction – Centurion Way. Evidence has been provided[11] that average delivery rates for sites of this size lie between 52 and 68 dpa. The Council has assumed 100 dpa for the purposes of their housing land supply calculation. This has not been supported by site specific justification or historic build out rates. The appellant has suggested an alternative build out rate of 80 dpa. This is possibly still too high but I am happy to adopt the lower figure as specified by the appellant as a reasonable assumption. 100 dwellings should therefore be removed from the supply, ie a reduction of 20 dpa for each of the five years.

82. The definition of 'deliverable' in the Framework is clear that sites with outline permission can only be considered where there is clear evidence that housing completions will begin on-site within the five-year period. The agreed base date is 31 March 2021. My approach is to use this date as the 'cut-off' point at which a site can be included in the potential supply, but to have regard to evidence up to the present day for those sites which make it through the 'cut-off'. This ensures that there is consistency in using the same deadline for both supply and need sides of the equation, whilst not ignoring relevant information which may contribute to 'clear evidence' on the progress of the sites. There are four disputed sites, which I take in turn below:

- Manor Road, Selsey – the 74 dwellings in Phase 2 only have outline permission and the reserved matters application has not yet been submitted. I acknowledge that the applicant is a major housebuilder and is progressing with Phase 1 of the development. However, this does not constitute clear evidence that Phase 2 will proceed in a timely manner and will contribute to the five year supply. The 74 dwellings from this scheme should therefore be removed from the supply;

- Tangmere SDL – an outline planning application has been submitted and the Council resolved to grant permission on 31 March 2021. However, this has yet to be issued awaiting the signing of the s106 agreement. This is because of ongoing negotiations surrounding the sale of some of the land on the application site to the developer, Countryside Properties. This is a complex negotiation, potentially also including CPO powers but likely as a last resort. The evidence before me is that this is a fractious process with significant areas of dispute and unresolved issues, particularly regarding the 'ransom value' of the land to be sold. There is therefore no clear evidence that 180 dwellings from this scheme will come forward within the five year period and they should be removed from the supply;

- Loxwood Farm Place, Loxwood – a reserved matters application has been submitted. However, it has not yet been determined and one of the factors that still needs to be agreed is in relation to nutrient neutrality in response to a standing objection from NE. This on its own is a potentially difficult obstacle to overcome and there is no certainty about the timescales that may be involved in securing reserved matters consent. The 24 dwellings should therefore be removed from the supply; and,

- Cooks Lane, Southbourne – the evidence before me as part of the inquiry is that a reserved matters application has not yet been

[11] Figure 7, Start to Finish Second Edition, February 2020 and pages 12-13, Chichester District Council 5YHLS Critical Friend Review, dated September 2021, both by Lichfields

submitted. However, the Inspector for the appeal decision[12] at Land to the West of Church Road, West Wittering, dated 22 April 2022, stated that this reserved matters application has now been submitted, by a major housebuilder. The appeal decision was issued after the evidence was submitted in relation to this inquiry, and I see no reason to doubt its accuracy. Given this active interest and progress for the scheme, there is a reasonable prospect of delivery within five years and the inclusion of this site within the supply is justified.

Conclusion

83. Taking all of the above together, I calculate the supply of deliverable dwellings to be 3,536 (the Council's figure) minus 762 dwellings as set out above, leaving 2,774 dwellings. The need is 3,330 dwellings, based on my conclusion of 666 dpa. The extent of the shortfall is therefore 556 dwellings. This equates to a housing land supply of some 4.17 years.

Neighbour Comments

84. Several letters of objection have been received, from local residents and also other interested parties, including Lavant Parish Council, Westhampnett Parish Council, and The Chichester Society. They raised many of the same concerns as assessed above. In addition, concerns were raised regarding: the accuracy of flood maps; groundwater and sewerage capacity; the impact on local infrastructure eg schools; the free flow of traffic, particularly on Madgwick Lane and access to the Rolls Royce Factory; highway safety on Madgwick Lane; pollution and health effects from increased traffic; the potential for the future drivers from the proposed development to cut through Madgwick Park; increased surface water run-off; removal of productive agricultural land; that local residents have not been properly consulted; occupants of the development to the east stating that they received reassurance from the estate agent and/or developer when purchasing their properties that the appeal site would not to be developed; loss of unspoilt views across the appeal site; Westhampnett is already over-developed and has taken more than its fair share of housing allocations; and, harm to privacy of residents at Old Place Farm.

85. I have taken all of these factors into consideration. Most are not in dispute between the main parties. Most were addressed in the officer's report, with the Council concluding that there would be no material harm in these regards. The appellant has submitted detailed technical information in relation to flooding, drainage, and highways. West Sussex County Council, in its capacity as the Lead Local Flood Authority and Highways Authority, has not objected to the proposal subject to conditions. Southern Water has likewise not objected to the proposal with regard to surface water drainage or flooding. All statutory consultation was undertaken by the Council and the appellant and the large numbers of objections make it clear that the majority of neighbouring residents are aware of the proposal. No substantiated evidence has been submitted that leads me to any different view. There is no 'right to a view' through the planning system, and advice provided by third parties during the purchase of nearby properties is not a material planning consideration. The other points are addressed in my reasoning above, could be addressed by conditions or are dealt with by the planning obligations secured.

[12] Paragraph 35, appeal Ref APP/L3815/W/21/3286315

PLANNING OBLIGATION

86. The s106 secures 30% of the total dwellings to be affordable housing, or a commuted sum payment *in lieu*. The full details of the size, tenure, mix and location of the affordable dwellings is to be agreed through an Affordable Housing Strategy.

87. The s106 secures the provision of at least 1.08 hectares (ha) of open space, a 5.15 ha area to be managed as natural/semi-natural meadow and/or grassland including a buffer area adjacent to the river, and a 0.13 ha play area. A Landscape Management and Maintenance Plan for all of these areas is also secured, as well as arrangements for a management company to secure the ongoing maintenance of these areas and any unadopted roads.

88. A contribution towards works to the A27 road to improve the Chichester Bypass Junction, as identified as necessary to mitigate traffic generation from the proposal by Highways England, is secured.

89. The provision of an education pack is secured, to be given to first future occupants providing details of how to mitigate the impact of their activities on the Chichester Harbour Special Protection Area (SPA). A recreation disturbance mitigation contribution is also secured. These are necessary to ensure that any effects on the SPA from increased recreation from future occupants are mitigated.

90. West Sussex County Council, related to the highways works monitoring, and Chichester District Council monitoring fees are secured.

91. The highways works necessary to create the access to the site from Madgwick Lane, including road safety audits, are secured.

92. A Travel Plan, a Travel Plan co-ordinator, and a Travel Plan monitoring fee, are all secured and would encourage modes of travel other than the car and the lifetime implementation of the Travel Plan.

93. Two alternative waste water treatment strategies are set out. The preferred option is to use Tangmere Waste Water Treatment Works. In that instance, nitrate mitigation measures would not be required. The alternative option is to use Lavant Waste Water Treatment Works. In that instance, the s106 secures nitrates mitigation measures for a period of 80 years, comprising tree planting on a specified area of land. The DoV secures two areas of land totalling 2.56 ha, to the north and east of the appeal site. Both are under the control of the appellant, with both to be planted with trees at a minimum of 20% canopy cover.

94. Overall, the obligations set out in the s106 and the DoV are directly related to the development, fairly and reasonably related in scale and kind to the development, and are necessary to make the development acceptable in planning terms.

CONDITIONS

95. Standard reserved matters submissions and timescales, and commencement timescale, conditions are necessary. In addition, a condition specifying the detail expected with future reserved matters submission(s), including housing mix with the first submission, is necessary to ensure the appropriate details are

submitted in support of future reserved matters submission(s) so as to protect the character and appearance of the area, highway safety, and to ensure biodiversity enhancement.

96. A condition specifying the relevant drawings provides certainty. I have only included the drawings showing details of access, which is applied for in full, and parameters plans as are required to control the future reserved matters submissions. The other submitted drawings are not listed because they are illustrative or relate to technical matters the detail of which will come forward as part of future reserved matters and other condition discharge submissions.

97. A Phasing Plan condition is necessary to confirm what the phases of the development will be and to provide a framework for the submission of details through other conditions.

98. A condition requiring a Written Scheme of Archaeological Investigation is necessary to secure appropriate protection and archaeological work.

99. **Conditions requiring details of the landscaping and children's play area, buffer** zone by the River Lavant, tree protection measures, a Landscape and Environmental Management Plan, a Tree Protection Plan and an Arboricultural Method Statement, are necessary to protect the character and appearance of the area and to ensure biodiversity enhancement, both at construction and through ongoing management and maintenance.

100. Contamination conditions are necessary to secure appropriate protection and remediation measures.

101. Conditions requiring a Construction and Environmental Management Plan and restricting construction hours are necessary to control the effects of construction on the living conditions of nearby occupiers, highway safety, traffic congestion, and the character and appearance of the site during construction, including specific controls with regard to the potential effect on operations and access to The Estate on major event days.

102. A condition requiring details in relation to air quality is necessary to protect the health and well being of the future occupants of the development.

103. Conditions requiring a scheme for the protection of the development from external noise, including layout and high level considerations prior to commencement and detailed design considerations prior to development above ground level, are necessary to ensure that the proposal suitably mitigates any noise effects from the operations of The Estate on the future occupiers. I have not adopted the full suggested wording of The Estate for these conditions, or used precise dB levels to be attained, because the Council would retain full control through the discharge of the conditions to ensure that suitable mitigation is secured and suitable noise levels achieved.

104. A condition requiring details of surface water drainage is necessary to ensure appropriate drainage works are completed to protect against unacceptable levels of surface water flooding.

105. A condition requiring details of sewage disposal is necessary to protect the living conditions of the future occupiers of the development and to ensure that sufficient sewage capacity and connections are secured, in accordance with the Strategic Infrastructure vision in the LP.

106. Conditions requiring details of the construction of the main access road, and the relevant driveways of each dwelling, and the construction of the agricultural buildings access, and specific highways details at the junction of Madgwick Lane and Old Place Lane, are necessary to ensure that no dwelling is occupied until adequate vehicular access has been provided, and to ensure highway safety.

107. A condition requiring compliance with the ecological reports is necessary to protect and enhance biodiversity.

108. A condition requiring a Sustainable Design and Construction Statement is necessary to mitigate carbon emissions and water usage, in accordance with Policy 40 of the LP.

109. A condition requiring details be provided to the first occupants of each dwelling of the events to be held at Goodwood Motor Circuit was requested by The Estate. However, the circuit is a well known local feature and business and it is highly likely that future occupants would be aware that the circuit exits and that major events are held there. I do not, therefore, view this condition as necessary to make the proposed development acceptable.

Pre-commencement

110. The pre-commencement conditions are necessarily worded as such, because a later trigger for the submission and/or implementation would limit their effectiveness or the scope of measures which could be used.

PLANNING BALANCE AND CONCLUSION

111. In the section that follows, I have adopted the following ascending scale in terms of weighting – limited, moderate, significant, substantial.

112. It is proposed to provide up to 165 dwellings. The housing land supply of the Council is 4.17 years, below the required five years supply. The need for housing is therefore pressing. Providing more housing is one of, if not the most, important aspirations of local and national planning policy. I therefore place substantial positive weight on the proposed market housing.

113. Up to 50 of the proposed 165 dwellings would be for affordable housing. The Council is currently exceeding its affordable housing targets as set out in the LP, but this is against the agreed to be out-of-date requirement of 182 dpa. The more up-to-date Chichester Housing and Economic Development Needs Assessment 2020 finds an affordable need of 385 dpa, against a supply of 255 dpa, leaving a net shortfall of 130 dpa. That there is a shortfall is evidenced in the fact that the Council has 1,226 households on the waiting list for affordable housing and that the affordability ratios have worsened over the past 2 years, whereas the rest of the south east of England has remained stable. There is therefore an acute requirement for affordable housing and I place substantial positive weight on the proposed affordable housing.

114. The proposal includes substantial areas of landscaped public open space, and a play area. These areas and facilities would be available for use by the public, as well as the future occupants of the development. A new view of the cathedral would also be created, which would be both a heritage and character and appearance benefit of the proposal. I place moderate positive weight on these factors.

115. A biodiversity net gain of 83% for general habitat and 300% for hedgerow habitat would be achieved. This is possible because the appeal site is currently agricultural land and, in common with much agricultural land, it offers relatively low existing biodiversity value. The proposal would introduce new native hedgerows, tree planting, management of the River Lavant to enhance existing habitats, and would provide bat boxes. Paragraph 174 of the Framework requires net gains for biodiversity, but does not identify a specific figure. The Environment Act 2021 indicates a likely future requirement for a biodiversity net gain of 10%. The proposed biodiversity net gain therefore goes significantly beyond policy requirements. I place significant positive weight on this factor.

116. There would be economic benefits in the short term through construction employment, and in the longer term through expenditure by future occupants in the area. As directed by paragraph 81 of the Framework, I attribute significant positive weight to the proposed employment generation that would support economic growth and productivity.

117. Proposing housing on the appeal site conflicts with the masterplanning of the SDL and would be physically divorced from the surrounding built-up areas. There would also be harm to the character and appearance of the area, including to landscape character. However, these harms would be tempered because the appeal site sits in an area with an edge-of-settlement, hinterland character, with residential and commercial development close by, and because the separation to the existing development to the east would be a managed landscaped area, rather than open, agricultural land.

118. Importantly, the identified deficit in housing land is only likely to be rectified through the granting of permission for housing on sites not identified in the LP, such as the appeal site. In addition, the LP was adopted on the basis of a housing need figure of 435 dpa, even though the objectively assessed need was 505 dpa, due to an insufficient evidence base in relation to transport. The LP Inspector therefore adopted the LP at the lower figure but only subject to an updated transport study being produced and the LP being reviewed within five years. The LPA are currently about three years behind schedule on this review. The policies in the LP affected by this awaited review, and in particular those relating to the location of housing, such as Policy 17 and the SDL, therefore carry reduced weight. The acceptability, or otherwise, of a proposal in other regards forms part of the overall planning balance, as I consider in this section, and should not be used to increase the weight to be attached to the conflict with the masterplanning of the SDL. Consequently, I only place moderate negative weight on these factors.

119. The proposal would introduce a new, publicly available view of Chichester Cathedral, a grade I listed building and one of the key defining features of the city. However, whilst this is a benefit of the proposal, I attribute to it limited positive weight because a mid-distance view of the cathedral with Chichester in the foreground is quite a common view from numerous locations.

120. The proposal would erode the setting of the Old Place Farmhouse historic complex, harming its special interest and heritage significance. I assess this level of harm to be at the lower end of less than substantial. I do not seek to set the benefit of the new view of the cathedral against the identified harm to the Old Place Farmhouse complex within the context of establishing if, overall, there remains less than substantial harm to heritage assets. The Framework

makes it clear that harm should be assessed against a heritage asset, not assets collectively. As directed by paragraph 199 of the Framework, I place great weight on the harm to the Old Place Farmhouse complex, limited though it may be.

121. The public benefits of the proposal include the provision of up-to 165 homes, including affordable housing, and the creation of significant areas of public open space, amongst others. These benefits clearly outweigh the lower end of less than substantial harm to the heritage asset that I have identified and the proposal complies with paragraph 202 of the Framework.

122. Subject to relatively minor mitigation measures that could be secured by condition, the proposal would provide satisfactory living conditions for future occupiers, with particular regard to noise from the aerodrome and motor circuit. This factor weighs neutrally in the planning balance.

123. Subject to control through traffic management that could be secured by condition, the proposal would not materially effect of the efficient operation of the highway network in the vicinity of the appeal site with regard to major events traffic. Nor would the proposal risk any unreasonable changes to the operation of The Estate more widely. This factor weighs neutrally in the planning balance.

124. As the housing land supply is 4.17 years and none of the assets of particular importance as set out in the Framework[13] provide a clear reason for refusing the development proposed, paragraph 11d, and the 'tilted balance', is therefore engaged. For the appeal scheme, the adverse impacts I have identified are moderate harm to character and appearance, conflicts with wider masterplanning and physical and visual integration, and harm to the Old Place Farmhouse complex. Taken together, these would not significantly and demonstrably outweigh the many benefits, in particular the provision of housing, including affordable housing, and the creation of new areas of publicly accessible open and play space including significant biodiversity net gain.

125. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

O S Woodwards

INSPECTOR

[13] At paragraph 11di and footnote 7

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Parkinson, of Counsel. He called:

Mike Stigwood MIOA MCIEH FRSPH	Director, MAS Environmental Ltd
Robyn Butcher CMLI	Director, Terra Firma
Tim Townsend	West Sussex County Council
Andrew Robbins MRTPI	Senior Planning Officer, Chichester District Council
Alex Roberts MRTPI	Director, Lambert Smith Hampton

FOR THE APPELLANT:

Andrew Tabachnik QC. He called:

Adam Ross MRTPI	Founding Director, Nexus Planning
Clare Brockhurst FLI	Director, Leyton Place Ltd
Dr Chris Miele MRTPI IHBC RHS FSA	Senior Partner, Montagu Evans LLP
Richard Stacey FCIHT CMILT	Managing Director, Evoke Transport Planning Consultants Ltd
Vernon Cole CEng MIOA FIMechE IIAV	Acoustic Consultant
Mark Prior FRAeS	Owner, Mark Prior Consulting Ltd
Steven Brown MRTPI	Principal Planner, Woolf Bond Planning

FOR THE ESTATE (RULE (6) PARTY):

Russell Harris QC and Stephen Whale, of Counsel. They called:

Haydn Morris MRTPI	Owner, HMPC Ltd
Lloyd McNeill	Estate Managing Director, The Estate
Mark Gibb	Aviation Operations Manager, The Estate
Gabriel Ludlow	Motor Circuit Operations Manager, The Estate
Adrian Sargent	Chief Financial Officer, The Estate
Rebecca Knight CMLI	Director, LUC
Richard Greer FIA	Director, Arup
Dr Nicholas Doggett FSA MCIfA IHBC	Managing Director, Asset Heritage Consulting
Alexander Welch CTPP MCIHT MTPS	Transport Planner, Arup

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

ID1	Opening Submissions by the Appellant
ID2	Opening Submissions by the Council
ID3	Opening Submissions by The Estate
ID4	Lavant Valley Linear Greenspace Plan
ID5	Green Route Site Plan Ref 5753/GI/08
ID6	Chichester District Council Local Plan Examination - Statement for Matter 7: Strategic Development Locations (Policy 17 Westhampnett/North East Chichester SDL), dated 5 November 2014, by Nexus Planning
ID7	Inspector's Site Visit Plan
ID8	Decision Notice Ref CH/20/01826/FUL, dated 5 March 2021
ID9	Appeal Decision Ref APP/L3815/W/21/3270759, dated 5 July 2021
ID10	Planning Noise Assessment – Phase 2 of the Westhampnett/North East Chichester Strategic Development Location (Land East of Graylingwell), by Cole Jarman, dated 23 August 2016
ID11	Appeal Decision Ref APP/Q3115/W/20/3265861, dated 25 June 2021
ID12	Planning Noise Assessment – Land between Stane Street and Madgwick Lane, by Cole Jarman, dated 7 October 2015
ID13	Goodwood Circuit Site Boundary Plan Ref 165302AC2 Figure 1
ID14	Pumping Station at Land at Madgwick Park, Westhampnett Land Registry Title
ID15	Noise Impact Assessment – Proposed Development at Madgwick Lane, Westhampnett, by 24Acoustics, dated 23 April 2018
ID16	Survey of Noise Attitudes 2014: Aircraft Noise and Annoyance, Second Edition, by the UK Civil Aviation Authority, published 2021
ID17	Instructions for Matt Prior Expert Witness Support, dated 21 April 2021
ID18	Power of Attorney in respect of s106 Agreement relating to land at Old Place Farm, north of Madgwick Lane, Chichester, dated 6 August 2021, David Charles Heaver
ID19	Power of Attorney in respect of s106 Agreement relating to land at Old Place Farm, north of Madgwick Lane, Chichester, dated 6 August 2021, Eurequity IC Limited
ID20	Revised noise predictions of Appellant, by MAS Environmental, dated 29 July 2021
ID21	South Downs National Park Authority Objection Letter, dated 6 August 2021
ID22	Map of location of Carne's Seat
ID23	Arup Letter dated 21 July 2021 – update on noise assessment
ID24	S106 Planning Agreement, dated 29 September 2021, between Chichester District Council, West Sussex County Council and David Charles Heaver and Eurequity IC Limited
ID25	Email from Chichester District Council regarding monitoring fees, dated 24 December 2020
ID26	Noise complaints from Goodwood Motor Circuit 1994 to 2007 Schedule
ID27	Decision Ref WH/13/00108/FUL, dated 20 March 2013, for the Goodwood Motor Circuit
ID28	Chris Miele Proof of Evidence Updated NPPF References Schedule
ID29	Richard Greer Qualifications and Experience
ID30	Appellant's Closing Submissions, by Andrew Tabachnik QC, dated 14 September 2021

ID31	Closing Submissions on behalf of the Goodwood Estate, by Russell Harris QC and Stephen Whale, dated September 2021
ID32	Closing Comments of Chichester District Council, by Andrew Parkinson, dated 14 September 2021
ID33	Chichester Local Plan Area – Five Year Housing Land Supply 2021-2026 Updated Position at 1 April 2021
ID34	Chichester District Council 5YHLS Critical Friend Review, by Lambert Smith Hampton, dated September 2021
ID35	Rebuttal Statement Five Year Housing Land Supply, by Woolf Bond Planning, dated December 2021
ID36	Start to Finish - What factors affect the build-out rates of large scale housing sites? Second Edition, by Lichfields, dated February 2020
ID37	Email from Kean Elliott of ECE Architecture to Chichester District Council, dated 26 November 2021, agreeing an extension of time for determining the planning application at High Street, Loxwood
ID38	Final Reply Statement on Five Year Housing Land Supply Matters, by Woolf Bond Planning, dated January 2022
ID39	Email from Haydn Morris, dated 7 January 2022, regarding housing land supply
ID40	Note on The Council's Reliance on Sites Beyond Defined Settlement Policy Boundaries in Seeking to Demonstrate a Five Year Supply of Deliverable Housing Land, by Woolf Bond Planning, dated 27 January 2022
ID41	Appeal Decision Ref APP/L3815/W/21/3286315, dated 22 April 2022
ID42	Comments Upon the Housing Land Supply Findings in the Appeals at Raughmere Drive, Lavant (11 April 2022) (PINS Ref: 3284653) and Church Road, West Wittering (22 April 2022) (PINS Ref: 3286315), by Woolf Bond Planning, dated April 2022
ID43	Appellants' Further Submissions in relation to Recent Appeal Decisions, by Nexus Planning, dated April 2022
ID44	Appeal Decision Ref APP/L3815/W/21/3284653, dated 11 April 2022
ID45	Email from Haydn Morris, dated 25 April 2022

ANNEX C: SCHEDULE OF PLANNING CONDITIONS

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

2) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: 6216/L001, P001, P002, R-20-0033-001E, and 004A.

5) As part of the first reserved matters application, a Phasing Plan identifying the Phases for the development hereby approved shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall proceed in in accordance with the approved Phasing Plan.

6) The reserved matters submission(s) for each Phase shall include, but not be limited to, the following details:
   a) Palette of materials;
   b) Housing mix (including size of dwellings in terms of bedrooms);
   c) Architectural, character and landscape approach;
   d) Existing ground levels and finished floor levels;
   e) Location of fire hydrants;
   f) External lighting;
   g) Refuse storage; and,
   h) Vehicle and cycle parking.

   In respect of matter b) 'housing mix', the details shall be submitted with the first reserved matters submission.

Pre-commencement

7) Prior to the commencement of development, a Written Scheme of Archaeological Investigation has been submitted to, and approved in writing by, the local planning authority. The scheme shall include proposals for:
   a) desk-based assessment of the previous results;
   b) the programme and methodology of site investigation and recording;
   c) the programme for post investigation assessment;
   d) the provision to be made for analysis of the site investigation and recording;
   e) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
   f) the provision to be made for archive deposition of the analysis and records of the site investigation; and,

g) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Development shall be carried out in accordance with the approved Written Scheme of Investigation.

8) No development shall commence until a scheme for the provision of white lining, road hatching or kerb build out, cycle markings, and associated signage at the junction of Madgwick Lane with Old Place Lane, as generally shown on drawing Ref R-20-0033-025A, has been submitted to, and approved in writing by, the local planning authority. The white lining, hatching or kerb build out, cycle markings, and associated signage at this junction shall thereafter be carried out in accordance with the approved details prior to first occupation of any dwellings.

9) No development shall commence until details of the location, extent and layout (together with an implementation specification and delivery programme) for the amenity open space, natural/semi natural green space and equipped children's area have been submitted to, and approved in writing by, the local planning authority. The amenity open space, natural/semi natural green space and equipped children's area shall be provided in accordance with the approved details in accordance with the approved delivery programme.

10) No development shall commence until an assessment of the risks posed by any contamination has been submitted to, and approved in writing by, the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

11) No development shall commence until a scheme for the protection of the development, both with regard to external and internal areas, from external noise has been submitted to, and approved in writing by, the local planning authority. The scheme shall include:
    a) plans, drawings and a description of the site;
    b) an assessment of the existing noise levels relevant to the site; and,
    c) an explanation of the principles adopted in the devising of mitigation measures, including appropriate site design and layout.

12) No development shall commence on a Phase where (following the risk assessment submitted pursuant to condition 9) land affected by contamination is identified within that Phase which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme for such land has been submitted to, and approved in writing by, the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as

contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The remediation shall be carried out in accordance with the approved remediation scheme.

13) No development shall commence on any Phase until a Construction and Environmental Management Plan (CEMP) for that Phase, comprising a schedule of works and accompanying plans for that Phase has been submitted to, and approved in writing by, the local planning authority. The CEMP for each Phase shall accord with the method of works and mitigation measures detailed in the recommendations section of the Ecological Appraisal by Baker Consultants (October 2020), and the recommendations of the Badger Mitigation Strategy (January 2021). Each CEMP shall also include (but not be limited to) details of:
    a) the anticipated number, frequency and types of vehicles to be used;
    b) the location and specification for vehicular access;
    c) the provision made for the on-site parking of vehicles by contractors, site operatives and visitors;
    d) the provision for on-site loading and unloading of plant, materials and waste;
    e) the storage of on-site plant and materials;
    f) the erection and maintenance of security hoarding;
    g) the location of any site huts/cabins/offices;
    h) the works required to mitigate the impact of construction traffic upon the public highway;
    i) measures to control the emission of dust and dirt;
    j) measures to control the emission of noise;
    k) details of all proposed external lighting;
    l) details for any on-site storage of fuel and chemicals;
    m) measures to reduce air pollution;
    n) management of construction waste;
    o) the contact details of a named person to deal with complaints; and,
    p) measures to accord with the mitigation measures detailed in the recommendations section of the Ecological Appraisal by Baker Consultants (October 2020) and the findings and recommendation in the Badger Mitigation Strategy (January 2021), as they relate to construction.

    The approved CEMP shall be adhered to throughout the entire construction period of that Phase.

14) Construction of the development shall take place only between the hours of: 07:30 hours and 18:00 hours Mondays to Fridays; 07:30 hours and 13.00 hours on Saturdays; not at all on Sundays or Public Holidays or the public attendance days for major events operating within the locality.

15) No development shall commence on a Phase until a scheme for the protection of the retained trees (the Tree Protection Plan) as part of that Phase and the appropriate working methods (the Arboricultural Method Statement) in accordance with paragraphs 5.5 and 6.1 of British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to, and approved in writing by, the local

planning authority. Each Phase of the development shall be carried out in accordance with the approved Tree Protection Plan for that Phase.

16) No development shall commence on any Phase above ground level until a management plan demonstrating how the mitigation measures relevant to that Phase identified in Tables 6.1 and 6.2 of the Air Quality Assessment produced by Brookbanks Consulting dated October 2020 will be implemented has been submitted to, and approved in writing by, the local planning authority. Each Phase of the development shall be undertaken in accordance with the approved implementation of the management plan for that Phase.

17) No development shall commence above ground level on any Phase until a scheme for the protection occupiers of the dwellings in that Phase from external noise has been submitted to, and approved in writing by, the local planning authority. The scheme shall follow the 'good acoustic design' principles set out in Planning Practice Guidance – Noise, and shall set out how the adverse effects of Goodwood noise (motor circuit and aerodrome activities) on the approved development (external amenity space as well as inside spaces) are minimised as far reasonably practicable by way of mitigation. Development shall be carried out in accordance with the approved scheme with any measures provided as part of the scheme to be retained in perpetuity.

Pre-occupation

18) Upon completion of any remediation works pursuant to the requirements of condition 11, a verification report by a suitably qualified contaminated land practitioner shall be submitted to, and approved in writing by, the local planning authority before any dwelling on land upon which contamination is found is first occupied.

19) No dwelling shall be occupied until surface water drainage works applicable to that Phase have been implemented in accordance with details that shall first have been submitted to, and approved in writing by, the local planning authority. The drainage details shall include, but not be limited to:
    a) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the part of the site relevant to that Phase and the measures taken to prevent pollution of the receiving groundwater and/or surface waters, and measures to prevent surface water draining onto the public highways and pollution of the receiving watercourse;
    b) a timetable for its implementation including any phased implementation; and,
    c) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme.

Development is to be carried out in accordance with the approved details and timetable.

20) No dwelling hereby permitted shall be occupied until works for the disposal of sewage have been constructed in accordance with details that have first been submitted to, and approved in writing by, the local planning authority.

21) No dwelling shall be occupied until the first 20 metres of the access shown in approved Drawing No. R-20-0033-001 Rev.E has been constructed to its wearing course, and the private vehicular access serving the relevant dwelling has been constructed to at least base course level.

22) No dwelling shall be occupied until such time as the approved vehicular access serving the agricultural buildings located to the west of the site and the pedestrian and cycle access works to Stocks Lane shown in approved Drawing No. R-20-0033-004 Rev.A have been constructed in accordance with the approved drawings.

23) No dwelling shall be occupied until a scheme for the delivery of a buffer zone alongside the River Lavant has been submitted to, and approved in writing by, the local planning authority. The buffer zone shall consist of natural/semi-natural greenspace, and shall be kept free from built development including lighting, formal hard-surfaced footpaths, domestic gardens and formal landscaping. The scheme shall include:
    a) details of the proposed planting scheme;
    b) a delivery and implementation programme; and,
    c) details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term.

    The development shall be delivered in accordance with the approved scheme.

24) A Landscape and Environmental Management Plan (LEMP) for the development shall be submitted with first application for Reserved Matters. The LEMP shall include details of ecological enhancements and a timetable for their implementation (taking account of the proposed Phasing for the development) and ongoing management and maintenance including:
    a) replacement tree planting at 2:1 ratio;
    b) areas of wildflower grassland planting;
    c) infilling gaps in tree lines or hedgerows with native species;
    d) the provision of bat brick/boxes to be installed into the dwellings and bat boxes/nest boxes to be installed on retained trees ;
    e) the provision of bird bricks/boxes installed into the dwellings and around the site;
    f) the provision and retention of 2 no. hedgehog nesting boxes;
    g) the provision of log piles;
    h) gaps to be provided under boundary fences to allow free movement of hedgehogs and small mammals across the site; and,
    i) retention of a green corridor along the River Lavant with ecological enhancements across the area; and,
    j) Dark corridors within the lighting scheme to ensure there are areas of no lighting which wildlife can move between.

    Each Phase of the development shall be carried out in accordance with the approved LEMP.

25) The development hereby permitted shall be carried out in accordance with the method of works and mitigation measures detailed in the recommendations section of the Ecological Appraisal by Baker Consultants (October 2020) and the findings and recommendation in the Badger Mitigation Strategy (January 2021). The measures provided as part of the scheme are to be retained in perpetuity.

26) A Sustainable Design and Construction Statement shall be submitted in writing for approval by the local planning authority with the first reserved matters application. The Statement shall include the following details:
    a) how the consumption of potable water should not exceed 110 litres per person per day;
    b) details for provision of charge points for electric vehicles; and,
    c) how the principles of the Sustainability and Energy Statement (October 2020) will be implemented.

    The development shall be carried out in accordance with the approved Statement.

============END OF SCHEDULE============

The Planning Inspectorate

Appeal Decision

Inquiry held on 31 July, 1, 30 and 31 August 2018

Site visit made on 2 August 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018

Appeal Ref: APP/W3520/W/18/3194926
Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Landex Ltd against the decision of Mid Suffolk District Council.
- The application Ref 2112/16, dated 2 May 2016, was refused by notice dated 6 September 2017.
- The development proposed is the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access at Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF in accordance with the terms of the application, Ref 2112/16, dated 2 May 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Revised Transport Assessment, a Planning Statement, a Contamination Report Part 1 and Part 2, an Ecology Report and Skylark Survey, a Flood Risk Assessment, a Foul and Surface Water Drainage Strategy, an Archaeological Report and a Landscape and Visual Appraisal.

3. At the Inquiry, a S106 Unilateral Planning Obligation was submitted by the Appellant.[1] This addresses all of the matters sought by the District and County Council in connection with the provision of community and other services arising from the development. The Planning Obligation is signed and dated 29 August 2018 and is a material consideration in this case. A Community Infrastructure Compliance Statement has been submitted by Suffolk County Council (SCC).[2] I return to the Planning Obligation later in this decision.

4. In addition, the Appellant submitted an Agreement with Flagship Housing Group Limited, conditional upon planning permission being granted, to enter into a Deed of Easement[3] to secure pedestrian and cycle access to the north

[1] APP8
[2] INQ5
[3] APP7

via Steeles Close. I shall return to the proposed easement later in the decision.

5. Statements of Common Ground (SoCG)[4] between the Appellant and SCC were agreed and have been signed by both parties in respect of: (i) Archaeology Matters; (ii) Drainage Matters; (iii) Early Years and Education Matters; and (iv) Highways and Transport. An additional SoCG on Planning Matters including Housing Land Supply was agreed between the Appellant and Mid Suffolk District Council (MSDC).

6. The main parties confirmed the List of Drawings on which the appeal should be determined and this is set out at Document APP1. The List of Drawings includes the House Types (1-9), a Site Location plan PA33, a Site Layout Plan PA31 Rev H and an Offsite Highways Works Plan 112/2015/04 - Rev.P2.

7. The revised National Planning Policy Framework (NPPF 2018) was published on 24 July 2018 shortly before the Inquiry opened and was addressed by participating parties both during the event and in closings. I have taken it in to consideration in my conclusions.[5]

8. Following the close of the Inquiry I sought the views of both main parties in respect of the revisions made to the PPG[6] on 13 September 2018 on Housing and economic land availability assessment. The comments received have been taken into account in my consideration of the appeal proposal.

Main Issues

9. In the light of the above I consider the main issues are:-

- the effect of the proposed development on highway and pedestrian safety;
- the impact of the proposed development on designated heritage assets including the setting of listed buildings and the character and appearance of the Woolpit Conservation Area; and
- whether the Council is able to demonstrate a five-year supply of deliverable housing sites sufficient to meet the full objectively assessed need (OAN) for housing and the implications of this in terms of national and local planning policy.

Reasons

The proposed development and appeal site

10. The appeal proposal is for 49 dwellings including 17 affordable dwellings (35%) together with a new access to be constructed to serve the development of Green Road. The dwellings would have associated garages and parking areas and pedestrian access from the site onto Green Road and pedestrian/cycle access to Steeles Close. There is a dedicated on-site play area proposed as well as extensive on-site open space and linking footpaths.

[4] INQ3
[5] Paragraph 212 Annex 1: Implementation
[6] Planning Practice Guidance

11. Woolpit is the third largest village in Mid Suffolk and has a good level of local services and infrastructure including health care, education and two business parks/employment sites and is designated as a Key Service Centre in the Council's settlement hierarchy. The appeal site is located on the southern edge of Woolpit village, to the south of its centre but with access to facilities which are in close proximity – a primary school, health centre, village shops and services are within walking distance.

12. Whilst, for planning policy purposes, the site is located in the designated 'countryside', its northern and eastern boundaries adjoin the defined settlement boundary for the village in the Mid Suffolk Local Plan 1998 (Woolpit Village Inset Map). There is existing residential development on the eastern side of the site on Steeles Road and immediately adjacent to the north lies Steeles Close and the main body of the village; on the opposite side of Green Road, but at the northern end of the appeal site lies residential development in the form of Priory Cottage, a Grade II Listed Building. There is therefore residential development on two sides of the appeal site. Land to the south and west comprises open agricultural land.

13. The appeal site comprises a total site area of about 2.3 hectares. It consists of a rectangular shape block of land which is part of an agricultural field. It is enclosed with an existing tree/hedge line on three sides. The appeal site is broadly level but there is a gentle slope west to east. There is an existing tree/hedge line to a part of the site's Green Road frontage and there are trees to the northern boundary which separate the site from Steeles Close. A public footpath passes north to south along the site's eastern boundary. This footpath connects to the southern part of the village and then to the wider countryside to the south.

14. There is a designated Conservation Area in Woolpit Village its nearest boundary being located about 250m to the north from the appeal site at the junction of Drinkstone Road and Green Road. The appeal site is not within the boundary of a protected landscape and there are no designations which apply to it. No Listed Buildings abut the application site but the listed Grade II, 17th century, Priory Cottage is situated on the west side of Green Road opposite the north-west corner.

Planning policy

15. The statutory development plan includes the following documents:

    (i) The Mid Suffolk District Local Plan 1998 (MSDLP) which was saved in accordance with the Secretary of State's Direction dated 14 September 2007;

    (ii) The Mid Suffolk District Core Strategy 2008 (CS), as adopted in September 2008 covering the period until 2025; and

    (iii) The Core Strategy Focused Review 2012 (CSFR) as adopted on 20 December 2012 covering the period until 2027.

16. The Council is in the course of preparing a new Joint Local Plan with Babergh District Council which will replace the CS and will be used to manage development in both districts up to 2036. The Councils have published the Joint Local Plan for consultation (Regulation 18) but the emerging Plan is in its very early stages and thus carries limited weight in the context of this appeal.

A Neighbourhood Plan is currently being prepared for Woolpit. It too is in its very early stages and draft policies have not yet been published so no weight can be attached to the Neighbourhood Plan.

First Issue - Highway and pedestrian safety

17. SCC, as Highway Authority, does not object to the proposal subject to conditions being attached to a grant of planning permission. The Council did not refuse the proposal on the basis of highway and pedestrian safety grounds because a highway improvement scheme at the pinch point on Green Road was proposed as part of the development and was to be secured by means of a planning condition. Rather, the Reason for Refusal (RfR) indicates that the proposed development would increase vehicular traffic in the village centre and require the provision of highway works to the north of the site in the vicinity of a number of unspecified listed buildings and within the Conservation Area. The Council then argues firstly, that the nature of the works and the increase in traffic would neither preserve or enhance the character of this part of the Conservation Area and secondly, would not preserve or enhance the setting of the unspecified listed buildings causing less than substantial harm to both.

18. The areas of debate at the Inquiry comprised:

- Increase in vehicular traffic through pinch point
- Increase in pedestrian flow through pinch point
- Personal Injury Accidents (PIA) Analysis
- Accessibility

Increase in vehicular traffic

19. North of the appeal site between Drinkstone Road and just beyond Mill Lane, Green Road narrows significantly to about 4.3m creating a pinch point about 60m long. On the western side there is no footway as the buildings and fences are hard against the edge of the road. On the eastern side there is a narrow footway measuring less than 1m in width, reducing to only 0.85m in parts. This road width is insufficient for two vehicles to pass with pedestrians on the footway being vulnerable to being hit by vehicles. The footway at this width is insufficient to allow pedestrians to pass each other without stepping into the road. It is also too narrow for wheelchair users and pram use so the only alternative for many is to walk along the road.

20. The footway here is also vulnerable to being driven over by vehicles as the kerbed separation is too low to offer sufficient protection. The kerb upstand is between 20mm and 60mm – this does not prevent or deter vehicles from driving over the kerb onto the footway. The Parish Council and others are concerned that at times Green Road can become congested. Both highway experts agree that Green Road is relatively lightly trafficked but this does not mean at times it cannot become congested.

21. I see no reason to doubt the underlying validity of the Appellant's Traffic Assessment (TA) as considered by the Highway Authority. The TA estimated that the proposed development would generate, overall, 33 vehicular trips in the AM peak hour and a total of 38 trips in the PM peak hour which would give

rise to 295 additional trips over a 24 hour period. The majority of this traffic would travel northbound through the pinch point to the transport links and facilities in the village beyond. Based on these TA figures, two-way traffic on Green Road would increase by 15% in the AM peak and by 16% in the PM peak as a result of the development traffic. This equates on average during the AM and PM peak hours to an additional vehicle passing through the pinch point every 2 minutes. In my view this represents at worst, a very modest increase in vehicular traffic through the pinch point.

Increase in pedestrian flow

22. The Council has assessed the additional pedestrian flows associated with the development: an additional three pedestrians walking northwards in the AM peak and 2 in the PM peak and an additional one pedestrian walking southwards in each of the AM and PM peak hours. The Council's assessment determines the theoretical likelihood of a northbound vehicle, a southbound vehicle and a pedestrian negotiating the pinch point together at any one time during the peak hour for both the existing scenario and that with the proposed development. It concludes that such events would increase threefold with the development in place, which equates to ten additional pedestrian injury risk events per year. These figures were accepted by the Appellant.

23. I appreciate that the Council's assessment is a theoretical risk analysis and that the ten additional pedestrian injury risk events compared to the baseline is relatively small – not even one per month. Nevertheless that increase is significant when considered over time, and it is noteworthy that any conflict between vulnerable road users (pedestrians) and motor vehicles will often result in an injury requiring hospital attention, even allowing for the slight reduction in vehicle speeds through the pinch point. In my view there would be a modest increase in the number of pedestrian injury risk events.

Personal Injury Accidents (PIA) Analysis

24. The TA demonstrates that there is no recorded accident data for Green Road itself, but there were four accidents which led to injury in the period between 2010 and 2015 (Appendix I). The Appellant accepted that when considering accident data, it is relevant to look more widely than the road on which the development is proposed, and that it is not just about the overall number of accidents but the details of them. Two of the accidents involved pedestrians being struck by passing cars (on The Street and on Heath Road) and that in one of those accidents the narrow width of the road was recorded as a causation factor by the police. Another accident involved a driver striking a line of cars in The Street during the hours of darkness. In my view the circumstances of the accidents which have occurred in the wider area are not inconsistent with a highway safety concern.

Accessibility

25. I accept that the proposed pedestrian and cycle link via Steeles Close and Steeles Road is likely to be used for a good percentage of pedestrian trips to give access to village services. It would be used for: (i) dropping off and collecting children from the primary school and pre-school as well as after school clubs; (ii) to access childcare services in the grounds of the primary school, such as a "Holiday Club" during school holidays; (ii) attending health appointments; (iv) picking up prescriptions from the dispensary; (v) shopping

at Costcutter Convenience Store with its extended opening hours (0600-2230 hours) and (vi) accessing the Brickfields Business Park, where around 25 companies are based. Moreover, the proposed easement to the north[7] would be entirely adequate for the purposes of guaranteeing access at all times. The terms on which it is granted make it entirely enforceable and I cannot foresee any circumstances which would lead to the grantor being in a position to restrict or prevent its use.

26. Nevertheless, it is noteworthy that the proposed development provides a footpath link from the Green Road access on the west of the appeal site which links to the pavement outside Vine Cottage. Anyone seeking the shortest route to walk to the village centre, to access facilities including the village shop (Co-op), the post office within it, the bus stops, the village pubs, the bakery, the tea room, the hairdressers, the Village Hall, the Church and the petrol filling station would have to negotiate the pinch point and the increased traffic going through it. Even with the Steeles Close access, anyone using it to take the shortest route to the village centre would still travel through the pinch point on Green Road. Use of the access via the Greenway at the south east of the site onto the public footpath would be far from desirable for anyone accessing facilities in the village centre.

27. Taking all of these matters into account I consider that the increase in vehicular and pedestrian traffic from the new development having to negotiate the pinch point on Green Road would exacerbate highway dangers unless appropriate safety improvements can be made. I conclude on the first issue that the off-site highway works specified in Drawing 112/2015/04 Revision P2 are necessary to mitigate the increased safety risk as a result of the development. If an appropriately worded planning condition(s) is imposed to secure the off-site highway works then there would be no unacceptable residual highway or pedestrian safety impact arising from the proposed development.

Second Issue - Heritage Assets

28. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the LBA requires special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

29. Paragraph 193 of the NPPF 2018 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

30. Whilst there is no statutory protection for the setting of conservation areas, paragraph 194 of the NPPF 2018 requires that consideration be given to any harm to or loss of significance of a designated asset, which includes conservation areas, from development within its setting. The main parties confirmed that no harm would be caused to the setting of the Conservation

[7] APP7

Area in this case and I agree.

Woolpit Conservation Area

31. The Woolpit Conservation Area Appraisal (2012) tells us that the Conservation Area covers the historic core of the village and was first designated by the Council in 1972. The Appraisal notes that the built form is marked by a variety of dates, architectural styles and building materials including a variety of roof finishes. The Conservation Area includes the Grade I listed Church of St Mary with its flint and stone chequered flushwork. The remaining listed buildings, the majority being Grade II, are identified as *`timber-framed houses, many now re-fronted in brick'.* The variety of building materials is noted, with exposed timber-framing and bricks from the local brickworks, comprising `Suffolk whites' and `soft red brick'.

32. In terms of its plan form and layout, Woolpit village has a distinct central triangular island, which `*is a well defined focal point'* which forms the focus for three `important vistas' identified on page 11 of the Appraisal. In vista (1) looking north along Green Road towards the village triangle, the view is eroded somewhat by the presence of street signage and the extent of parked cars around this `island'. Each important vista contributes to the character and appearance of the Conservation Area.

33. I consider the significance of the Conservation Area derives from its character interest which includes a mixture of medieval, post medieval and later buildings, of a variety of styles and material finishes, arranged around a central village `triangle' which is laid out and maintained as a green-edged `island', from which radiate outwards three main thoroughfares; Green Road, Church Street and The Street; and from there extends a wider network of smaller sub-roads. In connection with this, the vehicular traffic is regular enough to be noticeable particularly along the three main roads, but it is not an overbearing element. It contributes to the appearance of the Conservation Area, as does the traffic control measures that form part of the street scenes, most obviously in the form of a variety of bollards.

34. The Council alleges that there would be a significant impact on the appearance of the important vista along Green Road towards the central market place at the centre of the Conservation Area and that the important historical character of the southern `gateway' and the important historic street scene would be harmfully altered by the introduction of the highway improvements, resulting in a more urban appearance. In particular, reference is made to the kerbed build out with bollards, the footpath widening with raised kerbs, the erection of a TSRGD 516 sign on the pavement between Pepys House and Tyrells, the disruption of sightlines which have a natural downward slope and the noticeable increase in both vehicular and pedestrian traffic which it is said would detract from the perception of relative tranquillity. I disagree.

35. The changes such as they are would only be appreciable in relatively limited views north and south along Green Road from about the area of the village triangle to the southern edge of the Conservation Area. The proposed off-site highway works would only bring about a change to a limited and localised part of this designated heritage asset. In terms of the revision of road markings, when taken in the context of the existing roadway and indeed the appearance of the wider network of roads within the Conservation Area that are generally

of 'black tarmac with white network markings'; it would not be out of character and would not harm its special interest.

36. In terms of footpath widening, the existing pathway is a standard kerbed tarmac path, about wide enough for one person to traverse. The appeal proposals envisage the widening of this footpath to 1.8m with the kerb face raised to 125mm. Again, whilst this would represent a change to the current situation, it would not be incongruous with the character and appearance of the Conservation Area which includes a large number of kerbed footpaths of varying widths. The final form and finish of these proposals would be subject to detailed design at a later stage and there is an opportunity to include a higher quality surface finishing such as sandy bedding gravel to improve the appearance of this stretch of footpath, more in keeping with the current character of this area of the asset.

37. In my view, the proposed widening of the footpath would also allow better appreciation of the character and appearance of the Conservation Area by providing a more convenient means of accessing the asset to enjoy the quality of the historic built environment.

38. In terms of road signage there are currently numerous examples of instructional road signs elsewhere within the Conservation Area, not least within the village 'triangle' itself. The introduction of a new road sign would be needed at the southern end of the highways works to forewarn drivers heading north into the Conservation Area of the narrowing roadway. The exact location of this sign is not yet fixed and is subject to future agreement. It could, for instance, be located outside the southern boundary of the Conservation Area. Even if located within the asset I see no reason why it could not be sympathetically integrated into the street scene.

39. The kerbed build out with bollards adjacent to Model Cottage would be the most evident change resulting from the proposals, as the current location for this is a featureless part of the black tarmac roadway. However, the use of a variety of bollards for such traffic calming/building protection measures is already widely evident within the wider Conservation Area, with others also used to control parking. In my view, the use of bollards in this location and for this purpose, employing a sympathetic design to be agreed with the Council, would plainly not be intrusive or incongruous with the character and appearance of the wider Conservation Area and would not result in any harm.

40. In terms of the built form of the off-site highway works, the appeal proposals would only be evident from a small part of the wider Conservation Area, would not be incongruous with its current character and appearance, and, with regard to the widened footpath, could actually deliver an enhancement.

41. In relation to the increase in vehicular traffic and any effect on the character and appearance of the Conservation Area, I have identified that there would be a *very modest* increase in the amount of traffic using the immediate road network and on Green Road leading into the village centre. This very modest increase in vehicular traffic would not introduce an element into the Conservation Area that is not already present within the designated area and neither would it increase that existing element of the Conservation Area's character and appearance to any more than a modest degree. The very modest increase in traffic flow would have no effect on the special interest of the Conservation Area and no harm would be generated.

42. I consider there would be no harm caused to the Woolpit Conservation Area as a result of the appeal proposals. The proposals would as a minimum 'preserve' the character and appearance of the Conservation Area, if not actually enhance it through the improvement of the footpath.

Listed Buildings

43. When assessing the indirect impact of proposals on heritage assets such as those beyond the boundary of a development site, the question which should be asked is whether change within its wider 'setting' would result in a loss of (or damage to) its 'significance' as a heritage asset.

44. The NPPF 2018 defines significance in Annex 2: Glossary as: ***'The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting'.***

45. The current Historic England (HE) guidance[8] is clear in stating that change within a heritage asset**'s setting need not be harmful; the implementation of development proposals within a heritage asset's setting can be positive,** negative or neutral. The HE guidance presents an approach to setting and development management based on a five–step procedure. The key issue is whether and to what extent, the proposal would affect the contribution that setting makes to the significance of the heritage asset in question. In the following analysis I give considerable weight and importance to the desirability of preserving the settings of Listed Buildings.

Mullions, Tyrells and The Cottage

46. These three Grade II Listed Buildings are closely associated with each other and are all late medieval or early post medieval houses and should be considered as a group in terms of the contribution which setting makes to their significance. They also share this group value with those other listed buildings within this same historic core area. Such associations provide positive contributions to the significance of these buildings by providing context in which to appreciate the layout and hierarchy of the earlier settlement. In particular, Tyrells and The Cottage derive significance from their historic and functional associations, as two parts of the same original late medieval dwelling.

47. Insofar as the setting of these three listed buildings contributes to their significance, it does so in terms of (i) their associative relationships within the group, as well as with other surrounding aspects of the historic built environment defining the street scenes around and south of the triangle; (ii) in respect of historic, functional and aesthetic relationships with the positions and alignments of both Green Road and Mill Lane; and (iii) in respect of their historic and functional inter-relationships with spaces forming their garden enclosures.

48. In terms of Mullions, Tyrells and The Cottage, the Council alleges that their settings would experience change as a result of the off-site highway works and increased vehicular traffic. In terms of the off-site highway works, as

[8] The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) Historic England 2017

previously stated, these can be broadly divided into the following elements: (i) revision of road markings; (ii) footpath widening; (iii) new road signage and (iv) a kerbed build-out with bollards, adjacent to Model Cottage.

49. The proposals would effect physical change to only a short stretch of Green Road, which is already experienced as a modern tarmac road with white markings and street furniture. Although these three listed buildings are identified as deriving some significance from their association with this road, in terms of historic and functional associations, this is in no way dependent on its current appearance.

50. The three listed buildings would be broadly opposite where the kerbed build-out and bollards would be located. However, such a change would not reduce the ability to appreciate these buildings from Green Road or alter their evidential, historic or functional relationships with it. Moreover, the footpath widening adjacent to Mullions, would also be a noticeable change, particularly if the quality of finish was improved from tarmac to a more sympathetic surfacing, but in the context of the tarmac path already present, it would be inconsequential to the significance of the listed building. There is no substance to the allegation that the highway works would have an impact on the structural integrity of Mullions. The other changes, comprising new road signage and revised road markings, in the context of the existing setting would be such a marginal peripheral change as to be all but unnoticeable.

51. It is noteworthy that Dr Duck, the Council's Heritage Officer, did not raise the possibility of harm accruing to the listed buildings within the Conservation Area - including any of these three listed buildings as a result of the implementation of the off-site highway works. Given the very limited change and the existing context of these listed buildings I consider that the off-site highway works would preserve the setting of these listed buildings and would not harm their significance.

52. The appeal proposals would result in a very modest increase in traffic on average in the peak morning and evening hours. This increase would evidently be so marginal as to be barely perceptible and would not result in an apparent change to the experience of these listed buildings. As such, the traffic generation, such as it is would also not harm the significance of any of these listed buildings.

Priory Cottage

53. The Grade II listed Priory Cottage is the most southerly property in Woolpit and forms the southern gateway to the village. It comprises a cottage dating from the early 17th century, with 19th century additions. It is assessed as drawing its significance mostly from its architectural and historic interest, as evidenced in its built form. There is also some limited artistic and archaeological interest, which is derived from the few architectural embellishments and limited phasing which it possesses and exhibits. The building is set within private and well-tended gardens that provide an attractive space in which to appreciate its significance.

54. The property is adjacent to Green Road and the regular traffic along this roadway is also a notable feature within its setting. The roadway possesses historic and functional links with Priory Cottage and it forms the predominant means whereby the structure is appreciated. As the Cottage is located on the

edge of the village, there is some limited relationship with the street frontage immediately to the north, which represents pre-20th century dwellings. To the south and west, the wider setting of the building comprises open agricultural land, as it is also on the east side of Green Road (i.e. the appeal site).

55. The appeal site is assessed as falling within the setting of Priory Cottage, given that it is possible to experience the Grade II listed building from the farmland it comprises through a gap at the north end of the otherwise bushy and robust hedgerow. This hedgerow largely encloses the east side of Green Road and contains and curtails eastward views outwards from the listed building to the confines of this north-south thoroughfare of Green Road, thus separating the asset from the appeal site.

56. Therefore, whilst the appeal site does fall within the asset's setting, it makes only a very limited contribution to the significance of this building because of the screening effect of the boundary hedgerow and the concentration of the asset's relationships on (i) its garden enclosure (ii) the Green Road frontage north and south and (iii) the agricultural farmland that adjoins it to the west and south. All of these relationships are focussed to the west of the road.

57. The appeal proposals envisage two dwellings (Plots 15 and 16) in the north west corner of the development site served by a private drive that would run parallel to Green Road. A new footpath link with Green Road would run between Green Road and the private drive and thread through a gap in the roadside hedge opposite Priory Cottage. The hedgerow would be retained albeit on a slightly set back alignment.

58. Therefore, the change to the setting of Priory Cottage would only be noticeable as a change from partial views of an agricultural field to partial views of modern properties in the north west corner of the site. This would cause some erosion to the rural context of the area albeit limited by the partial retention of the hedgerow and the setback of the new properties from the Green Road frontage. Otherwise it would not affect the rural setting to the west and south, the relationships with its well-tended private gardens, Green Road or those properties in close proximity to it.

59. I consider that this limited change would result in a very low level of harm to the significance of this listed building at the lowest end of `*less than substantial harm'*. This conclusion is broadly in agreement with Dr Duck's original consultation response on the planning application where he states that the `***overall impact on the setting of Priory Cottage is notably less than substantially harmful'.***[9] No further mitigation is suggested.

60. In line with statute, policy, and case law[10], considerable weight and importance must be given to the presumption against granting permission for development that would harm the character or appearance of a conservation area or the setting of a listed building. If less than substantial harm is found of whatever magnitude, the decision maker needs to give considerable weight to the desirability of preserving the setting of the asset. In this case I have found a lack of identifiable harm to the Woolpit Conservation Area and the proposals would, as a minimum `preserve' its character and appearance. However, the overall impact of the proposal needs to take into account the

[9] Mr Crutchley's Appendix AC5
[10] East Northamptonshire DC v SSCLG [2014] 1 P & R 22 at paragraph 29

less than substantial harm to Priory Cottage and this harm should be weighed against the public benefits of the proposals.

61. The public benefits of the appeal proposals comprise:

- An increase in the provision of housing numbers at a time of pressing need (see my conclusion on the following main issue)
- An increase in choice and type of homes
- 35% affordable housing provision
- Employment opportunities during the construction phase
- Residents would be likely to use the local shops and services within Woolpit making a positive contribution to their vitality and viability
- Provision of 0.5 ha of community open space with green infrastructure features – delivering high quality green spaces available to all
- Footpath improvements to the village centre and the wider countryside
- Highway works in the village centre would deliver benefits to the Listed Buildings and the Conservation Area.

62. In accordance with the test set out in paragraph 196 of the NPPF 2018, I find that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

Third Issue - Housing Land Supply (HLS)

63. It is common ground that the Council's strategic policy for housing numbers is more than five years old and has not been reviewed. Accordingly, paragraph 73 of the NPPF 2018 indicates that the Council's housing land supply is to be assessed against the standard method for calculating local housing need. The Council's local housing need is 585 dwellings per annum (dpa) and a 20% buffer is to be applied. This amounts to 3,510 dwellings for the next five years, or 702 dpa. The difference between the parties is solely down to supply.

64. No under supply/previous under delivery is taken into account when using the standard method. Therefore, no 'backlog' of unmet need should be taken into account when calculating the Council's housing land supply position.

65. The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of `Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites.

66. The Council relies upon the same sites in its supply as were contained in its

Annual Monitoring Report (AMR) dated 11 July 2018. The only new site referred to at the Inquiry was that known as Land on the West of Barton Road, Thurston which was missed out of the AMR in error and for which planning permission was granted on 5 July 2018. The Council has carried out a sense check of the supply against the terms of the NPPF 2018 and referred to events that have occurred after the base date of the AMR.

67. In my view the definition of `deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.[11] There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut–off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.

68. Sites with outline planning permission make up a very large proportion of the Council's claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years. I accept that there was clear evidence of what was necessary on one site provided in Mr Robert's evidence[12] and so the 200 dwellings in respect of that site should be added to the Appellant's supply calculations. As for the other 1,244 dwellings with outline permission, the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.

69. The up-dated PPG on Housing and economic land availability assessment sets out guidance on what constitutes `deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. An assessment of the Council's AMR against the updated PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.[13]

70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018[14] it does not alter

[11] Paragraph 1.1 of the Annual Monitoring Report
[12] Mr Robert's POE A4 Build out rates for Chilton Leys
[13] See paragraphs 36 (ID:3-036-20180913); 047 (ID:3-047-20180913) and 048 (ID3-048-20180913)
[14] LPA4

the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years.

71. Paragraph 73 of the NPPF 2018 requires the Council's housing supply to be made up of `specific sites'. The Council was presented with three opportunities to demonstrate that the figure of 858 dwellings recorded in its trajectory table for small sites is robust. Firstly, on production of the AMR. Secondly, the Appellant asked for a list of sites on 30 July 2018 and was supplied with a list of 561 planning permissions, which the Council said made up its 858 dwellings. In this list there was insufficient evidence to either accept or challenge this figure, although a number of defects quickly became apparent to the Appellant. The Council was asked to provide more information but failed to do so. Finally, the Council indicated that it was going to submit a final rebuttal proof of evidence on HLS but it did not do so.

72. The Council argues that the St Modwen case[15] continues to provide sensible guidance on the context, as applied to NPPF 2018 and claims that it can demonstrate a 5 year HLS of 5.39 years. However, I cannot accept that the 858 is a robust figure. I agree that it would be a time consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR. The Appellant has completed a partial review and from the evidence that is before me it appears that there are at least 108 defective planning permissions within the list of 561 permissions[16] but does not know by what number one should discount the figure of 858. As the NPPF 2018 carries a presumption that small sites are deliverable until there is clear evidence that they will not be delivered, the 858 has been left in the Appellant's HLS calculation but I consider it is likely to be an overestimate.

73. Drawing all of these threads together I consider that the Appellant's assessment of supply, set out in Mr Short's rebuttal proof of evidence, is the more realistic taking into account the St Modwen judgment. The only change is that the site West of Barton Road, Thurston should now be removed from the supply. This leaves the Council's HLS at 3.4 years. If the small sites problem is taken into account, it is highly likely that the Council's HLS is less than 3.4 years. I conclude on the third issue, therefore that the Council cannot demonstrate a five year supply of deliverable housing sites.

Other Matters

74. I have taken into account all other matters raised including the representations from the Woolpit Parish Council, the Suffolk Preservation Society, the landscape assessment of Woolpit by Alison Farmer Associates and other interested persons. I have also taken into account the various appeal decisions submitted by the main parties. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the local highway network or the heritage impact which I have dealt with under the main issues.

[15] St Modwen Developments Ltd v SSCLG et al [2017] EWCA Civ 1643 paragraph 35
[16] APP6

75. The issue of landscape impact was raised in the representations. However, the Appellant has provided a comprehensive Landscape & Visual Impact Appraisal (LVIA) and the Council takes no issue with this. It is proposed to reinstate the former field boundary to the southern part of the site which would include a mixture of trees and hedging and a landscaped Greenway directly to the north of it which would form part of the pedestrian links throughout the site. The existing trees and hedging along the northern boundary and eastern boundaries of the site would be retained with some new planting proposed along the most southern part of the eastern boundary. Within the site itself, trees and hedging are proposed between dwellings and the public spaces to provide an attractive soft environment.

76. The appeal site would result in the loss of an agricultural field to development and whilst this would have some direct landscape impact, it would not be significantly adverse given its suburban backdrop. The proposed landscape framework would screen and filter views of buildings from the surrounding countryside. The visual impact of the development would be successfully mitigated into the rural edge of Woolpit and would provide an attractive environment for both new residents and those living in the surrounding locality. I therefore find no harm in this regard.

77. Reference is made to alternative housing sites identified in the emerging Joint Local Plan which are located to the north of the village centre. However, as I noted at the start, the emerging Joint Local Plan is in its very early stages and any conflict with this plan carries limited weight at this time and in the context of this appeal.

78. Concerns have been raised in relation to drainage, archaeology and ecological matters. However, it is noteworthy that the Council has not raised any objections in relation to these matters. In my view the concerns which have been raised can be adequately dealt with through the use of planning conditions in accordance with the advice in paragraph 54 of the NPPF 2018.

Planning Obligation

79. The S106 Unilateral Planning Obligation includes the provision of 17 affordable units on site which broadly equates to the Council's requirements for 35% provision. In this respect the Obligation is in line with both paragraph 62 of the NPPF 2018, which requires on-site delivery of affordable homes and Altered Policy H4 of the MSDLP.

80. With regard to open space covenants within the Obligation, the appeal scheme provides open space and a 360m^2 play area with play equipment within the site which meets the Council's policy requirements, notably Policy RT4 of the MSDLP.

81. With regard to covenants with SCC, the Obligation includes contributions in relation to primary school and Early Years provision and Public Rights of Way Improvements. A SoCG on Early Years and Education Matters has been agreed between the Appellant and SCC. There is also a Community Infrastructure Levy (CIL) Compliance Statement submitted by SCC.[17]

[17] INQ5

82. The Obligation includes the following matters in respect of SCC functions:

- Primary School Construction contribution – £180,719 (equates to £3,688.14 per dwelling). This is necessary if there are no surplus places available at the time of commencement, and if expansion of the existing primary school is confirmed, this Obligation would cease or be returned.

- Primary School Land contribution - £12,936 (equates to £264 per dwelling)– as above; and

- Contribution towards the build costs of a new Early Years setting - £33,332 (equates to £680.24 per dwelling).

83. The proposed development is estimated to generate up to four pre-school children. The proposed development should make a proportionate contribution towards the build cost of the new Early Years setting which in total would cost £500,000 and provide 60 places. The proposed development would generate 11 primary aged pupils but the Woolpit Primary Academy does not have enough places to accommodate all of the development being proposed in Woolpit. Due to the layout of the current school site it is not possible to add further permanent accommodation unless additional land is acquired.

84. Therefore the SCC strategy for primary school provision is to deliver a new 420 place primary school for Woolpit to ensure that there is adequate provision to support housing growth and basic need. The proposed development should make a proportionate contribution to the land and build costs of the new primary school in respect of the 11 pupils generated by it.

85. There are currently forecast to be surplus places available at the current secondary schools serving the proposed development, so no secondary or sixth form contributions would be required from the proposed development.

86. Paragraph 98 of the NPPF 2018 promotes the need to protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users for example by adding links to existing rights of way networks. The anticipated increased use of the PROW network from the development would result in the need for offsite improvement work involving heavy clearance on Woolpit Public Footpath 4. The total financial contribution required is £915. The requirement for the footpath improvement arises directly from the increased population which would be generated by the development in the local area and it would also meet Council policies.

87. The Council has confirmed that none of the obligations would conflict with Regulation 123 requiring that no more than five contributions are pooled towards any one specific infrastructure scheme.

88. In my view, all of the provisions set out in the Section 106 Planning Obligation are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore they all meet the tests with CIL Regulations 122 and 123 and should be taken into account in the decision.

Planning Balance

89. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with

the development plan, unless material planning considerations indicate otherwise. Whilst the RfR cites only a limited number of policies which are said to be breached I deal with all policies that have a bearing on the proposals and in line with the new approach of the NPPF 2018[18] identify those which are most important for determining the appeal and whether they should be considered to be out-of-date.

90. The CS was adopted in 2008 and the MSDLP in 1998. Both plans predate the publication of the NPPF 2012 and the more recent NPPF 2018. The CSFR has had little impact on the saved or CS policies that remain in place and Policy FC1 really only and unnecessarily repeats what was in paragraph 14 of the NPPF 2012. It is now out-of-date because of the test it employs. Policy FC1.1 is policy of a very broad nature with one requirement that development must conserve and enhance the local character of the different parts of the district. It is up-to-date but is not otherwise of significance. The appeal proposal complies with these policies.

91. Policy CS1 of the CS merely sets out the settlement hierarchy. However, it includes the words ***"the rest of Mid-Suffolk, including settlements not listed in the above (hierarchy) will be designated as countryside ... renewable energy"***. By virtue of this latter requirement it offends paragraphs 77 and 78 of NPPF 2018. It perpetuates the theme of protection of the open countryside for its own sake and its limitations are inimical to the balanced approach which the NPPF 2018 exhorts. It is one of the most important policies and it is out-of-date. The appeal proposal complies with the hierarchical requirements of Policy CS1 but it conflicts with the latter part of this policy as the site is located outside the settlement boundary.

92. As the proposed development is in open countryside, it also offends the requirements of Policy CS2. Policy CS2 is a most important policy and it is out-of-date. The NPPF has never and still does not exhort a restrictive approach to development outside settlements in this manner. It does not protect the countryside for its own sake or prescribe the types of development that might be acceptable. The policy as worded obviates a balancing exercise and precludes otherwise sustainable development by default and thereby defeats the presumption in its favour. It is also contrary to paragraphs 77 and 78 of NPPF 2018.

93. Policy CS5 provides that all development will maintain and enhance the environment including the historic environment, and retain local distinctiveness. It requires development actually to maintain and enhance the historic environment which exceeds the statutory duty (LBA 1990) and goes further than paragraph 192 of NPPF 2018 which requires decision makers to ***"<u>take account of the desirability</u> of sustaining and enhancing the significance of heritage assets"*** (my underlining). This is a most important policy and it is out-of-date. It does not make enhancement a requirement where no such requirement is reasonably possible or appropriate to the nature of the proposed development. The policy also fails to acknowledge the balancing exercise which the NPPF 2018 requires to be undertaken in circumstances where the harm is less than substantial.

94. Moreover, I have found that the appeal proposal would accord with national policy advice in the NPPF 2018, notably paragraph 192, and there would be no

[18] Paragraph 11

conflict with Policy CS5. The proposed development constitutes a high quality design as it proposes a form of development that reflects the character and appearance of the surrounding streetscape. The DAS provides details on materials and finishes. The materials selected for the new dwellings reflect the colours and shades of the Suffolk vernacular buildings of Woolpit in their simple forms and thus retain local distinctiveness in accordance with Policy CS5 and the NPPF 2018 in Section 12. Nor would there be any conflict with Policy CS5 in relation to the off-site highway improvements works in the Conservation Area.

95. Policy GP1 is a most important policy and it is up-to-date. The proposal complies with its requirements. Policy HB8 is also a most important policy and it is up-to-date despite the fact that it predates its CS equivalent. As I disagree with the Council's case on the impact of the proposal on the character and appearance of the Conservation Area, the proposal complies with its requirements. Policy FC2 is the Council's strategic housing policy within the development plan. However, in the light of paragraph 73 of the NPPF 2018, this policy is out-of-date, which is accepted by Mr Roberts.[19]

96. Drawing all of these threads together I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.

97. However, in the context of paragraph 213 of the NPPF 2018, I have found that some of the most important policies for determining this appeal are out-of-date, notably Policy CS1 and Policy CS2. I have attached only moderate weight to the conflict with these policies which lessens the significance of that conflict.

98. At paragraph 62 of this decision, I found that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

99. The tilted balance in paragraph 11 of the NPPF 2018 is engaged because firstly, policies that are most important for the determination of this appeal are out-of-date and secondly, the Council cannot demonstrate a five year supply of deliverable housing sites.

100. Balanced against the identified conflict with the development plan I give substantial weight to the provision of 32 market dwellings and 17 affordable dwellings on a site which is visually and functionally well related to the existing village. Paragraph 59 of the NPPF 2018 states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. This comprises a substantial social benefit.

101. I have attached moderate weight in terms of the economic benefits that would arise from the provision of employment opportunities during the construction phase and the spending power from 49 new households within the local area.

102. Furthermore I am satisfied that the proposed development would fulfil the aims of the NPPF 2018 by promoting a high quality design of new homes and

[19] Proof of evidence paragraph 2.3

places. I find that the provision of on-site community open space with green infrastructure features, the footpath improvements to the village centre and the wider countryside and the highway works in the village centre would all provide environmental benefits. I apportion moderate weight in terms of the environment.

103. Taking all of these matters into account, including all other material considerations, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the NPPF 2018 as a whole and that the proposal represents sustainable development. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

Planning Conditions

104. I have considered the conditions suggested by the Council[20] in the light of the advice in paragraphs 54 and 55 of the NPPF, the model conditions retained at Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions. I have made minor adjustments to the suggested conditions in the interests of clarity. Condition 1 imposes a shorter timescale than the normal three years but this is justified given the pressing housing need and the advice in paragraph 76 of the NPPF 2018. Condition 2 is necessary for the avoidance of doubt. Condition 3 is required to safeguard heritage assets of archaeological interest. Condition 4 which relates to Construction Management is necessary to ensure minimal impact on the public highway and residential amenity but I have deleted the element relating to haul routes as this relates to land outside the site and thus cannot be controlled by condition. Conditions 5-7 are necessary in the interests of ecology, safeguarding habitats/species and visual amenity. Conditions 8 -10 are required to ensure the development does not cause increased flood risk or increased pollution to the water environment.

105. Conditions 11-23 are necessary in the interests of highway safety, traffic management, safe and suitable facilities for pedestrian and cycle movement and to comply with paragraph 110 of the NPPF. Condition 24 is required in the interests of safeguarding ecology, biodiversity and amenity within the site. Condition 25 is required to ensure the site is suitably served by fire hydrants in the interests of public safety and fire prevention. Condition 26 is necessary to ensure that the development is equipped with access to high-quality telecommunications in accordance with paragraph 112 of the NPPF.

106. Condition 27 is required to ensure that recycling bins are not stored on the highway in the interests of highway safety. Condition 28 which relates to screen walls and/or fences is required in the interests of residential amenity. Condition 29 is required to ensure the appropriate recording and analysis of archaeological assets. Condition 30 is required to ensure the provision and long-term maintenance of adequate on-site space for the parking and manoeuvring of vehicles. Condition 31 relates to a Residents Travel Pack to reflect the national policy aim of achieving the fullest possible use of public transport, walking and cycling.

[20] INQ4

Conclusion

107. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-31)

TIME LIMIT FOR IMPLEMENTATION

1) The development hereby permitted shall be begun not later than the expiration of two years from the date of this permission.

LIST OF APPROVED DRAWINGS

2) The development hereby permitted shall be carried out in accordance with the following drawings:

5018 PA01 House Type 1
5018 PA02 House Type 1
5018 PA03 Single Garage
5018 PA04 House Type 2
5018 PA05 House Type 2
5018 PA06 House Type 3
5018 PA07 House Type 3
5018 PA08 House Type 3
5018 PA09 Rev. A House Type 3
5018 PA10 Rev. A House Type 4
5018 PA11 House Type 4
5018 PA12 Rev. A House Type 4
5018 PA13 House Type 5
5018 PA14 House Type 5
5018 PA15 House Type
5018 PA16 House Type 6
5018 PA17 House Type 6
5018 PA18 Rev. A Cart Lodge
5018 PA19 House Type 7
5018 PA20 House Type 7
5018 PA21 House Type 7
5018 PA22 Rev. A House Type 8
5018 PA23 House Type 8
5018 PA24 House Type 8
5018 PA28 House Type 9
5018 PA29 House Type 9
5018 PA31 Rev H Site/block roof plan
5018 PA32 Rev C Street Elevations
5018 PA33 Site Location Plan
5018 PA34 rev A Typical Elevations
5018 PA35 rev B Street Elevations
5018 PA36 ASHP SIZES

PRE - COMMENCEMENT CONDITIONS

Archaeology

3) No development shall take place within the site until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has previously been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

a. The programme and methodology of site investigation and recording.
b. The programme for post investigation assessment.
c. Provision to be made for analysis of the site investigation and recording.
d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
e. Provision to be made for archive deposition of the analysis and records of the site investigation.
f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
g. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

Construction Management

4) Prior to the commencement of development details of a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall incorporate the following information:

a. Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
b. Details of the storage of construction materials on site, including details of their siting and maximum storage height.
c. Details of how construction and worker traffic and parking shall be managed.
d. Details of any protection measures for footpaths surrounding the site.
e. Details of any means of access to the site during construction.
f. Details of the scheduled timing/phasing of development for the overall construction period.
g. Details of any wheel washing to be undertaken, management and location it is intended to take place.
h. Details of the siting of any on site compounds and portaloos.
i. Monitoring and review mechanisms.

The construction shall at all times be undertaken in accordance with the agreed methodology approved in writing by the Local Planning Authority.

Landscaping and Biodiversity

5) All ecological mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecological report (MHE Consulting August 2015) as already submitted with the planning application and agreed with the Local Planning Authority prior to determination.

6) No development shall commence until a detailed 'hard' and 'soft' Landscaping Scheme, which shall include any proposed changes in ground levels, has been submitted to, and approved in writing by, the Local Planning Authority.

The 'hard' landscaping shall include details of all hard surface materials and boundary treatments to be used within the development with a timetable for implementation, including all means of enclosure and boundary treatments, residential screen walls and fences.

The 'hard' landscaping shall be implemented and completed in accordance with the approved details and agreed timetable.

The 'soft' landscaping shall include details of the existing trees and plants on site to be retained together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication 'BS 5837: 2012 Trees in relation to design, demolition and construction'.

The 'soft' landscaping shall include details (including species, size of stock at time of planting, location) of all new plants and trees to be provided as well as any areas for seeding. The new landscaping should comprise of native species only as defined in Schedules 2 and 3 of the Hedgerow Regulations 1997.

The 'soft' landscaping shall be implemented in accordance with the approved details within the first planting season (October - March inclusive) following the commencement of development.

Any trees, hedges, shrubs or turf identified within the approved Landscaping Scheme (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

The approved Landscaping Scheme shall be carried out in its entirety and shall accord with the approved drawings under this permission.

7) Prior to the commencement of development on the site a skylark mitigation strategy, including a timetable for implementation, shall be submitted to, and agreed in writing by, the Local Planning Authority. The agreed strategy shall be implemented in full to mitigate the loss of potential nesting habitat.

Site Drainage

8) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

9) No development shall take place until a surface water drainage scheme for the site, including a timetable for implementation, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year + Climate Change storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be

implemented in accordance with the approved details and timetable before the development is completed. Details of which will include:

a. Details of further infiltration testing on site in accordance with BRE Digest 365 to verify the permeability of the site (trial pits to be located where soakaways are proposed and repeated runs for each trial hole). Borehole records should also be submitted in support of soakage testing.
b. Infiltration devices should be no more than 2m deep and will have at least 1.2m of unsaturated ground between base of the device and the groundwater table.
c. Dimensioned plans illustrating all aspects of the surface water drainage scheme including location and size of infiltration devices and the conveyance network. A statement on the amount of impermeable area served by each infiltration device should also be illustrated on the plans and should be cross referenceable with associated design calculations.
d. Full modelling results (or similar method) to demonstrate that the infiltration device has been adequately sized to contain the critical 100yr+ Climate Change event for the catchment area they serve. Each device should be designed using the nearest tested infiltration rate to which they are located. A suitable factor of safety should be applied to the infiltration rate during design.
e. Infiltration devices will have a half drain time of less than 24 hours.
f. Modelling of conveyance networks showing no above ground flooding in 1 in 30 year event, plus any potential volumes of above ground flooding during the 1 in 100 year rainfall + Climate Change.
g. Infiltration devices shall only be used where they do not pose a threat to groundwater. Only clean water will be disposed of by infiltration devices due to the site being inside a Source Protection Zone. Demonstration of adequate treatment stages for water quality control shall be submitted - SuDS features should demonstrate betterment to water quality, especially if discharging towards a watercourse or aquifer.
h. Topographic plans shall be submitted depicting safe exceedance flow paths in case of a blockage within the main surface water system and/or flows in excess of a 1 in 100 year rainfall event. These flow paths will demonstrate that the risks to people and property are kept to a minimum.
i. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
j. Arrangements to enable any surface water drainage within any private properties to be accessible and maintained including information and advice on responsibilities to be supplied to future owners.

10) No development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the Local Planning Authority. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction. The approved CSWMP and shall include:
a. Method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:

i. Temporary drainage systems.
ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.
iii. Measures for managing any on or offsite flood risk associated with construction.

Highways

11) No development shall commence until details of the estate roads and footpaths (including layouts, levels, gradients surfacing and means of surface water drainage, lighting and traffic calming measures), have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and completed in accordance with the approved details and agreed timetable.

12) No development shall commence until a detailed scheme for highway improvements to Green Road, comprising traffic calming measures and footway widening provision which shall be in general accordance with those details as shown on Drawing no. 112/2015/04 Revision P2, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Local Highway Authority.

13) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority, of the means to prevent the discharge of surface water from the development onto the highway. The development shall be carried out and completed in accordance with the approved details and agreed timetable.

PRIOR TO OCCUPATION OR OTHER STAGE CONDITIONS

Highways

14) No part of the development shall be commenced above slab level until the new vehicular access onto Green Road has been laid out and completed in all respects in accordance with Drawing No. 5018 PA31 Rev H Site/block roof plan and with an entrance width of 5.5 metres and been made available for use. Thereafter the access shall be retained in the specified form.

15) Prior to the access from Green Road into the site being constructed, the ditch beneath the proposed access shall be piped or bridged in accordance with details which previously shall have been submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter in its approved form.

16) The new estate road junction with Green Road, inclusive of cleared land within the sight splays to this junction, must be formed prior to any other works commencing or delivery of any other materials.

17) No development shall commence above slab level until a scheme for the provision and implementation electric car charging points for the development has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the occupancy of the development. The scheme

shall be implemented, and the measures provided and made available for use, in accordance with such timetable as may be agreed.

18) Details of the gateway feature identified on drawing 5018 PA31 Rev H to be located to the southwest corner of the site shall be submitted to and agreed with the Local Planning Authority and shall be completed prior to occupation of the first dwelling and thereafter retained in the approved form.

19) Before the access onto Green Road is first used, visibility splays shall be provided as shown on Drawing No. 5018/PA31 Revision H, as submitted, and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays at any time.

20) No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least binder course level or better.

21) No dwelling shall be occupied until the area(s) within the site, shown on approved drawing 5018 PA31 Rev H for the purposes of loading/unloading, manoeuvring and parking of vehicles, including electric charging points and secure cycle storage, serving that dwelling has been provided and thereafter that area(s) shall be retained and used for no other purpose. Thereafter those areas applicable to that dwelling shall be retained and remain free of obstruction except for the purpose of manoeuvring and parking of vehicles.

22) A metalled footway/cycleway, as shown on Drawing 5018 PA31 Rev H of a minimum 2.0 metres width, shall be provided from the site into Steeles Close, northwards to connect with the existing access in Steeles Close. The metalled footway shall be provided and made available for use prior to the first occupation of any dwellings in the development.

23) No dwelling shall be occupied until the highway improvements secured under Condition 12 above have been constructed in strict accordance with the approved details and made available for public use and thereafter retained post construction in the approved form.

Site Infrastructure/Other

24) Within three months of the commencement of development a detailed lighting scheme for all public areas to be lit shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show how and where external lighting will be installed, (through technical specifications and the provision of appropriate lighting contour plans which shall include lux levels of the lighting to be provided), so that it can be:

   a. Clearly demonstrated that areas to be lit have reasonably minimised light pollution, through the use of minimum levels of lighting and features such as full cut off cowls or LED.
   b. Clearly demonstrated that the boundary vegetation to be retained, as well as that to be planted, will not be lit in such a way as to disturb or

prevent bats using their territory or having access to their breeding sites and resting places or foraging areas, through the use of minimum levels of lighting and features such as full cut off cowls or LED.

All external lighting shall be installed in accordance with the specifications and locations as set out in the approved scheme and shall be maintained thereafter in accordance with that scheme.

25) Within three months of the commencement of development details of the provision of fire hydrants for the development, including a timetable for installation, shall be submitted to and approved in writing by the Local Planning Authority. The fire hydrants shall be installed in accordance with the approved details in their entirety and in accordance with the agreed timetable.

26) Within three months of the commencement of development, details of how superfast or ultrafast broadband infrastructures will be delivered to every household in the development, subject to network capacity being available, shall be submitted to and approved in writing by the Local Planning Authority. The approved superfast broadband infrastructures for each dwelling shall be installed prior to first occupation of that dwelling.

27) Within three months of the commencement of development, details of the areas to be provided for the storage of refuse/recycling bins shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the first occupation of the dwelling to which it relates and shall be retained thereafter and used for no other purpose.

28) The residential screen walls and/or fences as may be approved pursuant to the Landscaping Scheme under Condition 6 above, shall be erected prior to the dwelling/s to which they relate being first occupied and thereafter shall be retained in the approved form.

29) No dwelling shall be occupied until the archaeological site investigation and post investigation assessment, secured under Condition 3 above, has been completed and submitted to, and approved in writing by, the Local Planning Authority.

POST OCCUPANCY MONITORING/MANAGEMENT

30) Notwithstanding the provisions of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development shall be carried out in such a position as to preclude vehicular access to those vehicular parking spaces and no alterations shall be carried out to the approved garage units that would preclude the parking of vehicles within them without planning permission being granted in that regard.

31) Within one month of the first occupation of any dwelling, the occupiers of each of the dwellings shall be provided with a Residents Travel Pack (RTP). Not less than three months prior to the first occupation of any dwelling, the contents of the RTP shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority and shall

include walking, cycling and bus maps, latest relevant bus and rail timetable information, car sharing information, personalised travel planning and a multimodal travel voucher. The RTP shall be maintained and operated thereafter.

End of Conditions Schedule

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Asitha Ranatunga of Counsel	Instructed by the Council
He called:	
Luke Barber HND BSc FD C Eng.	Principal Engineer Suffolk CC
Nicholas Joubert MSc	Heritage Consultant
Andrew Ryley BA (Hons) MSc MRTPI	Associate Director DLP Planning Ltd
Alex Roberts BSc (Joint Hons) Associate RTPI	Director DLP Planning Ltd

FOR THE APPELLANT:

Mr Paul Shadarevian QC	
He called:	
Gerry Bullard C Eng. MICE	Partner GH Bullard & Associates LLP
Andrew Crutchley BA (Hons) PG Dip (Oxon) MCiFA	Director The Environmental Dimension Partnership Ltd
Leslie Short BA MRICS MRTPI	Director Artisan Planning and Property Services Ltd

INTERESTED PERSONS:

John Guyler	Chairman of Woolpit Parish Council
John Christie	Local Resident
Susan Eburne	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ1 Notification Letter

INQ2 Letters of Representation

INQ3 Statements of Common Ground

INQ4 Suggested Planning Conditions

INQ5 Suffolk County Council Community Infrastructure Levy Regulations (CIL) Compliance Statement dated 27 March 2018

DOCUMENTS SUBMITTED BY THE LPA

LPA1 Opening Remarks

LPA2 Pytches Road, Woodbridge – Traffic Calming scheme with buildout

LPA3 Letter from Storey Homes dated 13 August 2018: Land at Gardenhouse Lane, Rickinghall

LPA4 Mid Suffolk District Planning Permission: Reference 4455/16

LPA5 List of sites disputed by the Appellant

LPA6 Closing Submissions

DOCUMENTS SUBMITTED BY THE APPELLANT

APP1 List of Drawings

APP2 HCC Decision ***CPRE v Dover DC*** [2015] EWHC 3808 (Admin) [APP2]

APP3 Agenda Document for MSDC Development Control Committee A 29.8.2018

APP4 Appeal Decision APP/N1730/W/17/3185513

APP5 Hart District Local Plan 1996-2006 Saved Policy RUR2

APP6 MSDC Minor Sites Outstanding Planning Permissions (April 2018)

APP7 Agreement to enter in to an Easement conditional on Appeal dated 29 August 2018 between Flagship Housing Group Limited and Landex Limited

APP8 Certified Copy of Unilateral Undertaking dated 29 August 2018

APP9 Letter from Burgess Homes Limited re site at Back Hills, Botesdale

APP10 Closing Submissions

INTERESTED PERSONS' DOCUMENTS

IP1 Statement by John Guyler

IP2 Statement by John Christie

IP3 Statement by Susan Eburne

The Planning Inspectorate

Appeal Decision

Inquiry Held on 9-12 October and 19 November 2018

Site visit made on 19 November 2018

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 10th January 2019

Appeal Ref: APP/R3650/W/16/3165974
Longdene House, Hedgehog Lane, Haslemere GU27 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
- The appeal is made by Monkhill Ltd against the decision of Waverley Borough Council.
- The application Ref. WA/2016/1226, dated 6 May 2016, was refused by notice dated 20 September 2016.
- The application is for "…redevelopment to provide up to 29 dwellings (net increase of 27 dwellings); demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; landscaping and highway works including alterations and extension to the existing access to Hedgehog Lane. Within this hybrid planning application:
  Outline planning permission (with Layout, Scale and Appearance reserved and Access and Landscaping for approval) is sought for the erection of up to 28 new dwellings (Class C3), including extension and alterations to existing access from Hedgehog Lane, demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; and associated landscaping; and
  Full planning permission is sought for the change of use and refurbishment of Longdene House from office (Class B1a) to residential (Class C3) to provide a new dwelling."
- This decision supersedes that issued on 4 September 2017. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Preliminary matters

2. All the appeal documentation from the quashed decision was submitted as part of the documentation for my Inquiry. I have taken into account the submissions and judgments about the relevance of the previous Inspector's decision. The appellant's view is that it should be the starting point for the assessment of any supplementary evidence. However, there is case law that the quashed decision should be treated as if it has not been made and is incapable of ever having had any legal effect. I have, therefore, considered the matter afresh and determined the appeal on its merits, having regard to the evidence submitted to my Inquiry. Nevertheless, where the unchallenged reasoned conclusions of the previous Inspector's decision are capable of being material considerations, by reason of the way the witnesses at my Inquiry were questioned about these matters, or otherwise, and I have come to a different view from the previous Inspector on those points, I have set out my reasoning for doing so.

3. The appeal site comprises Longdene House, a Victorian dwelling currently in use as offices, its gardens and adjoining fields. Access is via a private driveway off Hedgehog Lane, along a tree-lined avenue. The hybrid planning application concerns four areas of the appeal site. Area A lies to the north of the driveway. It is an open field, except for a small wooden storage building, and is currently used to graze horses. Outline planning permission is sought for 25 dwellings on Area A. Outline permission is also sought for the replacement of a pair of semi-detached cottages in Area B with two dwellings. Longdene House itself is Area C, where full planning permission is sought for a change of use from office to a single dwelling with a detached garage. Area D includes existing glasshouses and outline permission is sought for the erection of one dwelling. The submitted plans show the other fields within the appeal site as undeveloped.[1]

4. The northern boundary of Area A adjoins a field which is proposed to be woodland planting as part of a scheme for 135 dwellings on Sturt Farm.[2] Beyond this field Footpath 35 runs between Hedgehog Lane and the A287. The majority of Area A and all parts of Areas B, C and D lie within the Surrey Hills Area of Outstanding Natural Beauty (AONB). The remaining part of Area A is designated as part of an Area of Great Landscape Value (AGLV). The town centre of Haslemere lies some 1.3 km from the site, and Haslemere railway station is about 800 m away.

5. Part of the appeal application is in outline, but with access and landscaping to be determined. In considering the outline application I have had regard to the other details shown on the submitted drawings as illustrative material not forming part of the application.

6. The application was refused by Waverley Borough Council (WBC) for five reasons, citing conflict with policies of the Waverley Borough Local Plan 2002 (WBLP). Some of these policies have since been replaced by policies in the Waverley Borough Local Plan Part 1: Strategic Policies and Sites, which was adopted in February 2018 (LPP1). Reason for refusal 2 concerning affordable housing has been addressed in a planning agreement. Concerns about flood risk (Reason 3) have been overcome by submission of an amended flood risk assessment. WBC has agreed that market housing mix (Reason 4) is a matter that could be addressed on the submission of reserved matters. Reason 5 concerned financial contributions, which are now covered by planning obligations. However, the first reason for refusal remains. This provides that the proposal, as a result of the urbanising impact and harm to the landscape character would cause material harm to the intrinsic character, beauty and openness of the Countryside beyond the Green Belt, the AONB and the AGLV.

7. Planning obligations would provide 10 affordable dwellings (6 rented and 4 shared ownership), financial contributions towards playing pitches, playground, sport and leisure, waste and recycling. A contribution would also be made towards early years and primary education. A unilateral undertaking sets out provisions concerning the trees along the access driveway. This provides that land containing the trees shall not be transferred with the demise of any dwelling within Area A, and shall at all times be managed by a person or body who is not or does not consist of an owner or occupier of a dwelling within Area

[1] A planning condition suggested at the Inquiry would preclude development outside Area A, Area B, Area C and Area D.
[2] ID22.

A. It adds that the reserved matters application shall be accompanied by a scheme for the long term succession of the existing avenue of trees along this driveway. A contribution towards secondary education is disputed, but provision has been made in a deed of variation to provide a contribution in accordance with a formula, if necessary.[3]

8. In addition to the accompanied site visit on 19 November, I undertook unaccompanied visits on 12 October to draft allocation sites at Red Court (DS18), land south-east of Haslemere Water Treatment Works (DS11) and land adjacent to the Royal Oak (DS21). I also walked Footpath 35 between Hedgehog Lane and the A287, and visited the Branscombe House site. Closing submissions were in writing.[4] The Inquiry was subsequently closed in writing on 27 December 2018.

Main issues

9. The main issues in this appeal are the effects of the proposed development on:

   (a) The character and appearance of the area and the AONB.

   (b) Highway safety.

   (c) Supply of housing land.

Planning policy

10. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The development plan for the area includes LPP1 and saved policies of WBLP.

11. LPP1 Policy RE1 provides that in areas shown as Countryside beyond the Green Belt on the Adopted Policies Map, such as the appeal site, the intrinsic character and beauty of the countryside will be recognised and safeguarded in accordance with the NPPF.

12. LPP1 Policy RE3 states, amongst other things, that new development must respect and where appropriate, enhance the distinctive character of the landscape in which it is located. With regard to the AONB it adds that the protection and enhancement of the character and qualities of the AONB that is of national importance will be a priority and will include the application of national planning policies together with the Surrey Hills AONB Management Plan, and notes that the setting of the AONB will be protected where development outside its boundaries harm public views from or into the AONB. Part of the appeal site lies with a local landscape designation (AGLV), where the same principles for protecting the AONB will apply, and which will be retained for its own sake and as a buffer to the AONB.

13. LPP1 Policy SP1 applies the presumption in favour of sustainable development as it was expressed in the 2012 version of the NPPF. Policy ST1 concerns sustainable transport. Policy AHN1 deals with affordable housing. Policy TD1 ensures that the character and amenity of the Borough are protected by, amongst other things, requiring new development to be of a high quality and inclusive design that responds to the distinctive local character of the area, and ensuring that it creates safe and attractive environments that meet the needs

[3] ID33.
[4] ID38-ID40.2.

of users and incorporate the principles of sustainable development. Policy HA1 concerns the protection of heritage assets. Policy NE1 seeks to conserve and enhance biodiversity.

14. LPP1 requires a minimum of 990 dwellings to be provided in Haslemere during the plan period. WBC is progressing Local Plan Part 2. A Regulation 18 Preferred Options consultation was undertaken in May and July 2018 (eLPP2). The appeal site was proposed as a housing allocation in the preferred Options Consultation version of eLLP2. Land to the north of the appeal site at Sturt Farm, with planning permission for 135 dwellings, was proposed in eLPP2 to be included with the revised settlement boundary for Haslemere. However, progress on eLPP2 has been deferred.[5]

15. Paragraph 11 of the revised ***National Planning Policy Framework*** (hereinafter the ***Framework***) sets out how decisions should apply a presumption in favour of sustainable development. The ***Framework*** states that to support the Government's objective of significantly boosting the supply of homes, it is important, amongst other things, that a sufficient amount and variety of land can come forward where it is needed. Paragraph 73 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against its housing requirement set out in its adopted strategic policies. Paragraph 172 of the ***Framework*** provides that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues.

16. Guidance about housing land availability assessment is provided in the ***Planning Practice Guidance*** (hereinafter the ***Guidance***).

17. In re-determining the appeal I have had regard to the purpose of conserving and enhancing the natural beauty of the AONB in accordance with section 85(1) of the Countryside and Rights of Way Act 2000.

Reasons

Character and appearance

18. The proposed development in Areas B, C and D would alter, replace or be closely associated with, existing built form in the AONB. I have no reason to disagree with the parties that the proposals for these areas would conserve the landscape and scenic beauty of the AONB. However, the scheme for Area A is a matter of dispute.

19. The ***Guidelines for landscape and Visual Impact Assessment*** (GLVIA3) stresses the distinction to be made between landscape character and visual effects.[6] Both experts at the Inquiry accepted that this distinction applies also to the terminology used in paragraph 172 of the ***Framework***. Area A is well screened in views from public vantage points. The only likely view point where residential development would be apparent in filtered glimpses through vegetation would be from a small section of Footpath 35. However, the appellant's landscape expert acknowledged at the Inquiry that an adverse

[5] ID26.
[6] GLVIA3 is the Third Edition published by the Landscape Institute and the Institute of Environmental Management and Assessment.

impact on landscape character could not be moderated by screening.[7]

20. The appellant argues that it is on-site landscape character impacts alone that are at issue here. I do not accept this because GLVIA3 advises that the area of landscape that needs to be covered in assessing landscape effects should include the site itself and the full extent of the wider landscape around it which the proposed development may influence in a significant manner. In this case, I consider that this encompasses at least part of the grounds of Longdene House given the location of the access drive and the avenue of trees along it. The proposal would not conflict with LPP1 Policy HA1 by reason of harm to parkland of heritage significance, but this tree-lined approach through open countryside, to what was a country house with some parkland features, makes an important contribution to the landscape character of this part of the AONB.

21. The character of the area is affected to some degree by activity associated with the office use of Longdene House, and the tranquillity of the area is sometimes interrupted by background noise from road traffic, trains and aeroplanes. Nevertheless, the proposed residential development of Area A would introduce an urban form of development and associated activity into a countryside location, resulting in a loss of openness and local distinctiveness. I consider that the appellant has understated the likely impact of the appeal scheme on the landscape character of the area. I also have concerns about the proposed details for access and landscaping, and the resultant impact on the character and appearance of the area, which I raised at the Inquiry.

22. Access and landscaping details for approval in Area A are shown on Drawings 16-T001-07 Site Access Options – Scheme B, 1027.2.04A Landscape Masterplan (25 Unit Scheme) and 1027.2.07 Land Adjacent to Main Access (Area A) 25 unit scheme.

23. Access here means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

24. Landscaping here means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area, including screening by fences and wall, planting of trees, hedges, shrubs or grass, formation of banks and terraces, provision of gardens and other amenity features.

25. It was clarified at the Inquiry that granting outline permission, with the proposed access and landscaping details, would for Area A determine the position of the cul-de-sac and circulation routes, along with the location of various landscape features. The latter would include the location of tree and shrub planting to either side of the estate road, the siting of hedgerow planting to define rear garden areas, and the position of grass verges and tree planting. This would effectively negate any scope for a reserved matter application to propose plot boundaries other than those shown on the submitted drawings. This would constrain the layout of dwellings, which is a reserved matter.

[7] In the quashed decision, at paragraph 19, the previous Inspector concluded that due to the screening there would be a moderate adverse impact on the landscape character within the tightly drawn Area A with only slight adverse impacts beyond the red line application area. Paragraph 55 of the quashed decision gives great weight to the harm to the landscape character of the AONB, but goes on to state that the extent of the harm would be limited to Area A visible from a point on the footpath, the field itself and views from the access drive.

26. Area A is bounded by mature trees, some of which are more than 20 m high. Given the determination of the landscaping and access details, I consider that the scope for siting dwellings so as to minimise potential harm to nearby trees would be limited.[8] I share WBC's concern that the outline planning permission proposed would be likely to result in long term harmful effects on nearby large trees arising from pressure by future occupiers to cut or lop trees because of shading or other adverse effects of large trees near to dwellings. I have taken into account the unilateral obligation, which would separate responsibility for the trees from the owners/occupiers of the proposed dwellings. If there was any consensus at the Inquiry by the experts about this resolving the matter, it is not a view that I share. The obligation cannot guarantee that any such pressure could be successfully resisted. Owners/occupiers can be very persuasive, particularly where dwellings have been sited too close to large trees. I do not consider that reliance should be placed on the obligation to safeguard the trees.

27. The tall trees along the driveway adjoining Area A are a significant feature of the local landscape and are visible from vantage points in the wider area. If pressure from owners/occupiers resulted in their loss or cutting back that would harm the local distinctiveness of the area. In coming to this finding I have had regard to the pattern of development in Haslemere, where many dwellings are set within mature vegetation, often on sloping sites. But it seems to me that within this part of the AONB the loss or diminution of such a significant landscape feature would harm the character and appearance of the area.

28. WBC is also concerned about the urbanising impact of the proposed cul-de-sac development. This is a form of development that is apparent in nearby parts of Haslemere. But the urban road configuration proposed for Area A would not accord with its location within the setting of a former country house in this part of the AONB. Area A is separated from the development permitted at Sturt Farm by a field which is proposed to be woodland planting and by Footpath 35. I consider that Area A relates more to the rural setting of Longdene House than it does to the proposed extension to the urban area at Sturt Farm, and that this should be properly reflected in the access and landscaping details.

29. In this context, I consider that the proposed cul-de-sac arrangement would fail to take the opportunities available here for improving the character and quality of the area and the way it functions, contrary to paragraph 130 of the *Framework*. The appeal scheme would also be at odds with paragraph 127, which provides that decisions should ensure that development, amongst other things, adds to the overall quality of the area, is sympathetic to local character, and establishes or maintains a strong sense of place, using the arrangement of streets and spaces to create attractive and distinctive places. Were the proposed access and landscaping details to be permitted, I am not satisfied that there would be a reasonable prospect of devising a reserved matter scheme that complied with LPP1 Policy TD1.

30. Taking all the above into account, I find that the appeal scheme would have an adverse effect on the landscape character of the area, not just for the site itself, of major significance. Given the limited visibility into the site from public

[8] In the quashed decision at paragraph 16, concerning the trees coming under pressure for crown reduction and/or removal due to shading, the previous Inspector stated that although the area would be quite densely developed, the dwellings could be sited to minimise this.

vantage points, but having regard to the visual significance of the avenue of trees, I consider that the proposal would have an adverse visual effect of minor/moderate significance.

31. Having regard to the nature, scale and setting of the proposal, along with its likely impact on the purposes of the designation, I do not consider that the appeal scheme represents major development in the AONB for the purposes of applying national policy. This is not now disputed by WBC. I also consider that the proposed alterations to Longdene House would be beneficial. Nevertheless, for the reasons set out above, I have found that the proposal would be likely to result in harm of major significance to landscape character, and of minor/moderate significance to visual amenity. This would result in significant overall harm to the character and appearance of the area.

32. I have considered whether it would be appropriate to grant outline planning permission with all matters reserved for later consideration. However, in the absence of an illustrative layout that demonstrated the likely feasibility of designing a policy compliant scheme for 25 dwellings on Area A, I do not consider that it would be reasonable to do so.

33. On the first main issue, I consider that the outline proposal, with the submitted access and landscaping details, would be likely to result in a scheme that had a significant adverse effect on the character and appearance of the area. This would not conserve or enhance the landscape and scenic beauty of the AONB. The resultant harm, in accordance with the ***Framework***, should be given great weight in the planning balance. The proposal would not safeguard the intrinsic character of the countryside and so would be at odds with LPP1 Policy RE1. It would also conflict with LPP1 Policy RE3 because it would not respect the distinctive character of the landscape. LPP1 Policies RE1 and RE3 are consistent with the revised ***Framework***.

Highway safety

34. Highway safety is not an issue for WBC, but is of great concern to local residents. There is concern about the junction of Hedgehog Lane, Courts Hill Road and Longdene Road, and the potential for increased danger at major roads such as the A286 and B2131. There is particular concern that the pavements are inadequate for pedestrians to access the railway station and town centre.

35. Local reservations about the impact of additional vehicles on the road network are not without foundation given the configuration of some of the local road junctions, along with the horizontal/vertical alignment and width of some of the routes that future occupiers of the proposed development and their visitors would be likely to use. The local network is not ideal, particularly for vulnerable road users, such as pedestrians and cyclists. However, I am not convinced that the appeal scheme would make the existing situation materially worse. The existing office use of Longdene House, with its large car park, generates considerable traffic on the local roads, which includes delivery vehicles. The proposed residential use of Longdene House and the additional dwellings would change the nature and timings of trips to and from the site, and possibly the mix of modes of transport. But overall, I consider that the proposed development would be unlikely to significantly alter the current risks to road users.

36. It seems to me that the many constraints on the local network, which were apparent at my accompanied and unaccompanied site visits, serve to keep vehicle speeds low, and encourage drivers to adopt a cautious approach. I see no reason why this should be any different with residential development of the appeal site. Taking into account all the evidence adduced at the Inquiry, and from my site visits, I do not consider that the proposal would be likely to result in an unacceptable adverse effect on highway safety. Available routes to the town centre and railway station are not so dangerous that they would render the location unsuitable for further residential development.

37. Local apprehension about risks to vulnerable road users is understandable, but I do not consider that any resultant harm to highway safety should weigh significantly against the proposal. I find no conflict with LPP1 Policy ST1. Residual cumulative impacts on the road network would not be severe, and any increased risk to highway safety would fall far short of an unacceptable impact that would, in accordance with the *Framework*, justify preventing the development on highway grounds.

Housing supply

38. WBC updated its 5 year supply using a 1 April 2018 base date to demonstrate a 5.8 years' supply, with a 5% buffer as was applied by the Local Plan Inspector. The appellant disputes this and considers that with a 5% buffer there is only 3.37 years' supply.[9] I note that Inspectors in other appeals have recently found a 5 years' supply, largely on the basis of maintaining the Local Plan Inspector's conclusions. However, the provisions of the revised *Framework* make it more difficult to place such reliance on the Local Plan Inspector's finding that WBC could demonstrate a 5 year supply of deliverable housing sites.

39. I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.

40. Urban and Rural LAA sites could potentially contribute to supply provided that there was clear evidence that completions will begin on site within 5 years. However, I consider that WBC's submissions about the deliverability of these sites falls short of the clear evidence now required. Many of the Rural LAA sites are located in the Countryside beyond the Green Belt, or in the Green Belt, the AGLV or the AONB. There is no clear evidence about the deliverability of these sites, particularly where progress on eLLP2 has been deferred.

41. Footnote 39 of the *Framework* provides that from November 2018 significant under delivery would be measured against the Housing Delivery Test (HDT).

[9] ID15 Table 2 indicates that this is based on deleting from WBC's total supply of 5,287 units the following: 1,159 units from outline permissions, 487 units from Urban LAA sites and 574 units from Rural LAA sites.

However, the HDT assessments have not yet been published, and paragraph 215 of the *Framework* states that the test will apply from the day following the publication of its results. I do not consider that it would be appropriate in advance of the publication of the HDT assessment to require a 20% buffer. ID15 Table 3 indicates that, with a 5% buffer, if the outline consents alone were deleted there would be 4.5 years' supply, and if the outline consents were included but both Urban and Rural LAA sites deleted there would be 4.6 years' supply. On the evidence before me, I find that the housing land supply here would be between 3.37 years and 4.6 years. There is not enough information about individual sites for me to assess where within this range the current supply falls. Nevertheless, this is a significant shortfall.

42. The additional dwellings from the proposed development would make a significant contribution to the supply of housing in Haslemere. The provision of 10 affordable dwellings would be particularly important in providing for local needs and would comply with LPP1 Policy AHN1. Given the housing land supply situation and the degree of shortfall, these are benefits which should be given significant weight in the planning balance.

Other matters

43. The appeal site lies within 5 km of the Wealden Heaths Special Protection Area (SPA). The scheme does not propose any mitigation for any adverse impact on the SPA. Natural England (NE) considers, given the size and scale of the proposal that it would not lead to a likely significant effect upon the integrity of the SPA, either alone or in combination. Accordingly, NE does not consider it necessary for an Appropriate Assessment (AA) to be undertaken. I note that an AA was completed by WBC in determining a duplicate application for the appeal site (Application Ref.WA/2018/0151), and that NE was happy with the outcome of that assessment.[10] However, I am satisfied on the evidence before this Inquiry that the proposal, alone or in combination, is not likely to have a significant effect on the interest features of the SPA.[11] It is not, therefore, necessary to undertake an AA. WBC now concurs with this finding.

44. The proposal would provide employment during construction and future residents would contribute to the local economy. The proposed landscaping and ecological enhancements would be beneficial for wildlife, and so the scheme would gain some support from LPP1 Policy NE1. These are benefits which should be given moderate weight in the planning balance.

45. I have taken into account all the other matters raised in the evidence, including the appellant's submission that some development of AONB land will inevitably be required to meet LPP1 requirements for housing in Haslemere. But this is a matter for eLPP2, and I do not consider that it should be a decisive consideration in determining this appeal. The fact that work on eLPP2 has been deferred does not, in my view, alter this finding. Similarly, it is not very helpful in deciding the appeal on its planning merits to draw comparisons with other possible housing sites in the wider locality. It is not possible in this section 78 appeal to consider all the relevant matters, along with the views of interested parties, on the different sites likely to be required to meet the housing requirement in Haslemere. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

[10] This duplicate application was refused in August 2018 against officer recommendation for approval.
[11] ID16.

Conclusions

46. The scheme would gain some support from development plan policies that seek to provide housing in Haslemere, and to increase the supply of affordable housing and enhance biodiversity, but would conflict with LPP1 Policies RE1 and RE3. I find that overall the proposal would be contrary to the provisions of the development plan taken as a whole. The proposal does not accord with an up-to-date development plan and so *Framework* paragraph 11 c) does not apply.

47. I have found that WBC cannot demonstrate a 5 year supply of deliverable housing sites, and so paragraph 11 d) is engaged by virtue of Footnote 7. Paragraph 11 d) i. refers to the application of *Framework* policies that protect areas or assets of particular importance. The appellant argues that no such policies are engaged in this case. I disagree. In paragraph 11 d) i. the reference to "protect" has its ordinary meaning to keep safe, defend and guard. It seems to me that that is precisely what paragraph 172 seeks to achieve with respect to landscape and scenic beauty in AONBs. This *Framework* policy for AONBs states that they have the highest status of protection in relation to conserving and enhancing landscape and scenic beauty, and that within AONBs the scale and extent of development should be limited. The inclusion of AONBs in Footnote 6 brings into play the whole of paragraph 172, not just that part which deals with major development, as the appellant's closing submissions seem to imply.

48. Given my findings about the effects on the character and appearance of the area, as set out above, I consider that applying *Framework* policies for the AONB here provides a clear reason for refusing the proposed development. So the provisions of paragraph 11 d) i. disengage the tilted balance. Therefore, the planning balance in this case is a straight or flat balance of benefits against harm.

49. The appeal scheme would provide additional housing in Haslemere, including affordable units, in an area of need. There would also be some benefits to the local economy and to biodiversity. But in my judgement these benefits would be outweighed by the harm to the character and appearance of the area, along with the harm to the AONB which attracts great weight. I find that the planning balance falls against the proposal.

50. The proposal would be contrary to the provisions of the development plan taken as a whole. It would not gain support from the *Framework*. There are no material considerations here which indicate that the determination of the appeal should be other than in accordance with the development plan.

51. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed. It is not, therefore, necessary for me to deal with the disputed contribution towards secondary education.

John Woolcock

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes of Counsel	Instructed by Lewis Jones Planning Solicitor for Waverley Borough Council

He called

Andrew Cook BA(Hons) MLD CMLI MIEMA CEnv MID	Director Pegasus Group
Brian Woods BA(Hons) MRTPI ONC	Managing Director WS Planning & Architecture

FOR THE APPELLANT:

Charles Banner of Counsel	Instructed by David Neame Director Neame Sutton Limited

He called

Dominic Farmer BSc(Hons) MSc CEnv MCIEEM	Ecology Solutions Ltd
Colin Brown BSc(Dual Hons) DipLD MA	Principal LanDesign Associates
Clive Burbridge BSc(Hons) MSc MRTPI MCIT MCILT	Director Iceni Projects Ltd
David Neame BSc(Hons) MSc MRTPI	Director Neame Sutton Limited

INTERESTED PERSONS:

Dr Philippa Guest	On behalf of CPRE Surrey
Michael Barnes	On behalf of Longdene Action Group
Guy Reynolds	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1	Appeal Ref: APP/W3520/W/18/3194926 Land on east side of Green Road Woolpit
Document	2	Extracts from the *Planning Practice Guidance*
Document	3	Schedule of suggested conditions
Document	4.1	*Park Lane Homes v SSHCLG* CO/3142/2018
Document	4.2	*Boddington v British Transport Police* (H.L.(E.)
Document	4.3	*West Lancashire BC v SSCLG* CO/4913/2016
Document	4.4	*Arun DC v SSCLG* CO/336/2012
Document	4	*North Norfolk DC and SSHCLG* CO/1319/2018
Document	5	Appellant's opening statement
Document	6	Opening submissions on behalf of the local planning authority
Document	7	Written Statement by Haslemere Vision
Document	8	Statement by Dr Philippa Guest on behalf of CPRE Surrey
Document	9	Email from WBC dated 1 October to those promoting housing sites concerning updated delivery rates
Document	10	Statement by Michael Barnes including petition
Document	11	Statement by Guy Reynolds including comments on traffic video addendum and script to addendum on traffic
Document	12.1	Draft s106 agreement
Document	12.2	Summary of s106 agreement
Document	13	Photographs of Red Court
Document	14	Plan by Mr Cook annotated with parkland area
Document	15	Housing Land Supply – Position Statement
Document	16	Addendum Note by Dominic Farmer on European Designated Site issues
Document	17	Note from Mr Woods documenting oral update to Inquiry concerning Appendix 3 and Appendix 9
Document	18	Aerial photograph of Red Court
Document	19	Email dated 10 October 2018 from Mr Barnes including letter from appellant dated 10 October 2018
Document	20	Housing Delivery Test Measurement Rule Book
Document	21	Draft unilateral undertaking
Document	22.1	Appellant's note on Sturt Farm SANG
Document	22.2	Outline planning permission dated 30 march 2015 for 135 dwellings at Sturt Farm
Document	22.3	Planning agreement dated 18 April 2018 for Sturt Farm which includes SANG obligations
Document	22.4	Plan showing approved landscaping details
Document	22.5	Planning permission for SANG dated 20 April 2018
Document	22.6	Plan for reserved matter application for Sturt Farm
Document	23	Dictionary definitions for 'parkland' and 'pastoral'
Document	24	Appellant's bundle of photographs 1-12
Document	25	Email from Natural England concerning Waverley Local Plan Part 2 dated 30 October 2018
Document	26	Waverley BC press release dated 29 October 2018 re deferring Local Plan Part 2
Document	27	Extract Hazlemere Herald 1 November 2018 re Housing site allocations withdrawn
Document	28	Sites with Outline Consent referred to in Mr Woods' EiC note
Document	29	Urban LAA Sites – October 2018
Document	30	Rural LAA Sites – October 2018

Document	31	Note on Housing Delivery Test
Document	32	Technical consultation on updates to national planning policy and guidance MHCLG October 2018
Document	33.1	Unilateral undertaking pursuant to s106 dated 14 November 2018
Document	33.2	Deed pursuant to s106 dated 16 November 2018
Document	33.3	Summary of S106 agreement & unilateral undertaking Note on R123 compliance: Secondary School Contribution
	33.4	Deed of Variation dated 20 December 2018
Document	34	Press Release re new timeline for eLPP2
Document	35.1	Transport Note dated 16 November 2018
Document	35.2	Qualifications and experience Clive Burbridge
Document	36	Suggested planning conditions
Document	37	Statement from Surrey County Council in support of a s106 contribution for secondary education
Document	38	Closing statement on behalf of the Longdene Action Group
Document	39	Closing submissions on behalf of the local planning authority and judgments
Document	40.1	Appellant's closing submissions and judgments
Document	40.2	Appendix : Legal submissions on the relevance of the previous Inspector's decision

PLANS

Full Application

078-PL-02	Existing Site Plan
074-PL-001 Rev. A	Location Plan
078-PL-017	Existing Block and Demolition Plan
079-PL-018	Proposed Blocks
078-PL-050	Existing Floor Plans Cottages
078-PL-051	Existing Elevations 1 Cottages
078-PL-052	Existing Elevations 2 Cottages
078-PL-053	Existing Glasshouse
078-PL-054	Existing Store 1
078-PL-055	Existing Store 2
1027.2.08	Semi-Detached Dwellings (Area B), Longdene House (Area C), Glasshouse/Outbuildings (Area D)
078-PL-020	Existing Basement
078-PL-021	Existing Ground Floor Plan
078-PL-022	Existing First Floor Plan
078-PL-023	Existing Second Floor Plan
078-PL-024	Existing Roof Plan
078-PL-025	Existing South Elevation
078-PL-026	Existing West Elevation
078-PL-027	Existing North Elevation
078-PL-028	Existing East Elevation
078-PL-030 Rev. A	Basement
078-PL-031	Ground Floor Plan
078-PL-032	First Floor Plan
078-PL-033	Second Floor Plan
078-PL-034	Roof Plan
078-PL-035 Rev. A	South Elevation
078-PL-036 Rev. A	West Elevation
078-PL-037 Rev. A	North Elevation
078-PL-038 Rev. A	East Elevation
078-PL-040	Garage Plans
078-PL-041	Garage Elevations
9172/01 Rev A	1/3 Tree Constraints Plan
9172/01 Rev A	2/3 Tree Constraints Plan
9172/01 Rev A	3/3 Tree Constraints Plan
9172/03	1/3 Tree Protection Plan
9172/03	2/3 Tree Protection Plan
9172/02	3/3 Tree Protection Plan
114543/9001	Development Area and Source Protection Zones Site Plan

PLANS

Outline Application

078-PL-02	Existing Site Plan
074-PL-001 Rev. A	Location Plan
078-PL-017	Existing Block and Demolition Plan
1027.2.04A	Landscape Masterplan (25 Unit Scheme)
1027.2.07	Land Adjacent to Main Access (Area A) 25 Unit Scheme
16-T001 07	Site Access Options – Scheme B
9172/03 2/3	Tree Protection Plan
9172/01 Rev A 2/3	Tree Constraints Plan
Plan 1027.2.04B	Landscape Masterplan

WB20

The Planning Inspectorate

Appeal Decision

Inquiry held on 8-10 April and 2 May 2014; unaccompanied site visit made on 7 April 2014 and accompanied site visit made on 2 May 2014

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

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

Decision date: 25 June 2014

Appeal Ref: APP/W0530/A/13/2207961
Land to the west of Cody Road, Waterbeach, Cambridge CB25 9LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 [hereinafter "the Act"] against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Manor Oak Homes against South Cambridgeshire District Council.
- The application, Ref S/0645/13/FL, is dated 22 March 2013.
- The development proposed is erection of 60 dwellings (Class C3), including affordable housing, access, car parking and associated works, open space, landscaping and a children's play area.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 60 dwellings (Class C3), including affordable housing, access, car parking and associated works, open space, landscaping and a children's play area on land to the west of Cody Road, Waterbeach, Cambridge CB25 9LS in accordance with the terms of the application, Ref S/0645/13/FL, dated 22 March 2013, subject to the conditions set out in the attached *Schedule of Conditions*.

Procedural matters

2. I have been appointed to deal with 2 appeals on nearby, but not contiguous, sites and held 2 Inquiries on consecutive dates to consider the respective appeals. The second appeal was made by Persimmon Homes East Midlands against the decision of South Cambridgeshire District Council to refuse an application to grant outline planning permission for residential development of up to 90 dwellings on land north of Bannold Road, Waterbeach. The appeal [Ref: APP/W0530/A/13/2209166] was heard at an Inquiry held between 13 and 15 May 2014. The decision in respect of that appeal is being issued on the same date as the decision in this appeal as the issues are very similar.

3. Two Planning Obligations dated 10 April 2014 have been submitted in this appeal. The first [Document 14] is between all relevant interests in the land and Cambridgeshire County Council, the headline summary of which is that:
   i) £127,680 is offered as a contribution towards early years education facilities;
   ii) £4,366.92 is offered as a contribution towards libraries and lifelong learning;
   iii) £146,160 is offered as a contribution towards primary education facilities;
   iv) £6,000 is offered as a contribution towards real time passenger information to the south bound bus stop on Cody Road;
   v) £11,400 is offered as a contribution towards strategic waste infrastructure facilities;

vi) £1,899.80 is offered as a contribution towards the cost incurred in the negotiation, preparation and execution of the deed; and,
vii) specified off site highway works are offered, comprising upgrading of the south bound bus stop or the north bound bus stop in the event that such an upgrade to the former has already been executed.

4. The second [Document 15] is between all relevant interests in the land and South Cambridgeshire District Council, the headline summary of which is that:
   i) £30,366.88 is offered as a contribution towards the provision of and improvements to indoor community facilities;
   ii) £66,887.35 is offered as a contribution towards off-site sports facilities;
   iii) £20,000 is offered as a contribution towards the future maintenance of the on site public open space which will be provided on the appeal site;
   iv) £94,764.92 is offered as a contribution towards off-site public open space;
   v) £69.50 per house and £150 per flat is offered as a contribution towards the provision of household waste receptacles;
   vi) £4,250 is offered as a contribution towards the cost incurred in the negotiation, preparation, execution and monitoring of the deed; and,
   vii) 24 of the dwellings provided shall be affordable housing units, which comprises 17 affordable rented units and 7 shared ownership units.

5. At the Inquiry I questioned, by reference to Part I of the appeal form, whether all parties with an interest in the appeal site were signatories to the Planning Obligations. I was advised that the other party on whom notice was served at that stage has no interest in the appeal site and was served notice because of their interest in the land over which the proposed drainage outfall would run. The Council is satisfied that all parties with an interest in the appeal site are signatories and whilst I have not seen title I intend to proceed on this basis. I shall return to consider whether the contributions meet the legal tests below.

6. During the conditions session at the Inquiry the Appellant expressed concern about a suggested condition put forward by the Council [Document 18], as a result of which it offered a further Unilateral Undertaking. This was submitted by the Appellant in the timetable agreed at the Inquiry and the Council has confirmed that it has no issues with the manner in which it is drafted. The Unilateral Undertaking [Document 21], dated 15 May 2014, offers the sum of £2,500 as a contribution towards off-site works to complete the footpath links between the appeal site and the existing Cam Locks development to the west.

7. Paragraphs 1.5 and 1.8 of the agreed Statement of Common Ground sets out the basis upon which the Council were minded to refuse the application, based on reports to the Council's Planning Committee in October 2013 and March 2014. This rationale informs my approach to the main issues.

Main Issues

8. In the light of all that I have heard I consider that there are 4 main issues in this appeal. The first is whether relevant policies for the supply of housing are out-of-date. The second is the effect of the proposed development on the character and appearance of the area. The third is whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Planning Practice Guidance ["the Guidance"]. The fourth is whether, having regard to the Development Plan [DP] and the presumption in favour of sustainable development in the National Planning Policy Framework ["the Framework"], this is a suitable and sustainable location for this scale of

residential development. I acknowledge that this represents a revision from those circulated at the Inquiry, but the substantive issues have not changed.

Planning policy

9. The DP includes the Core Strategy DPD [CS] and the Development Control Policies DPD [DCP], which were adopted in January 2007 and July 2007 respectively. Relevant DP Policies include CS Policies ST/2 and ST/5 and DCP Policies DP/3 and DP/7. The Framework has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. Paragraph 11 confirms that applications, and by inference appeals, should be determined in accordance with the DP unless material considerations indicate otherwise. However the Framework is one such material consideration. I examine the Framework in greater detail below.

10. The examination into the South Cambridgeshire Local Plan 2011-2031 [LP], started with its submission to The Planning Inspectorate on 28 March 2014. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the weight to be attached to such polices will depend on: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

11. It is common ground that all relevant policies and proposals, including S/4 and SS/5 which are relied upon in the putative reasons for refusal, are the subject of outstanding objections. Whilst some of those objections have been lodged by those who seek to progress this and other development schemes in the vicinity of Waterbeach this does not alter my view that there are significant unresolved objections outstanding. It remains in prospect that the Inspector appointed to undertake the examination might find that the emerging LP is unsound or recommend main modifications as a result of those objections or otherwise. On the limited information before me the unresolved objections appear to be significant because they go the principle of the policies at issue.

12. In relation to Policy S/4 the extent to which the emerging policy is consistent with the Framework[1] remains at issue between the parties and I shall examine this as part of my consideration of the third main issue, below. Although the strategy of planning for large scale development through the identification of a new settlement might represent the best way of achieving sustainable development, paragraph 52 of the Framework says this should be achieved with community support. However there are 431 objections, presumably all still unresolved, in relation to Policy SS/5, including what the Council has characterised to be "*a local campaign opposed to the new town*"[2]. For these reasons, applying paragraph 216 of the Framework but particularly having regard to the significance of the unresolved objections, I attach limited weight to the relevant policies and proposals of the emerging LP.

13. The Council advised in closing that the examination hearings are not likely to start before mid October 2014. Although I do not have the full picture, based on the limited information before me it would appear that the examination

[1] Including paragraphs 52, 80 and 82.
[2] Source of quote: page 327 of the bundle appended to Mr Hyde's proof [page 73, Appendix 25].

could be quite lengthy. The Local Development Scheme [LDS, Document 6] says that the examination will be undertaken during "*Summer/Autumn 2014*" but if the hearings do not commence until October there is likely to be some slippage in this timetable. The LDS anticipates adoption of the LP during "*Spring 2015*" but, given the need to consult on any modifications that are recommended, this would appear to be optimistic in the circumstances.

Reasons

(i) Housing supply

14. The Framework says: "*To <u>boost significantly the supply of housing, local planning authorities should</u>: …identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against <u>their housing requirements</u> with an additional buffer of 5 % (moved forward from later in the plan period) to ensure choice and competition in the market for land*" [3] [<u>my emphasis</u>]. I assess the Council's housing supply in this context.

The relevant housing requirement

15. The Guidance says[4]: "*Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. ...Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested*".

16. Applying this advice I consider that the "*starting point*" is the CS, which I accept to be the most up-to-date, extant and tested housing requirement for South Cambridgeshire. Figure 4.7 of the Annual Monitoring Report [AMR] indicates the annual requirement that would be necessary during the remainder of the plan period, taking account of past and forecast completions. The main parties agree that when considered against the CS the Council cannot demonstrate a 5-year housing land supply. Although the figures differ, reflecting different assumptions, and do not include the "*City Deal*" which I examine below, it is clear that the magnitude of the shortfall, even on the Council's most optimistic figure[5], must lead to a finding that it cannot show a 5-year supply of deliverable housing sites on this basis.

17. However, even if I take the position as at April 2013, which is a question I shall return to, it is evident that the CS plan period would be a maximum of 3-years. The Council also points out that the projections and forecasts supporting the CS were not for the current housing market area, do not specifically consider the development needs of the District and were prepared in a different economic climate. I accept that the Guidance contains an important caveat and that in this case significant new evidence, in the form of the Cambridge sub-regional Strategic Housing Market Assessment [SHMA], which I turn to below, has been prepared. In all of these circumstances I attach only moderate weight to the housing land supply calculation based on the CS.

[3] Source of quote: paragraph 47, principally the second bullet-point.
[4] Source of quote: paragraph reference 3-030-20140306.
[5] 2.6 years supply using the 'Liverpool' method with a 5 % buffer [DR40].

18. My colleague in the Toft appeal [Ref APP/W0530/A/13/2192228] gave reasons for finding that the housing land supply in the emerging Local Plan, based on the SHMA, "…*contains a more up to date and thus more reliable assessment of housing need in the District*…" than that contained in the CS; I agree. Although I recognise that the SHMA figure of 19,000 homes for the period 2011-2031 is the subject of objections and has yet to be tested through the examination process, I attach greater weight to it than I do to the CS figure of 20,000 homes for the period 1999-2016. The CS figure derives from the Structure Plan which was, in turn, based on the now revoked RPG6. It is not therefore an up-to-date, objectively assessed figure for housing need. Ultimately my view is reinforced by Mr Hyde's concession in cross-examination that if one requirement had to be used in this case, it should be that based on the SHMA.

19. As the Council submitted in closing the different requirements arising from the CS and the SHMA might lead to different 5-year housing land supply outcomes and that might place the decision maker in an invidious position as to whether a 5-year supply exists. I shall therefore proceed on the basis of an annualised requirement of 950 dwellings pa or 4,750 dwellings over a given 5-year period.

Base date

20. The issue between the parties is whether the 5-year supply requirement should use a base date of 1 April 2013 or 1 April 2014. As a general rule I accept the Council's submission that a more recent base date is to be preferred but only where I can be confident that it captures information on actual progress over the previous year[6]. In this case I am concerned that I only have a partial data set rather than a full set of the figures for the full year, April 2013-March 2014. Amongst other things the "*March AMR update*" [Document 13] says the figure for housing completions records "…*predicted completions to 31/3/2014. These predicted completions are based on the housing trajectory in the plan where there is no better information and otherwise on what developers have told us are their actual completions and <u>planned completions</u> to 31/3/2014. This information was gathered between October 2013 and <u>January 2014</u> for major sites and others down to sites of 9 homes*" [<u>*my emphasis*</u>]. In other words it is only for part of the accounting year and otherwise based on a prediction.

21. In cross-examination Mr Hyde referred to other ways in which the data set was incomplete by reference to Figure 4.7 of the February 2014 AMR. In particular the table records planning permissions granted for windfall sites between 1 April and 31 December 2013 rather than for the full year. These commitments have the effect of increasing the supply side but the flip side is that no account has been taken of any planning permissions that lapsed after 31 March 2013.

22. The base date of 1 April 2013 ensures the housing land supply requirement figure is based on known completions because the actual level of historic completions is published in the 2012-13 AMR. This is the most up-to-date figure of known completions and anything else is conjecture. Moreover the Appellant refers to Mr Roberts's Appendix DR44 to show the principle that the further ahead the projection, the less accurate it becomes. The Council's approach is therefore less robust since it projects further into the future. For these reasons I find the Appellant's approach is the most robust and reliable.

23. I appreciate that this approach does not then relate to the full 5-year period looking forward [2014-2019] but it plainly does relate to a 5-year period. I am

[6] Or where, as in the concurrent appeal with which I am dealing, it is common ground that 2014 should be used.

unclear why the Council's approach would fail to comply with Regulation 34(3) of the Town and Country Planning (Local Planning)(England) Regulations 2012. I acknowledge the claim that the housing trajectories have been fairly reliable indicators of completions in the past, but I note from paragraph 4.11 of the AMR that there has been considerable variation over the 5-year period from 2008-2012. I have no reason to doubt that it mirrors the approach taken by Cambridge City Council but that does not validate the approach or make it right. It does not lead me to find that this is a sound evidence base on which to assess supply because it remains an estimate rather than an actual figure.

24. Although I acknowledge that this leads to an inconsistency with the approach that I have taken in the Bannold Road appeal, my decisions must be led by the evidence that has been presented in each case. For this reason there is a clear basis on which to distinguish the respective appeals.

Shortfall recovery: Liverpool v Sedgefield

25. In *Bloor Homes* [Document 1] it was held that the judgment as to whether to use the Liverpool or Sedgefield method was properly a matter for an Inspector to make and a Court would not interfere, subject to soundness of reasoning. The judgment expressly took account of paragraph 47 of the Framework, previously recited, and even though the judgment was handed down post-issue of the Guidance there was no reason for the Court to take it into account. The Council distil 4 factors from *Bloor Homes* to be: (i) the need to boost the supply of housing; (ii) the severity of the shortfall; (iii) the pattern and pace of housing provision planned for the Borough; and (iv) whether the Council was "*averse to boosting the supply of housing*"[7]. I comment on these below.

26. Dealing initially with the need to boost the supply of housing, my colleague in the Three Pots appeal [Ref APP/K2420/A/13/2202261] had both of the appeals[8] from Hinckley & Bosworth, which are relied upon by the Council, placed before him. I therefore regard it to be significant that he found the Sedgefield approach to be the "*most appropriate*" [DL13]. His observation that: "…*the Sedgefield approach has been generally considered by Inspectors to be the correct approach, as any accumulated backlog would be dealt with in the next 5 years*" [DL12], accords with my own. I consider that the Sedgefield approach aligns more closely with the Government's objective as expressed in paragraph 47 of the Framework: "*To boost significantly the supply of housing*". This view is consistent with that expressed in the joint Local Government Association and Planning Advisory Service publication "*Ten key principles for owning your housing number – finding your objectively assessed needs*"[9].

27. I deal with the question of the buffer below but the Council acknowledges that there has been a shortfall in the initial years of the emerging LP period, from 2011, when assessed against the annual target set out in that plan. Whether that should be characterised as "*small*", as the Council submits, is somewhat subjective. Mr Hyde made the point under cross-examination that the deficit of 642[10] that has built up over the first 2-years of the emerging LP is significant in such a short period of time and represents the best part of a year's shortfall.

[7] Source of quote: paragraph 112 of the judgment.
[8] Ref APP/K2420/A/12/2188915 and APP/K2420/A/12/2181080, at DR41, which were both subject of challenge, the latter of which gave rise to the *Bloor Homes* judgment and has therefore been quashed.
[9] See page 175 of the bundle appended to Mr Hyde's proof [Appendix 14].
[10] Calculated as 279 + 363 [See DR31 for derivation].

28. Although Mr Hyde conceded that there has not been a "*forward planning failure*" in the District, fewer houses have been built than planned for. This basic problem colours my approach to the strategic approach, which has meant that Cambridge City has been the focus of urban extensions on its periphery. Although there is evidence of joint working, exemplified by the identical date of submission of the respective Local Plans for examination, there is no joint DP; each District still needs to meet its own housing requirement. In this context there is force in the closing submission that the Council is doing nothing more than its statutory obligation as opposed to doing its best to boost the supply of housing. The pattern and pace of housing provision is unlikely to change in the short term because the spatial strategy evident in the CS is carried forward into the emerging LP. The Council does not appear to have proactively sought to boost the supply of housing, e.g. by bringing other allocated sites forward.

29. The Guidance says: "*Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible*" [11]. The cross-reference ["*Related policy*"] is to paragraph 47 of the Framework, which is not in the "*Plan Making*" section of the Framework [paragraphs 150-185]. On this basis I reject the contention that this aspect of the Guidance is exclusively concerned with plan making. As Mr Roberts conceded in cross-examination, it can also be relevant to applications and/or appeals.

30. The DCLG publication "*Land Supply Assessment Checks*" [2009] predates the Framework and the Guidance. For this reason although it does not recommend either approach as best practice this does not alter my view that the Sedgefield approach is to be preferred. The Council also contends that the Sedgefield approach is not appropriate for a District of 108 villages and no towns, but this is not a good reason not to boost the supply of housing. As the Appellant points out, it might present greater opportunities to address the outstanding need. For all of these reasons the Sedgefield approach is to be preferred.

Has there been a persistent under-supply of housing in the District?

31. The Framework says: "*Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land*"[12]. The Guidance says: "*The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing…. The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle*" [13].

32. The Council's best case is set out in the table in Mr Roberts's Appendix DR31. It shows that during the 14-year period 1999-2013 there was only a surplus in 4-years, namely 2003-4, 2005-6, 2006-7 and 2007-8. During the last 5-years of this period, namely from 2008-9 to 2012-13, annual housing delivery was significantly, i.e. not less than 505 units, below the DP target. Even in those years that the table shows as being in surplus, if the DP target is derived from the CS a surplus is only achieved in one year, namely 2007-8. Figure 4.7 of

[11] Source of quote: paragraph reference 3-035-20140306.
[12] Source of quote: paragraph 47, second bullet-point.
[13] Source of quote: paragraph reference 3-035-20140306.

the AMR cites the annualised requirement of the CS to be 1,176 per annum over the same period from 1999 to 2013 and confirms the historic completions over the period from 1999 to 2013. I acknowledge that the CS was only adopted in 2007 but the AMR confirms that the base date of the CS was 1999.

33. In the circumstances I am far from convinced that it would be appropriate to attach weight to the annual targets for the period 1999 to 2007, shown in DR31, which are said to derive from earlier Local Plans. The published AMR is given as one source for the table at DR31 and as it appears to be the primary evidence base for housing completions and targets I attach it greater weight. The Council has a duty to publish the AMR under Regulation 34 of the Town and Country Planning (Local Planning)(England) Regulations 2012, which it has interpreted in this way, i.e. against the CS base date. On this basis I attach significant weight to this published source. The CS itself says that an AMR has to be produced and that a key aspect of monitoring will be the number of houses[14]. Amongst other things my attention has been drawn to CS Policies ST/10 and ST/11, which aim to achieve a "*continuous high level of dwelling production throughout the Plan period*" and bring forward sites for development where monitoring suggests that policies and allocations are not being met, respectively. These adopted policies therefore provide no basis for reverting to lower targets in superseded plans in order to avoid delivery, quite the reverse.

34. The Appellant offers another approach that would achieve a similar result. It is said that at the point where the CS was adopted, January 2007, the target should have been the overall housing provision (20,000) less completions at the point of adoption (6,131) annualised over the remainder of the plan period. The Appellant submits that even applying the Liverpool method that this would have resulted in an annual target over the remainder of the plan period, to 2016, of 1,541 per annum. Regardless of which approach is adopted I reject the Council's claim that the table at DR31 is the '*best available evidence*'.

35. I acknowledge DR31 collates housing completions with other data, including the capacity of sites with planning permission; I accept that there appears to be no obvious correlation between this and the number of completions. There is some relationship between GDP growth and completions although I would not agree that it is '*obvious*'. For example the table shows that the biggest increase in GDP was in 2000-2001, at 4.4 %, but that year there was still a deficit, even against the 1993 Local Plan target, which would have been much greater if assessed against the CS target. The largest deficit is recorded in the table to be in 2012-2013, at -589 but, in contrast to the period 2008-2010, the table shows that was the third year in a row in which there was growth in GDP. In any event, applying the quoted advice from the Guidance, a long-term view of the situation, since 1999, takes account of such fluctuations in the economy.

36. On any reasonable analysis, taking account of economic factors, I therefore conclude that there has been a *record of persistent under delivery of housing* in the District of South Cambridgeshire. The Council's own published AMR shows that the historic completions only exceeded the CS target in 1 year out of 14 and on any analysis that is persistent. Even if I had been persuaded that the Council had exceeded the DP target in 4-years I would still regard that to be a *record of persistent under delivery*.

[14] Paragraphs 4.4 and 4.9 of the CS, respectively on pages 245 and 247 of the bundle appended to Mr Hyde's proof [Appendix 18].

37. This conclusion is consistent with the approach of my colleague in the Three Pots appeal and the position recorded in paragraphs 48 and 49 of *Cotswold DC v SSCLG and others* [2013] EWHC 3719 (Admin). In both cases under-delivery in 50 % or more of the years in the periods considered were found to comprise persistent under delivery; Lewis J. did not interfere with that finding.

Reliance on City Deal

38. The Framework defines deliverable as: "*To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable*"[15].

39. During the course of the Inquiry I was provided with further evidence of the Greater Cambridge City Deal [Documents 7.1-7.4], including a joint letter to the Chief Secretary to the Treasury welcoming the offer. That letter confirms that under the deal 1,000 additional units on rural exception sites would be delivered by 2031. However I am not persuaded that it would be reasonable to assume that 150 of those homes would be deliverable in the current 5-year supply period. On the limited information before the Inquiry it is far from clear whether any suitable sites have been identified, still less whether they would be *available now*, in order to be considered to be deliverable. Amongst other things the draft Minute records that the County Council and University, as major landowners, "*may*" find some exception sites. There is no basis for categorising these sites as windfall sites[16]. This novel arrangement for this area cannot, by definition, provide: "*compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply*", as required by paragraph 48 of the Framework.

40. The draft Minute underlines that there remains considerable uncertainty about the scheme, particularly at this early stage. Matters to be resolved include joint governance, which might take approximately one year and appears to require primary legislation. The letter to the Treasury underlines the lack of certainty, including with regard to financing provisions, e.g. "…*<u>if</u> we receive the full £500m*" [*<u>my emphasis</u>*]. This goes back to the question of deliverability in terms of viability, which might depend on the availability of public subsidy. For these reasons I agree with the Appellant that there is a lack of certainty about the principle and timing of the City Deal and, as a consequence, there is no sound basis to take it into account in the current 5-year housing land supply.

Reliance on Cambridge City Council

41. The Council has prepared a number of calculations based on various assumptions, including joint figures taking account of the housing supply situation in Cambridge City Council's administrative area. The District surrounds the City and the adopted strategy, CS Policy ST/2, has sought to allocate housing on the edge of Cambridge as the first preference. Both Councils submitted their respective Local Plans on the same date for joint examination by one Inspector and although this is evidence of joint working it is, by definition, not a joint DP. Pending revised governance arrangements arising from the City Deal, the fact is that the 2 Councils comprise separate Local Planning Authorities. Paragraph 47 of the Framework is directed to each

[15] Source of quote: footnote 11 of the Framework.
[16] The Glossary to the Framework defines these as: "*Sites which have not been specifically identified as available in the Local Plan process. They <u>normally comprise previously-developed sites</u> that have unexpectedly become available*" [*<u>my emphasis</u>*].

Local Planning Authority, e.g. "*their housing requirements*". Since it is clear that each Local Planning Authority must demonstrate its own 5-year housing land supply, to adopt a different approach here would be without precedent. It is telling that the Council has been unable to identify a single decision of an Inspector or the Secretary of State which adopts the joint approach which it has advanced at this Inquiry. In my view this speaks volumes.

Housing land supply calculations

42. For the above reasons I consider that the Appellant's calculation in Table 3 of Mr Hyde's proof is to be preferred. On the supply side this excludes the figures given in the February 2014 AMR for planning permissions granted between 1 April and 31 December 2013 but as it is a calculation at the end of March 2013 that is justified. I conclude that the Council has 3.51 years supply of housing. It is material to note that on the Council's own figures, adopting the Sedgefield methodology, but based on the position at 31 March 2014, including predicted completions to that date, it cannot show a 5-year housing land supply. With a 20 % buffer the Council calculates 3.9 years supply. Even using the Liverpool method, with a 20 % buffer, the Council calculates 4.4 years supply. I have given reasons why I do not accept the assumptions that underpin these figures but they tend to reinforce my conclusion in this matter.

Relevant policies for the supply of housing

43. The Framework says: "*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*"[17]. The Appellant identified 3 policies to be relevant policies for the supply of housing, namely CS Policies ST/2 and ST/5, and DCP Policy DP/7. In response to my question as to whether the Council agreed it provided a note [Document 10] that identified those policies. However it contains a caveat that: "*It should be noted that to the extent that they address matters not directly relevant to the supply of housing, those elements of policy can properly attract weight*".

44. Dealing with CS Policies ST/2 and ST/5 there appears to be no dispute that these exclusively comprise policies for the supply of housing. To the extent that it might be said that CS Policy ST/5 includes a relevant requirement for larger scale development to deliver financial contributions that does not appear to be in dispute in this appeal and is a matter I turn to in due course. However in closing it was said that DCP Policy DP/7 (2) lists criteria that are broadly consistent with the Framework. I accept that but it does not alter my view that DCP Policy DP/7 is, primarily, a policy for the supply of housing. Whilst worded positively rather than negatively DCP Policy DP/7 (1) appears to be similar to Policy EV2, which was at issue in *South Northamptonshire Council v SSCLG and Barwood Land* [2014] EWHC 573 (Admin)[18]. Ouseley J. held "*Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development*" and that "…*the policy clearly falls within the scope of the phrase* [in paragraph 49 of the Framework]"[19]. My view is reinforced by the fact that this site is outside of the development framework and hence the criteria in DCP Policy DP/7 (2) do not apply to the appeal site.

---

[17] Source of quote: paragraph 49.
[18] See summary of EV2 at paragraph 38 of the judgment on page 479 of the bundle appended to Mr Hyde's proof [Appendix 31].
[19] Source of quotes: paragraphs 47 and 48 of the judgment, respectively, on page 481 of the bundle appended to Mr Hyde's proof [Appendix 31].

45. On the first issue I conclude that relevant policies for the supply of housing, namely CS Policies ST/2 and ST/5, and DCP Policy DP/7, are out of date.

(ii) Character and appearance

46. The Statement of Common Ground records that the main parties agree the following points. The appeal site is enclosed by built development on 3 sides. The recently completed residential development at Cam Locks is situated to the west and the party boundary is formed by a mixture of mature trees and hedging. The residential properties at Nos 31-45 Bannold Road are located to the south and a timber close boarded fence augmented by trees and vegetation is present along the party boundary. To the north lies Waterbeach Barracks, which has now been relinquished by the Ministry of Defence [MoD]; the former married quarter housing is currently being refurbished for the open market and the first phase has been released. The party boundary is formed by a concrete post and wire fence and a number of mature trees. The appeal site is contained on its eastern boundary by Cody Road with agricultural land to the east.

47. DCP Policy DP/7 (1) only permits development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside. In cross-examination Mr Hyde, on behalf of the Appellant, conceded that the proposal is for development outside of the village framework of a type not permitted under the policy, which is an inevitable concession, but it needs to be seen in the context of my finding that it is not up-to-date.

48. In pursuit of its claim that the proposed development would result in a loss of a visually important open buffer which presently separates Waterbeach from the Barracks, the Council point to the comments of 2 previous Inspectors. In an appeal decision [Ref T/APP/W0530/A/86/044894/P4], dated 12 August 1986, the Inspector dismissed a scheme for 5 dwellings on a site to the north-east of the junction of Bannold Road and Cody Road. The Inspector found "*Waterbeach is a varied and characterful village which has succeeded in absorbing a large number of new houses without losing its compact and attractive appearance. It is separated from Waterbeach Barracks by a strip of arable land only some 200 m wide and the barracks itself is as extensive as a large village. It seems to me highly desirable that a wedge of open land should be retained between the 2 settlements to prevent their coalescence. Bannold Road, with its grass verges, mature trees and generally rural appearance forms a natural northern boundary to the village providing open views of farmland with the barracks beyond... If the appeal site were…to be built on this would further reduce the visual impact of the green wedge... Cody Road forms a distinct boundary to development on the northern side of Bannold Road and I consider it appropriate that the village envelope should exclude all the land to the east of this road*"[20]. The 2004 Local Plan Inspector found that the current appeal site "…*is a green field arable site immediately to the* [east of what is now Cam Locks]. *The land is open to Cody Road and much more visible from the east. In my view there is far less case for developing this site and I do not support the objector's request that it be allocated for residential development*"[21].

49. I accept that both Inspectors had to form judgments about the importance of the undeveloped area between the village and the Barracks and that their conclusions about that underlie both decisions. The appeal decision was made some 28 years ago and there have been 2 material changes since that time.

[20] Source of quote: paragraph 10.
[21] Source of quote: page 1122 of the SHLAA Site Assessment Proforma [KPC9].

The first is the development of what is now Cam Locks. That built form is visible from Cody Road, particularly over the winter period, but even during the accompanied visit, when the mature hedgerow was in full leaf, the houses were still evident. However I acknowledge that the second Inspector did anticipate this change and take it into account when making the comments that he did.

50. The second arguably more significant change is that the Barracks, or at least that part of the Barracks served off Cody Road[22], have been relinquished by the MoD and are being refurbished as market housing. In terms of their character and appearance I consider that the refurbished houses are indistinguishable from the "*varied and characterful*" remainder of the village. I consider that the refurbished houses[23] belie their origins. The Appellant draws comparison to, amongst others, Waddelow Road. However Park Crescent, to the south of Bannold Road, has a far more institutionalised feel, including a gate beside the entrance, and yet those houses are wholly within the settlement boundary.

51. In these circumstances I reject the claim that all of the findings made in 1986 remain pertinent today. In particular, the idea of the former Barracks and the village being "*2 settlements*" no longer applies. Mrs Pell-Coggins agreed in cross-examination that the sole reason why the former Barracks was outside of the settlement boundary was because of its military use, but that rationale for considering it separate has fallen away. The refurbished dwellings served off Cody Road are wholly dependent on Waterbeach for access and the residents are likely to use many of the services and facilities in the village, including the shops, school and GP surgery. Physically[24] and functionally this part of the former Barracks is now part of the village and, on the balance of probability, present and future occupiers of refurbished houses would regard themselves to be residents of the village of Waterbeach. I find no basis for concluding that this part of the former Barracks has a separate and distinct identity.

52. When viewed in this way the "*highly desirable*" separation that underpinned the Inspector's rationale in 1986 is now much less important. Indeed there is an argument that better integration would achieve the "*strong, vibrant and healthy*" community that the Framework alludes to. Otherwise the separation evident on the ground might represent a metaphor for something more. The first Inspector refers to Cody Road as forming a distinct boundary, making a distinction between the land to the west and east of the road. Although the second Inspector saw "*less case*" for developing the appeal site that comment needs to be seen in the context of the housing need at that time[25] and policies which then prevailed, including the emphasis on previously-developed land.

53. It is in this context that I turn to consider the site's visual importance. Views from Cody Road, such as that at issue between the main parties, are of low visual sensitivity because of the transient nature of any receptor. The Council disagrees because it says existing houses in the former Barracks have an outlook in this direction. That might be correct but that is not the specific view at issue[26]. Nevertheless I consider that the magnitude of change on Cody Road

[22] Noting that access remains restricted to some areas of the barracks, including the officer's mess, there might be a distinction to be drawn in other cases and hence the qualification. The area served off Cody Road includes Capper Road, Kirby Road, Fletcher Avenue and Abbey Place.
[23] At the time of my inspection the refurbishment was in progress along Capper Road and Kirby Road; the condition of the houses along Fletcher Avenue gave an indication of what those houses were like before the refurbishment.
[24] By virtue of the road link and pedestrian footway via Cody Road if nothing else.
[25] DR31 records that the 2004 Local Plan annual target was 753 dwellings per annum, which is the lowest for the period for which data is provided.
[26] Photograph 2 in Appendix 2 to the evidence of Mr Pearce.

would be high adverse, which is defined as causing a significant deterioration, because whereas there is now an open field with built development around its periphery there would be a brick wall and a view dominated by houses[27]. However it is relevant that Cody Road is not a through route but effectively a cul-de-sac that serves the dwellings on Capper Road, Kirby Road, Fletcher Avenue and Abbey Place. There is no public right of way through the Barracks. This is material because, as Mr Pearce says, the sensitivity of visual receptors depends on the expectation and occupation or activity of the receptors.

54. Although the Council also took issue with views from Bannold Road[28], my site inspection revealed that views of the appeal site from these vantage-points would be less significant and so I have no reason to dispute the assessment. In particular at the time of my accompanied site inspection views of the appeal site from location 5 were largely obscured by, albeit deciduous, vegetation.

55. Cody Road is the key public vantage-point in which the appeal site might be said to provide a setting for the village and/or the former Barracks, as referred to in the putative reason for refusal, but this role is limited because the site is surrounded on 3-sides by built forms. The existing development establishes a clear relationship between those areas rather than a barrier, which is the sense in which the Council appear to use the word buffer. So whilst the appeal site is open, as in undeveloped, I question whether it fulfils the role of a buffer. Even if this might be wrong it is not a *visually important* open buffer as it is not sufficiently visible in the wider context but mainly seen from a no-through road [*my emphasis*]. The visual impact assessment demonstrates the limited extent of public views of the appeal site, aside from those in close proximity to the boundaries. The view towards the site from Cody Road is limited and enclosed. The view from the public open space looking east provides only glimpsed views of the appeal site and, during the summer, the hedgerow is an effective screen.

56. In broad landscape terms, distinct from the policy based approach evident from the CS, I accept that the site is visually contained within the envelope of the village. This view is consistent with Boyer Planning's description of it, for largely unrelated reasons, as: "*…an enclave of undeveloped land within the framework of the existing village*"[29]. A passer-by, walking along the pavement on Cody Road, would at present see a field enclosed by built development on 3-sides and would not perceive separate settlements. Development of the site, in visual terms, will only result in the presence of built form coming closer to Cody Road. The Village Capacity Study, from 1998, identified the appeal site as a part of area No. 2, with "*Exposed edge, with rear garden and intermittent hedgerows*". This description would still be relevant if the appeal site was to be developed and so there would be no unacceptable impact on character.

57. In these circumstances the proposition that coalescence between the village and former Barracks would be undesirable is not justified. As I have noted, in terms of linking the communities it would be advantageous. In physical and landscape terms there is a clear and inevitable relationship between them. Development up to Cody Road would merely continue the pattern of coalescence that has taken place to the west of the appeal site over the years and so this would maintain, rather than harm, this characteristic of the village.

---

[27] The front and/or side wall of Plot 60 would dominate this view with a view along the front of the other dwellings proposed along Cody Road on the left hand side of this vista, which would only have modest front gardens.
[28] Photographs 5 and 6 in Appendix 2 to the evidence of Mr Pearce.
[29] Source of quote: page 378 of the bundle appended to Mr Hyde's proof [page 19, Appendix 27].

58. In my view the Council's revision of this reason for refusal was recognition that it would be unable to substantiate the alleged non-compliance with DCP Policy DP/3 (2) (m). It must now be common ground that the development would not have an unacceptable adverse impact on the countryside and landscape character. Neither do I consider it would contravene DCP Policy DP/3 (2) (l) because the proposed development would not have an unacceptable adverse impact on village character. It would have no material impact on the historic core of the village and, as is evident from the 1986 appeal decision, the village is characterised by the variety of housing that has been developed throughout the post war era including, most recently, at Cam Locks. To the extent that there might be public views out from land within the village framework, e.g. looking north along Cody Road[30], it is common ground that the impact would be low adverse, defined as a minor deterioration in the view, which is less than the policy test. Even when viewed from further along Cody Road the Council has not shown that the proposed development would have an *unacceptable adverse impact on village character*, which is a high policy test.

59. In view of this finding I attach limited weight under this heading to the findings of the Council's Strategic Housing Land Availability Assessment [SHLAA] 2012. The "*Site Assessment Conclusion*" that the site had development potential went on to set out a caveat that: "*This does not include a judgment on whether the site is suitable for residential development in planning policy terms, which will be for the separate plan making process*"[31]. It is clear that the Council's view was expressed in the putative reason, as modified, rather than the SHLAA.

60. On the second main issue I conclude that the proposed development would not harm the character and appearance of the area. By virtue of the fact that the scheme is proposed outside of the village development framework there would be a conflict with DCP Policy DP/7 (1) but for the reasons outlined above I find no conflict with DCP Policy DP/3 (2) and, in particular, criterion (l).

(iii) Prematurity

61. The Guidance says: "…*arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination…. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process*"[32].

---

[30] Photograph 4 in Appendix 2 to the evidence of Mr Pearce.
[31] Source of quote: page 1128 of the SHLAA Site Assessment Proforma [KPC9].
[32] Source of quote: paragraph reference 21b-014-20140306.

62. The first point to make is that the fact that the appeal is being pursued in the context of an emerging LP cannot itself render the proposal to be premature. The point is evident from my colleague's decision in Malpas, Cheshire [Appeal Ref APP/A0665/A/13/2193956], when he said: "*…the pursuance of residential schemes in the face of emerging but unadopted development plan documents cannot, in itself, render the proposal premature*"[33]; I agree.

63. Mr Roberts, for the Council, agreed in cross-examination that criterion a), above, is not met. The development proposed is not so substantial, and its cumulative effect would not be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of development that are central to the emerging LP. Neither in my view is b) met. The appeal was lodged in October 2013, around 5 months before the emerging LP was submitted for examination, and had this Guidance [*seldom be justified*] been extant at that time it is open to question as to whether this putative reason would have been advanced. I have already expressed doubts about the timetable for its adoption in the LDS and given the quantum and nature of the objections I cannot characterise the emerging LP to be at an advanced stage. It might be subject to significant changes, in the form of main modifications, before adoption, assuming it is found to be sound.

64. In these circumstances the Council focussed on the words "*but not exclusively*". There is an argument that this is a reference to the application of "*both*" a) and b) but even if this is right this would not assist the Council here because I have given reasons why both a) and b) would not be met. The inference appears to be that some other circumstances should be applied, what was referred to as the exceptional case, but it is not clear what that might be. It would not be appropriate to impose what would amount to a moratorium on development pending consideration of, in particular, LP Policy S/4. The Inspector makes this clear in the Malpas decision when he responds to the suggestion by saying it would: "*…not reflect Government advice in the Framework, and such a course of action would result in housing supply falling further and further behind*" [34]. Although a copy of the advice that was extant when the appeal was lodged was submitted[35], which was current when the decision in Malpas was made, this does not assist; paragraph 17 referred to refusing planning permission on the grounds of prematurity where there is a phasing policy but that does not apply. In light of the Guidance I find that no circumstances exist in this appeal that justify a deemed refusal of planning permission on the basis of prematurity.

65. Nevertheless the Appellant has made extensive submissions under this heading following what the Council has called "*forensic archaeology conducted in cross examination*"[36]. There is a balance to be struck between taking account of these material considerations and avoiding overstepping the mark by treading into territory that is properly within the remit of the examination Inspector. I make the following observations without prejudice to the LP examination.

Would there be prejudice to the outcome of the plan-making process?

66. The Council advanced a putative refusal reason on the grounds of prematurity. On this basis the Council needs to indicate clearly how a grant of planning permission would prejudice the outcome of the plan-making process. Mr Roberts, for the Council, was clear that in his view the new town proposal

[33] Source of quote: paragraph 111 [page 288 of the bundle appended to Mr Hyde's proof [page 17, Appendix 23].
[34] Source of quote: paragraph 109 [page 288 of the bundle appended to Mr Hyde's proof [page 17, Appendix 23].
[35] Document 11.
[36] Source of quote: paragraph 27, Document 19.

would ultimately be included in the LP that would be adopted. Implicit to this view is that the outcome of the plan-making process would not, in this respect, be prejudiced. In substance the delivery of Policy SS/5 in relation to the area shown on Inset Map H would not be prejudiced by allowing this appeal.

67. Policy SS/5 (6) says an Area Action Plan [AAP] will be prepared for the area shown on the Policies Map. The Key and annotation on Inset Map H confirm that the area concerned excludes that part of the former Barracks accessed via Cody Road, i.e. Capper Road, Kirby Road, Fletcher Avenue and Abbey Place. This area is also proposed, on Inset No 104 [Map 2 of 2], to be outside of the settlement boundary for Waterbeach. As I have already noted the sole access to this part of the former Barracks is via Cody Road; I have given reasons why it is physically and functionally part of the village. There appears to be nothing in the emerging LP that would lead me to find that status would change. On this basis it is difficult to see how the proposed Green Belt extension could be said to separate the village from the new town. The only contiguous boundary between the proposed Green Belt and the new town would be along the northern boundary of the appeal site. However there appears to be no plan to close Cody Road at this point and so this "*direct road access*", as per Policy SS/5 (3), would be inconsistent with achieving clear separation at this point.

68. The Council has not considered the proposed Green Belt extension against the purposes of the Green Belt set out in paragraph 80 of the Framework. It was submitted for the Appellant that this was a "*serious error*" and it is surprising, especially when others had already questioned whether the proposed extension complied with these purposes[37]. The objective appears to be separation but the second bullet-point, which is perhaps the most relevant to this aim, relates to "*neighbouring towns merging into one another*". The Council maintained at the Inquiry that the District comprises 108 villages with no towns and it follows that Waterbeach is, as it stands, a village. As such the proposed Green Belt extension would not appear to meet this or any other purpose in paragraph 80.

69. In the absence of having tested the proposed Green Belt extension against the purposes in paragraph 80 of the Framework, the Council instead relies on the "*established purposes of the Cambridge Green Belt*"; the only relevant one is to: "*Prevent communities in the environs of Cambridge from merging into one another*"[38]. However I have already given reasons why that part of the former Barracks served by Cody Road should be seen, physically and functionally, to be part of the village of Waterbeach, rather than being a separate community. On this basis it is difficult to see how Policy S/4 is consistent with this purpose.

70. In a similar vein paragraph 52 of the Framework invites Councils to "*consider whether it is appropriate to establish Green Belt around or adjoining any such new development*". However the proposed extension to the Green Belt would principally lie between that part of the former Barracks served by Cody Road and the village rather than being around the new town. As I have noted the only point at which the proposed Green Belt would directly adjoin the new town would be along the northern boundary of the appeal site and it is only to this very limited extent that it could be said to adjoin the new development. On this basis it is difficult to see how Policy S/4 is consistent with this advice either.

[37] RLW/DIO representation on the consultation Local Plan, dated 11/10/2013, paragraph 4.29 [page 378 of the bundle appended to Mr Hyde's proof [page 19, Appendix 27].
[38] Source of quotes: paragraph 2.29 of the Proposed Submission South Cambridgeshire Local Plan.

71. Paragraph 82 of the Framework requires "*exceptional circumstances*" to be shown in order to justify the establishment of new Green Belts. I acknowledge that one example given is a new settlement, but Councils still need to satisfy the criteria set out. The Audit Trail[39] reveals these criteria were considered[40] and reasons given why the criteria were met. Dealing with each in turn:
    i) the Appellant submits that normal planning and development management policies would be adequate, but I accept that they might not be if, at any point, there was an absence of a 5-year supply of housing. The reference to paragraph 86 of the Framework, whether a village should be '*washed over*' by Green Belt, is different and does not assist in circumstances where the land is open and undeveloped. However this is not, in itself, a demonstration of the necessity for the extension to the Green Belt [see point iv) below]. As Mr Hyde observed the logical consequence of that argument is that one would expand the Green Belt to include all sites at risk of release;
    ii) the change in circumstance that led officers to propose the designation was the new town. Although extensive representations were made with regard to the evolution of the policy, this is the key point that I take from those submissions;
    iii) it is not unreasonable for the Council to argue that the designation would have no adverse consequences for sustainable development as other sites might come forward in the absence of a 5-year supply;
    iv) there was no Green Belt study or assessment and, crucially, I have already had cause to criticise the Council in its application of Green Belt purposes, which goes to the necessity for the Green Belt in this location. Although Mr Roberts's proof refers to openness I consider this does not go to necessity for Green Belt in this geographical location. This argument, and the absence of implication for adjoining local plans, was not expressly addressed in the Audit Trail; and,
    v) based on my earlier rationale I disagree that the designation would ensure separation between the village and new town, which is the key reason given in Mr Roberts's proof, which was reinforced in closing.

    To this extent it is difficult to see how Policy S/4 is consistent with the fourth and fifth bullet-points of paragraph 82.

72. My view that the Council has not demonstrated the necessity for the Green Belt extension in this location is reinforced by the prospect that it might be possible to achieve the objective in Policy SS/5 (3), to maintain the identity of Waterbeach as a village close to but separate from the new town, in another way, via the AAP, which better aligns separation with no direct access. Policy SS/5 (1) is clear that whilst the new town of 8,000-9,000 dwellings is proposed: "*The final number of dwellings will be determined in the Area Action Plan*". In this regard it is material that the promoters of the new town have sought to argue that the capacity of the Major Development Site, as defined in the emerging LP, should be increased to 10,000 dwellings, based on a density of 40 dwellings per hectare[41]. This appears to be based on a Development Framework Plan that makes allowance for almost 150 hectares of open space[42].

[39] Page A48, Draft Final Sustainability Appraisal (March 2014) at Appendix DR 18 to Mr Roberts's proof.
[40] I acknowledge the Appellant's submission that this was done retrospectively, after the Members decision was made in June 2013, but that does not alter the designation or the terms of the submission LP.
[41] RLW/DIO representation on the consultation Local Plan, dated 11/10/2013, paragraphs 4.34 and 4.14, respectively [pages 378 and 376 of the bundle appended to Mr Hyde's proof [pages 19 and 17, Appendix 27].
[42] I do however acknowledge that this area appears to extend beyond the Major Development Site on Inset H, see page 388 of the bundle appended to Mr Hyde's proof [Appendix 27].

73. The Appellant submits that in the absence of studies which will inform the AAP it is impossible for the Council to argue that provision of a buffer to the north of the former Barracks cannot be accommodated except by harming the quality of future development; I agree. Policy SS/5 (6d) says that the AAP will consider the relationship and interaction with the village. Paragraph 3.37 of the supporting text says of the Major Development Site: "*This does not mean the whole of the area will be developed. Large parts of it will remain undeveloped and green after the settlement is complete to provide open spaces within the new town and a substantial green setting for the new town…and Waterbeach village*". Although the disposition of open space might need to be revised from that illustrated on the promoter's *Development Framework Plan*, I agree with the Appellant's submission that there would appear to be plenty of scope to provide a green, open buffer within the land allocated for the new town. So, whilst I respect the Council's objective to maintain the identity for the village, which reflects concerns raised by the local community, I am not persuaded that this outcome could not be achieved without the proposed Green Belt extension. To the contrary, it might be better to align separation with no road access.

74. For these reasons the Council has not clearly shown how a grant of planning permission would prejudice the outcome of the plan-making process. First it is clear that the proposal for the new town, Policy SS/5 read with Inset Map H, would, in substance, be unaffected by a grant of planning permission. Second I have given reasons why the objective underpinning the proposed Green Belt extension could be accommodated in another way, without causing prejudice to the outcome of the plan-making process. It might be a matter that could be properly and reasonably delegated to the AAP, which the LDS says the Council is not scheduled to commence work on until "*Winter 2017/18*"[43]. A grant of permission would not prejudice the outcome of that plan-making process.

75. The Appellant submits that no weight should be given to draft LP Policies S/4 and SS/5 in relation to the proposed designation of land at Cody Road as Green Belt. However these policies are material to my decision and although I have expressed concerns about the degree to which the former is consistent with the Framework, this tends to reinforce my earlier view that it would be appropriate to attach limited weight to these emerging policies. To apply no weight might suggest they are not material but they are; the fact is the Council maintains that the appeal site should be designated as an extension to the Green Belt. However this rather minor concession does not alter my overall findings. On the third main issue I conclude that dismissal of the appeal on the grounds of prematurity would not be justified, having regard to advice in the Guidance.

(iv) Is it a sustainable location for this scale of residential development?

The Development Plan approach to sustainability

76. Paragraph 2.7 of the CS says: "*The Strategy is one of concentrating development on Cambridge through a number of urban extensions to the city and at the new town of Northstowe… The strategy also allows for limited development to meet local needs in Rural Centres and other villages*". CS Policy ST/2 sets out this "*order of preference*" with "*…development <u>in</u> Rural Centres and other villages*" [<u>*my emphasis*</u>] being the last preference. Although I acknowledge that no distinction is made in CS Policy ST/2 between types of rural centres I consider that this does not assist the Appellant. CS Policy ST/5 includes Waterbeach but it is clear that the policy only permits residential

[43] Source of quote: Document 6, page 3.

development within the village frameworks of Minor Rural Centres, as defined on the Proposals Map. The appeal site is outside the village framework as so defined and hence I regard the debate between the parties as to whether the policy reference to an indicative maximum scheme size of 30 dwellings can be interpreted to permit 60 to be academic. The proposed development would not be policy compliant because the appeal site is not within the village framework.

77. A number of material considerations have been advanced. I acknowledge that the SHLAA concluded that the site had development potential. The summary of the SHLAA Assessment[44] found the appeal site had sustainable development potential and, using a traffic light system, classified it green, defined as a "*More sustainable site with development potential (few constraints or adverse impacts)*". This included recognition that the appeal site could be accessed by sustainable transport modes such as walking, cycling and public transport.

78. That this is so is borne out by the Council's own Services and Facilities Study[45]. It records that there is an hourly bus service between Cambridge and Ely from Monday to Saturday, inclusive, with a half-hourly service at peak times and a timetabled journey time of less than 25 minutes from the village to Cambridge. The train service from the village to and from Cambridge runs from 0700 to 2300 hours and appears to be hourly with a more frequent service to Ely at all times and to Cambridge in the morning peak. Journey times are short with a timetabled journey time to Cambridge of as little as 6 minutes. There is also an off-road cycle route parallel to the river which, by reason of the topography, provides a realistic alternative mode of travel. In addition cycling or walking are realistic ways of gaining access to the bus and rail network, as well as local services and facilities, including employment.

79. In terms of services and facilities, the village has a primary school and a GP, both of which are conveniently located close to the appeal site. There is no secondary school, although the Inquiry was advised that there is a bus service for students to gain access to Cottenham College. The village has a basic level of retail facilities, including a post office, bakery, butcher, newsagent, village store, pharmacy and hairdresser. Apart from the numerous public houses there appears to be a fairly limited range of other services and facilities, such as one garage, but there is significant employment both within and near to the village.

80. Questions of frequency aside, the fact that Waterbeach has a train service at all gives it a considerable advantage, in terms of choice of sustainable modes of transport, over many other villages in the District. I consider that this might not be adequately reflected in the Village Classification Report[46], which ranks Waterbeach as joint second from bottom in the list of settlements on the basis of a scoring system set out in the report. However I am not in a position to undertake a revised form of comparative analysis, which is properly a matter for the Inspector undertaking the LP examination. So whilst Mrs Pell-Coggins conceded in cross-examination that the Village Classification Report was "*rather harsh*" and I have sympathy with the Appellant's claim that it "*short-changes*" the village, particularly by reason of its good public transport links, it is unclear where that point goes. In comparative terms, even if Waterbeach was given a score for its public transport accessibility, it would still be a relatively poorly performing settlement when judged against the, albeit not entirely satisfactory, criteria set out in the Village Classification Report.

[44] Appendix 4 to Mr Hyde's evidence.
[45] Appendix 14 to Mrs Pell-Coggins's evidence.
[46] Appendix 13 to Mrs Pell-Coggins's evidence.

81. For these reasons I find a conflict with CS Policies ST/2 and ST/5 and the locational strategy which underpins them. In reaching this finding I appreciate that: i) paragraph 2.20 of the supporting text refers to the 30 dwellings as being a "*guideline*"; ii) the 2004 Local Plan designated the village as a Rural Growth Settlement with no numerical constraints on development; and, iii) criterion 3 of CS Policy ST/5 is met, but this does not alter this finding.

The approach of the Framework to sustainability

82. Turning to the Framework, paragraph 29 says the transport system needs to be balanced in favour of sustainable transport modes "…*giving people a real choice about how they travel*". In this context I attach significant weight to the view of the Highway Authority that: "*This development can be considered in a sustainable location with reasonable pedestrian/cycle and public transport links*"[47]. I have no doubt that in reaching this view the Highway Authority took account of the factors previously identified, including transport accessibility and the location of services and facilities. Moreover Mrs Pell-Coggins accepted in cross-examination that the appeal site is a sustainable location; I agree because prospective households would not be wholly dependent on the private car in order to meet their day to day needs. The Framework also says that in preparing Local Plans, Local Planning Authorities should support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport. In this context, the fact that the Council has identified the village as a location for a large new town is not immaterial.

83. Although prospective occupiers would inevitably depend, to some extent, on the private car, it is worth noting that this is also likely to be the case, albeit to varying degrees, in all of the District's villages. My colleague in the Toft appeal found: "*Toft, in combination with Comberton, is capable of meeting a number of the day to day needs of its residents*…"[48]. This was a factor in his finding that the proposal would be a sustainable development, yet I note the CS says Toft is only suitable for infill; in other words that village is lower down the spatial hierarchy in the CS. In the context of the failure of the adopted strategy to deliver an adequate supply of housing, I consider the appeal site represents a sustainable development option. It is not the most sustainable option in terms of the locational strategy in the CS but it is a sustainable option that is deliverable and would help to meet the shortage of housing in the area.

84. The Framework explicitly recognises that development in rural areas is unlikely to offer the same opportunities for promoting sustainable modes of transport as is development in urban areas. However this is not reason in itself to focus all new development around Cambridge, because the "*sustainability*" of putting development in a particular location is about much more than just accessibility. In that real sense the CS is out-of-date with the approach in the Framework.

85. As I have already noted, paragraph 7 of the Framework says that there are three dimensions to sustainable development. In terms of the economic dimension, the Government has made clear its view that house building plays an important role in promoting economic growth. The proposed development would have give rise to a number of economic benefits. In the short term this would include the creation of jobs in the construction industry as well as the multiplier effect in the wider economy arising from increased activity. In the long term future occupiers of the proposed new houses would provide more

[47] Source of quote: Transportation comments from the Highway Authority dated 28th August 2013.
[48] Source of quote: paragraph 24 of the Toft decision.

custom for the existing shops and services in the village thereby contributing to the local economy. The provision of housing in Waterbeach would help to meet the needs of businesses, e.g. on the nearby Cambridge Research Park, to house their employees, whilst also providing a realistic travel option by train to Cambridge to help support its important, wider economic role. The scheme would therefore contribute towards building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place at the right time to support growth.

86. Turning to the social dimension of sustainable development, the Framework places importance on widening the choice of high quality homes and ensuring that sufficient housing (including affordable housing) is provided to meet the needs of present and future generations. For the reasons identified in my consideration of the first issue, the proposal would be of clear benefit in these terms given the current shortfall in the District's housing supply. The proposed development would give rise to a high quality built environment. Accessible services that would meet many day-to-day needs of prospective occupiers exist in the village or can be accessed by sustainable modes of transport.

87. Finally in relation to the environmental role of sustainable development I have given reasons why the proposed development would not harm the character and appearance of the area. Paragraph 8 states that in order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. I conclude, notwithstanding my finding when tested against the locational strategy in the CS, that the proposal would comprise sustainable development.

Application of the presumption in favour of sustainable development

88. The Framework says that for decision taking the presumption in favour of sustainable development means that: "*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted*" [49]. Footnote 9 to the Framework gives examples of the latter to be policies relating to land designated as Green Belt and locations at risk of flooding. The appeal site is not designated as Green Belt and although local residents have expressed concerns about flooding, the Statement of Common Ground records that all technical issues have been resolved between the main parties. Paragraph 6.1 (ii) thereof records that the Council's Drainage Manager has accepted the approach outlined within the revised Flood Risk Assessment and any other issues regarding surface water drainage have also been resolved. There is no technical evidence before the Inquiry, distinct from assertion, which would lead me to a contrary view. Although Councillor Hockney pointed out at the Inquiry [Document 17] that the Drainage Board raised concerns about the original application it is clear that those concerns have been overcome by the revised drainage scheme, which is now agreed.

89. In applying the presumption in favour of sustainable development it is necessary to undertake a balancing exercise that is skewed in favour of granting permission. I have identified the adverse impacts of the proposed development to include the fact that the development would take place outside the settlement boundary, but given that DCP Policy DP/7 is a policy for the

[49] Source of quote: paragraph 14 of the Framework.

supply of housing this is not, in and of itself, a reason to refuse permission. Similarly my finding that the proposed development would conflict with the locational strategy in the CS was made having regard to the spatial strategy set out in CS Policies ST/2 and ST/5, which are also policies for the supply of housing that are not up-to-date. Noting again the view of the Highway Authority and the concession by Mrs Pell-Coggins, prospective households would not be wholly dependent on the private car in order to meet their day to day needs due, amongst other things, to realistic public transport options and local employment opportunities. The contributions that have been offered towards upgrading a bus stop and the provision of real time passenger information would further promote these options. I have also given reasons why I attach limited weight to the emerging LP at this time, even though I acknowledge that it seeks to designate the appeal site as Green Belt.

90. On balance I find that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, which include the prospect of early implementation in order to meet the urgent housing need in the area. Although most of the other financial contributions constitute mitigation for, rather than a benefit of, the proposed development, the 40 % affordable housing that is offered is a material consideration in favour of the proposed development to which I attach significant weight. The design, including layout and landscaping, is acceptable and the contribution offered towards new footpath linkages with the recent housing at Cam Locks would facilitate legible pedestrian routes to neighbours. On the fourth main issue, taking account of the broader perspective of sustainable development that is evident from the Framework but not reflected in the DP, I conclude that this is a suitable and sustainable location for this scale of residential development.

Other Matters

(i) Consideration of the Planning Obligations and Unilateral Undertaking

91. The Council provided a "*Planning Obligations Justification Statement*" ahead of the Inquiry, the contents of which were not challenged. Appended to the statement is a bundle of policy extracts and background documents that set out the basis for the quantum of contributions sought. Moreover both of the main planning obligations are, somewhat unusually in my experience at appeal, delivered as agreements rather than unilateral undertakings, which underlines that the respective Councils are content with the level of contributions offered.

92. If I were in any doubt as to the necessity for the specific sums sought, the basis for the respective contributions is set out in the Justification Statement. In the circumstances I am satisfied that provision of the Planning Obligations are compliant with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy [CIL] Regulations 2010. Amongst other things DCP Policy HG/3, read with the Affordable Housing Supplementary Planning Document [SPD], which was adopted in March 2010, provides a clear basis for the level and mix of affordable housing. Although the statement refers to "36" I shall assume this is a typo, perhaps a reference to the concurrent appeal[50]. With this one anomaly there is a clear basis and audit trail for the sums sought.

93. The statement details the rationale for a sum of £3,000 for monitoring but not the costs, £1,250, incurred in the negotiation, preparation and execution of the deed. I note that a similar figure, £1,899.80, is offered as a contribution

[50] See paragraph 2.7 of the statement for the land to the west of Cody Road; 40 % of 60 is 24, which is what would be delivered by the second planning obligation in this case.

towards the cost incurred in the negotiation, preparation and execution of the first planning obligation. Although the basis for these sums is not set out in the Justification Statement the basis for them is self-evident and, as such, I have no reason to interfere in the quantum that is agreed between the parties.

94. The Justification Statement says the developer should pay for the installation of two sections of footpath to create links to the Cam Locks development to the west of the appeal site, as shown on the submitted site plan. The submitted Unilateral Undertaking would appear to achieve this goal. The Council has not raised an issue with regard to the quantum of the contribution offered. Whilst the Justification Statement does not identify a figure I consider that £2,500 is a reasonable contribution towards the works necessary to achieve this objective, which is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010.

(ii) Other material considerations

95. I appreciate that allowing this appeal might make it more difficult for the Council to resist other applications for residential development on adjoining land that have recently been put forward, including S/2092/13/OL [Document 8]. However, noting the weight that I have attached to the variable housing supply situation, that is properly a matter for the relevant decision maker.

96. Concerns have been expressed that the upstairs rooms of house Nos 12-17 would face "*directly*" towards existing properties in Bannold Road, which would result in a loss of privacy[51]. However, as I was able to observe during my site inspection, the relationship would not be untypical of many residential areas. The properties along this part of Bannold Road enjoy quite long rear gardens and the resulting separation distance between existing and proposed dwellings would be adequate to maintain good living conditions. My view in this matter is reinforced by the Council's stance in this matter[52].

97. There has been a suggestion that the Officer's Mess of RAF Waterbeach, which lies to the north of the appeal site, "…*may soon become a Listed Building*" [53]. However it is not so designated at the present point in time and in any event no claim is made that the proposed development would not, at a minimum, preserve the setting of the building. This factor does not weigh against the proposal. None of these material considerations nor any other matters raised in the written representations alter the overall conclusion to which I am drawn.

98. In the light of my finding that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, and my similar conclusion in the Bannold Road appeal, I have also considered whether the combined impact of allowing both appeals would result in any change in the balance of benefits and adverse impacts. The effect of permitting both appeals would be to increase the weight on the "*adverse impact*" side of the balance, principally due to the identified conflict with the spatial strategy set out in the DP. However because CS Policies ST/2 and ST/5 are policies for the supply of housing that are not up-to-date it remains the case that, in applying the presumption in paragraph 14 of the Framework, the cumulative impacts of allowing both of these appeals would not significantly and demonstrably

---

[51] Source of quote: Document 9.
[52] Paragraph 6.1 (iv) of the Statement of Common Ground records that there is no objection to the layout that has been submitted or the proposed design of *__any aspect__* of the development [*__my emphasis__*].
[53] Source of quote: Document 16.

outweigh the identified benefits. In reaching this view it is material that no case was advanced for the Council on this "combined" basis.

Overall conclusion

99. I conclude that, as policies for the supply of housing in the DP are out-of-date and the Council cannot demonstrate a 5-year supply of housing land, the appeal should be allowed and planning permission granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Taking account of the identified benefits of the appeal proposal, I conclude overall that planning permission should be granted because other material considerations clearly outweigh the identified conflict with out-of-date DP Policies.

Conditions

100. In advance of the Inquiry the Council put forward a list of 22 conditions, all of which are acceptable to the Appellant insofar as they relate to the development that I propose to grant planning permission. However I shall briefly test the suggested conditions against the advice in the Framework and the Guidance, having regard to the list of model conditions in Circular 11/95.

101. The first is the standard commencement condition, which is a requirement of the Act. The second identifies the approved plans, which is necessary in the interests of proper planning and for the avoidance of doubt. The third, requiring details of external materials to be agreed, is necessary to ensure a satisfactory appearance. The fourth, removal of permitted development rights, is necessary in order to avoid any possible adverse impact on neighbours' living conditions. The fifth requires specified windows, which are on side elevations that look out over rear gardens of adjacent dwellings, to be fitted with fixed obscure glazing in the interests of neighbours' living conditions. The sixth requires approval of details of the proposed garden sheds, together with their completion and retention, but as the rationale for the condition goes to cycle parking I shall add a clause to require the garden sheds to be available for this purpose.

102. The seventh, eighth and ninth conditions require details of boundary treatment, hard and soft landscaping, and implementation of the latter respectively, which are necessary in the interests of the finished appearance of the development. The tenth requires details of those trees that are proposed to be retained, which is necessary to achieve biodiversity and by reason of visual amenity but I shall revise that suggested to make reference to the current British Standard. The eleventh, bird nest boxes, is necessary to enhance biodiversity but I shall add a retention clause to ensure that they are not immediately removed.

103. The twelfth, archaeology, is necessary in order to comply with DP policy but I shall revise the suggested condition in the interests of precision. The thirteenth relates to land contamination, which is necessary in the interests of neighbours' living conditions together with those of prospective residents, but I shall add a clause to require remediation, if necessary, to make it enforceable. The next requires implementation of the surface water drainage scheme that has been agreed with the relevant drainage bodies in order to prevent flooding. The next requires approval of a scheme of pollution control of the water environment, which is appropriate to reduce the risk of such pollution from oil etc.

104. The sixteenth and seventeenth require provision of the required visibility splays at the road junctions and driveways, respectively, which are necessary in the interests of highway safety. The eighteenth requires agreement of a traffic management plan during construction phase, which is also necessary in the interests of highway safety. The nineteenth requires the parking and turning areas to be laid out and thereafter retained for those purposes. The twentieth requires a travel plan to be submitted and approved, and whilst a revised plan is before the Inquiry it is for the Council to consider whether further details are required to discharge the condition. The final two suggested conditions agreed between the main parties require details of lighting and fire hydrants to be approved, which are necessary in the interests of minimising light pollution and ensuring an adequate water supply is available in emergencies, respectively.

105. At the Inquiry a further suggested condition was put forward by the Council [Document 18], which sought to deliver footpath links to the adjacent Cam Locks site in order to integrate the respective developments. Although such links are shown on the submitted site plan, amongst others, it must be right that the Appellant is only able to deliver those parts of the footpaths that are on land within the Appellant's control. In the circumstances I shall impose a condition to achieve this as distinct from the more wide ranging condition put forward by the Council at the Inquiry. This appears to be broadly in line with paragraph 2.36 of the "*Planning Obligations Justification Statement*", having regard to the terms of the Unilateral Undertaking that I have examined above.

Pete Drew

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 7777 002 B, 7777 001 X, 7777 017 B, 7777 018 A, 7777 019 B, 7777 020 A, 7777 021 B, 7777 022 A, 7777 023 B, 7777 024 A, 7777 025 A, 7777 026 B, 7777 027 B, 7777 028 A, 7777 029 B, 7777 030 A, 7777 031 B, 7777 032 B, 7777 033 A, 7777 034 A, 7777 035 B, 7777 037 C, 7777 038, 7777 039, 5084 F E TPP 08, 5084/LM03 Rev J, 5084/PP04 Rev I, 5084/PP05 Rev I, 5084/PP06 Rev I, TA03 Rev C, TA04 Rev C and TA09 Rev B.
3. No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), no development within Class A of Part 1 to Schedule 2 shall take place on Plots 1 to 26 and 39 to 60 unless expressly authorised by the Local Planning Authority following a grant of express planning permission.
5. Apart from any top hung vent, the proposed windows in the specified elevations of the dwellings hereby permitted shall be fixed shut and permanently glazed with obscure glass. The specified elevations of the dwellings concerned are: Plot 8 (first floor bathroom window in north elevation); Plot 12 (first floor bathroom window in east elevation); Plot 49 (first floor bathroom window in east elevation); Plot 53 (first floor bathroom window in south elevation); and Plot 57 (first floor bathroom window in south elevation).
6. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the designs and dimensions of the garden sheds on Plots 8 to 17, 39 to 44 and 50 to 53. The garden sheds shall be completed before any dwelling on each of these respective plots is occupied in accordance with the approved details and shall thereafter be retained and available for the parking of bicycles.
7. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before that dwelling or any dwelling on any adjacent plot is occupied in accordance with the approved details and shall thereafter be retained.
8. No development shall take place until full details of hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection during the course of development. The details

shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.

9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. If within a period of 5 years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

10. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
    i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
    ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
    iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.

11. No development shall take place until a scheme for the provision of bird nest boxes has been submitted to and approved in writing by the Local Planning Authority. The bird nest boxes shall be erected in accordance with the approved scheme before any dwelling is occupied and shall thereafter be retained.

12. No development shall take place until a programme of archaeological work has been undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

13. No development shall commence until:
    i) The appeal site has been subject to a detailed desk study and site walkover in relation to contamination, to be submitted to and approved in writing by the Local Planning Authority.
    ii) Following approval of i) above, a detailed scheme for the investigation and recording of contamination and remediation objectives (which

have been determined through risk assessment) must be submitted to and approved in writing by the Local Planning Authority.

iii) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the Local Planning Authority.

iv) The works specified in the Remediation method statement have been completed and a verification report submitted to and approved in writing by the Local Planning Authority, in accordance with the approved scheme.

v) If during remediation works any contamination is identified that has not been considered in the Remediation method statement then remediation proposals, together with a timetable, should be agreed in writing by the Local Planning Authority and the remediation as approved shall be undertaken within the timeframe as agreed.

14. The site shall be drained via a new surface water sewer to the Internal Drainage Board watercourse at Bannold Drove as set out in option 3 of section 5.3.11.1 of Flood risk Assessment reference R-FRA-Q6343PP-01C Revision D dated November 2013. Prior to the commencement of any development the details of the scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any dwelling or in accordance with an implementation programme that has been agreed in writing by the Local Planning Authority.

15. No development shall take place until a scheme for the provision and implementation of pollution control of the water environment, which shall include foul drainage, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any dwelling or in accordance with an implementation programme that has been agreed in writing by the Local Planning Authority.

16. Visibility splays shall be provided on either side of the junction of the proposed access road with the public highway prior to occupation of any dwelling. The minimum dimensions of the required splay lines shall be 2.4 m, measured along the centre line of the proposed access road from its junction with the channel line of the public highway, and 43 m in both directions, measured along the channel line of the public highway from the centre line of the proposed access road. The visibility splays shall be maintained clear from obstruction over a height of 600 mm and thereafter retained.

17. Visibility splays shall be provided on both sides of the driveway and/or parking space to each dwelling that exits directly on to the public highway prior to occupation of any dwelling. The minimum dimensions of the required splay lines shall be 2.0 m on each side of the driveway/parking space x 2.0 m along the highway boundary within the curtilage of the dwelling. The visibility splays shall be maintained clear from obstruction over a height of 600 mm and thereafter retained.

18. No construction works shall commence on site until a traffic management plan has been agreed with the Local Planning Authority in consultation with

the Highway Authority. The principle areas of concern that should be addressed are:

i) Movements and control of muck away lorries (all loading and unloading should be undertaken off the adopted public highway).
ii) Contractor parking, which should be within the curtilage of the site and not on street.
iii) Movements and control of all deliveries (all loading and unloading should be undertaken off the adopted public highway).
iv) Control of dust, mud and debris, which should not be deposited upon the public highway.

19. The dwellings hereby permitted shall not be occupied until parking and turning space has been laid out within the site in accordance with the layout shown on drawing No 7777 001 X. The parking and turning areas shall thereafter be retained for their authorised use.

20. The dwellings hereby permitted shall not be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be implemented in accordance with the approved details.

21. No development shall take place until a lighting scheme, to include details of any external lighting of the site such as street lighting, floodlighting and security lighting, has been submitted to and approved in writing by the Local Planning Authority. This information shall include a layout plan with beam orientation, full isolux contour maps and a schedule of equipment of the design (luminaire type, mounting height, aiming angles and luminaire profiles, angle of glare) and shall assess artificial light impact in accordance with the Institute of Lighting Engineers (2005) '*Guidance Notes for the Reduction of Obtrusive Light*'. The approved lighting scheme shall be installed in accordance with the approved details before any dwelling is occupied, and thereafter maintained and retained in that condition.

22. No development shall take place until a scheme for the provision and location of fire hydrants to serve the development to a standard recommended by Cambridgeshire Fire and Rescue Services has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved scheme before any dwelling is occupied.

23. No development shall begin until details of a scheme for the provision of public footpaths up to the western boundary of the appeal site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation of the works, which shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy of Counsel	Instructed by Head of Legal Services, South Cambridgeshire District Council.
She called:	
Karen Pell-Coggins MA MRTPI	Senior Planning Officer, South Cambridgeshire District Council.
David Roberts BA, MRTPI	Principal Planning Policy Officer, South Cambridgeshire District Council.

FOR THE APPELLANT:

Craig Howell-Williams QC	Instructed by Januarys Consultant Surveyors, Cambridge.
He called:	
Mark Hyde BA (Hons), BTP, MRTPI, AIEMA	Planning Director, Januarys Consultant Surveyors, Cambridge.
Scott Pearce BA (Hons), Pg Dip, MArborA, MLI	Director, First Environment Consultants Limited, Oxfordshire.

INTERESTED PERSONS:

Oliver Merrington	Local resident.
Councillor Peter Johnson	Local Councillor.

DOCUMENTS

1	Transcript of *Bloor Homes East Midlands Ltd v SSCLG and Hinckley and Bosworth Borough Council* dated 19 March 2014, [2014] EWHC 754 (Admin).
2	List of appearances for the Council.
3	Opening statement on behalf of the Appellant.
4	Opening submissions on behalf of the Council.
5	Plan showing appeal site in the context of identified roads in the village.
6	South Cambridgeshire Local Development Scheme 2014.
7.1 - 7.4	(i) "*Tweet Widget*" regarding City Deal; (ii) Email dated 7 April 2014 setting out status of City Deal; (iii) Recommendations to Scrutiny and Overview Committee, dated 3 April 2014; and (iv) letter dated 4 April 2014 to Rt Hon Danny Alexander MP regarding Greater Cambridge City Deal.
8	Plan and decision notice [S/2092/13/OL] in respect of land to the east of Cody Road and north of Bannold Road.
9	Annotated plan submitted by Mr Merrington to the Inquiry.
10	Statement from the Council identifying policies for the supply of housing.
11	"*The Planning System: General Principles*" [ODPM, 2005], now cancelled.
12	The Town and Country Planning (Local Planning)(England) Regulations 2012.
13	March AMR update, submitted by the Council at the Inquiry.
14	Planning Obligation [County Council] dated 10 April 2014.
15	Planning Obligation [District Council] dated 10 April 2014.
16	Statement of Mr Merrington, which was submitted at the Inquiry.
17	Letter from Councillor Hockney, dated 1 May 2014, submitted at the Inquiry.
18	Additional condition suggested by the Council at the Inquiry.
19	Closing submissions on behalf of the Council.
20	Closing submissions on behalf of the Appellant.
21	Unilateral Undertaking, dated 15 May 2014, submitted by the Appellant.