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Local Government

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Our Ref: APP/A0665/A/14/2214400
Your Ref: C124.1

7 January 2015

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR PAUL CORBETT
LAND AT WELL MEADOW, WELL STREET, MALPAS, CHESHIRE, SY14 8DE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor BSc DipTRP DipDesBEnv DMS MRTPI MRICS, who held a public local inquiry on 9-12 September 2014 into your client's appeal against a decision of Cheshire West & Chester Council (the Council) to refuse outline planning permission for a residential development of up to 35 dwellings, with all matters reserved except for access in accordance with application 13/02382/OUT, dated 24 May 2013.
2. On 18 September 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The Council amended the application description on the decision notice to refer to the proposal as a development of two-storey dwellings (IR2). The Secretary of State notes that this description is not agreed by the Appellant, who suggests that single story dwellings may be included; and his decision is therefore based on the description as at paragraph 1 above.

Policy considerations

5. In deciding this appeal, 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.
6. In this case the development plan consists of the saved policies of the Chester District Local Plan 2006 (LP), and the Secretary of State agrees with the Inspector that the most relevant policies are those described at IR10-12. However, like the Inspector, the Secretary of State has also had regard to the emerging Cheshire West and Chester Local Plan (eLP) and the emerging Malpas and Overton Neighbourhood Plan (MONP); and he agrees that the policies relevant to this appeal are those described at IR13-15 for the eLP and IR16-27 for the MONP. The Secretary of State also notes the significant progress made towards the adoption of the eLP during the appeal process and that the policies therein have been found sound. He therefore gives significant weight to the emerging policies in the eLP and MONP. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework, March 2012) and the associated planning practice guidance (March 2014). Furthermore, in accordance with the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the section 66 duty), he has also paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

7. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR181.

Housing need and supply

8. The Secretary of State has carefully considered the Inspector's conclusions on the issue of housing need and supply in Cheshire West & Chester. For the reasons given at IR182-195, the Secretary of State agrees with the Inspector's conclusion at IR196 that there is at least an overall 5 year supply of housing in the Council's area and that LP policy HO7 is not out of date insofar as it applies to housing development in the countryside. The Secretary of State further agrees with the Inspector (IR197-198) that the potential social and economic benefits of the provision of additional housing are reduced in the case of Malpas given the extensive existing commitments for new housing around the village. Overall, therefore, he agrees with the Inspector's conclusion at IR199 that significant weight can be afforded to the housing requirements and provisions set out in the eLP and to the recent monitoring work to demonstrate that a 5 year supply is available without a need for additional housing in the countryside beyond that already committed. He also agrees that existing commitments in Malpas considerably exceed the eLP target, significant weight can still be afforded to Policy HO7, and the site would not directly adjoin the village for the purposes of eLP Policy STRAT 8 and MONP Policy H1.

Character and Appearance

9. For the reasons given at IR200-211, the Secretary of State agrees with the Inspector's assessment of the impact of the proposed development on character and appearance. He agrees that the site has an open and rural character (IR200-202) and that the development would result in a significantly harmful loss of openness and open

countryside to the detriment of the character and appearance of the area (IR202-207). He also agrees that the visual impact of the development would be greatest for recreational users, who would experience a severe adverse visual impact (IR208-210); and that the proposal would contravene LP Policy ENV24, eLP Policy ENV 2 and MONP Policy H4.

Heritage

10. For the reasons given at IR212-217, the Secretary of State agrees with the Inspector's findings at IR217 that there would be less than substantial harm to the setting and significance of Broselake Farmhouse, dependant on the final layout and design of the buildings and open space, but that this nevertheless merits considerable weight and importance in the planning balance. Turning to the impact on the Malpas conservation area, the Grade I listed St Oswald's Church and Castle Hill Motte scheduled ancient monument (IR218-223), the Secretary of State agrees with the Inspector that, for the reasons which he gives, and subject to the final scheme design including the safeguarding of views of the church from Well Meadow, there need not be any material harm to the setting or significance of these designated heritage assets or any other designated or undesignated heritage assets in the vicinity. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR224 that, while the harm to heritage assets would be only slightly adverse, it merits considerable weight and importance arising from the Section 66 duty. Accordingly, and taking account of the associated conflict with LP Policy ENV45, eLP Policy ENV5 and MONP Policy BE1, the Secretary of State also agrees with the Inspector that that harm would need to be weighed with any public benefits of the scheme in the terms of paragraph 134 of the Framework.

Living Conditions

11. For the reasons given by the Inspector at IR225-228, the Secretary of State is satisfied that, although concerns were raised about the impact on living conditions of those residents of the appeal scheme closest to the Meredith Coaches Depot (IR225), it has been established that the noise levels could be contained to satisfactory levels through the imposition of conditions (IR226).

Other matters

12. The Secretary of State has considered the Inspector's comments on transportation at IR230-231; education at IR232; health services at IR233; wildlife at IR234; flood risk at IR235; and Archaeology at IR 236. He agrees that neither these nor any other matter raised outweigh the main considerations (IR237).

The planning balance

13. The Secretary of State concludes that the provision of new homes, including affordable housing, would be an important social and economic benefit but, like the Inspector, he gives this benefit reduced weight in light of the extensive provision for housing already made locally around Malpas (IR238) which goes beyond the provisions set out for its supply in the eLP. The Secretary of State also agrees that LP policy HO7 continues to merit weight and that the proposal would contravene this in respect of new dwellings in the open countryside. Furthermore, he agrees with the Inspector at IR239 that the environmental harm, including harm to the landscape character and appearance of the countryside and to the setting and heritage significance of the Grade II listed Broselake Farmhouse, conflicts with the relevant policies in the LP, the eLP and the MONP and outweighs the benefits of additional housing provision.

Conditions

14. The Secretary of State has considered the Inspector's comments at IR168-180 on the proposed planning conditions and the schedule of conditions he recommends (IR, page 51). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

Overall Conclusions

15. The Secretary of State concludes that the benefits of this particular scheme in terms of new housing, including affordable housing, and associated economic benefits are insufficient to outweigh the significant harm to landscape character, significant adverse visual impact and slight adverse harm to heritage assets. He therefore does not consider it to be sustainable development when assessed against the policies in the Framework taken as a whole so that the national policy presumption in favour of development should not apply.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a residential development of up to 35 dwellings with all matters reserved except for access, in accordance with application 13/02382/OUT, dated 24 May 2013, at land at Well Meadow, Well Street, Malpas, Cheshire SY14 8DE.

Right to challenge the decision

17. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

18. A copy of this letter has been sent to Cheshire West and Chester Council. Notification has been sent to all other parties who asked to be informed.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRTPI MRICS

Date 21 October 2014

Town and Country Planning Act 1990

Cheshire West & Chester Council

Appeal by

Mr Paul Corbett

Inquiry held on 9-12 September 2014

Land at Well Meadow, Well Street, Malpas, Cheshire SY14 8DE

File Ref: APP/A0665/A/14/2214400

File Ref: APP/A0665/A/14/2214400**Land at Well Meadow, Well Street, Malpas, Cheshire SY14 8DE**

- 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 Paul Corbett against the decision of Cheshire West & Chester Council.
- The application Ref 13/02382/OUT, dated 24 May 2013, was refused by notice dated 30 August 2013.
- The proposal is for a residential development of up to 35 dwellings with all matters reserved except for access.

Summary of Recommendation: That the appeal should be dismissed.

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Abbreviations used in this Report

5YS	5 year's housing supply
ALVIA	Amended Landscape and Visual Impact Assessment
CA	Conservation Area
CIL	Community Infrastructure Levy
DL	Decision Letter Paragraph
DPD	Development Plan Document
dph	Dwellings per hectare
EHO	Environmental Health Officer
eLP	emerging Cheshire West and Chester Local Plan Part One
eNP	emerging Neighbourhood Plan
fn	Footnote
FP	Footpath
Framework	National Planning Policy Framework
GLVIA	Guidelines for Landscape and Visual Impact Assessment
ha	hectare
IR	Inspector's Report
km	Kilometre
LAMax	Maximum A weighted sound pressure level recorded
LP	Chester District Local Plan 2006
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
m	Metre
MM	Main Matters
MONP	emerging Malpas and Overton Neighbourhood Plan
OAN	Objectively assessed need for housing
PINS	Planning Inspectorate
PPG	Planning Practice Guidance
PPS	Planning Policy Statement
RfR	Reason for Refusal
RSS	Regional Spatial Strategy
SHLAA	Strategic Housing Land Availability Assessment
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SUDS	Sustainable Urban Drainage System
TSHA	The Setting of Heritage Assets – English Heritage
VP	Viewpoint
XIC	Evidence in Chief
XX	Cross examination
Y	Year

Procedural Matters

1. After the Inquiry, the appeal was recovered for the decision of the Secretary of State because Malpas Parish Council had, on 5 September 2014, submitted to the Council the Neighbourhood Plan for Malpas and Overton. That plan is to shortly commence its formal publicity period and examination which is necessary before it can be put to a referendum. If approved, it would then be made as part of the development plan.
2. The proposal would include the demolition and removal of the existing agricultural buildings on the site. The Council amended the application description on the decision notice to refer to this as development of 'two storey' dwellings. However that amended description is not agreed by the Appellant who suggests that single storey dwellings may be included and the Report has been prepared on the basis of the original description as above.
3. The application was made in outline with all matters except the means of access reserved for subsequent determination. At the Inquiry the main parties agreed that the only formal application drawings are the 'Site Context Plan Ref INCLA_N177_L03' (Doc 3A), which defines the application site with a red line, and the access drawing included with the Transport Statement Ref 14371-03a (Doc 3B). The latter drawing shows a vehicular and pedestrian access from Well Meadow only and it includes the position and dimensions of the access and the visibility splays. Any additional means of access would require subsequent determination.

The Site and Surroundings

4. The site is an open area of greenfield agricultural land extending to about 1.7ha and with a group of agricultural buildings at its centre. The buildings include a group of semi-derelict brick and corrugated iron structures erected in the early or mid 20th century (Photo at Hutchinson Proof Fig 3). There is also a large timber clad modern shed erected in the 1990s or early 2000s which is used for the storage of straw or hay in connection with the Appellant's storage and distribution business (CD2.9 LVIA Viewpoint 1).
5. The land is approximately triangular in shape and is surrounded on all sides by public roads. Well Meadow to the south east provides a connection between the village of Malpas and the A41 through No Man's Heath but the route to the east of the site is narrow. It is part of a national cycle route and has recently been made the subject of a 40mph limit. Greenway Lane (previously Well Street) is a narrow country lane that wraps around the north west and north east frontage of the site. At the northern corner a branch of Greenway Lane extends as far as the main Chester Road but is subject to a traffic order which only allows access to frontage properties for motor vehicles. The lane is popular with walkers and provides connections to public footpaths. It is also used by students to reach the local secondary school.
6. The relevant Landscape Character assessment describes the RF5 Malpas Character Area and includes the statements that: '*Away from the main highways the predominantly narrow lanes weave between high hedges and linear woodlands and the character of the landscape is very rural and tranquil*' and '*Sandstone walls .. occur beneath some hedgerows*'. The appeal site is enclosed

on all sides by neatly maintained hedgerows that are a characteristic feature of the local landscape and in places there are sandstone walls beneath the hedgerows. The eastern part of the appeal site is at a similar level to the adjacent narrow lanes. However the western and northern parts of the site are raised above the lanes. Levels are shown on the existing site plan (CD2.6).

7. On the opposite side of Greenway Lane to the north west the site faces the principal early 19th century façade of the Grade II listed Broselake Farmhouse (Photos at Hutchinson Proof Figs 1 and 2). There are cottages adjoining that house. A group of buildings at the rear have been adapted or rebuilt from utilitarian brick farm structures to provide stables or ancillary domestic accommodation.
8. To the north east of the site on the opposite side of Greenway Lane (previously Well Street) is the long-established depot of Merediths Coaches (CD2.9 LVIA Viewpoint 3 and CD3.7 ALVIA Viewpoint E)). This includes an extensive hardstanding area as well as metal sheds used for maintenance and other small structures. Adjacent to the entrance is a house known as Lydgate which faces the appeal site and is occupied by members of the Meredith family who have retired from the family business. There is a small group of dwellings on Well Meadow opposite the site's south west corner. The appeal site is otherwise currently surrounded by open fields. The long distance Marches Way footpath (FP4) crosses the countryside to the south and provides long views of the appeal site and of Malpas village (LVIA Viewpoint 7-9).
9. To the west, Well Meadow becomes Well Street as it enters the built up area of Malpas. The original village has a hilltop location surmounted by the prominent Grade I listed St Oswald's Church and by the less visible adjacent Castle Hill Motte which is a scheduled ancient monument. The church lies within and surrounded by the village conservation area which is concentrated on the High Street and Church Street. In the 20th century the village has been considerably extended with the development of housing estates on the lower eastern slopes of the hill outside the conservation area. A plan at page 8 of the submitted Neighbourhood Plan (Document 6) illustrates where and when the village has expanded since 1919. Well Street itself is fronted by a mix of mainly 19th and 20th century development. A long view of the village and St Oswald's Church is available when approaching the village past the appeal site along Well Meadow (CD3.7 ALVIA Viewpoint M – 5 sequential views).

Planning Policy

Local Policy

10. S38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal be determined in accordance with the provisions of the adopted development plan unless material considerations indicate otherwise. For those purposes the relevant adopted development plan currently comprises only the saved policies of the ***Chester District Local Plan 2006*** (the LP)¹. The former Policy HO1 of that plan, which included a housing target, has not been saved and is thus not to be taken into account. More up to date housing requirements were set out in the former Regional Spatial Strategy for the North West (the RSS) but

¹ CD1.2

have also been revoked. Nevertheless in the absence of more up to date assessments, they have previously been treated as a material consideration in the determination of planning applications and appeals when calculating whether the Council has the 5 year supply of housing land required by national policy. A number of other LP policies continue to be relied upon by the Council including: ENV1, HO7, ENV24, ENV37, ENV38, and ENV45. Those policies merit the full weight of an adopted development so long as they remain in accordance with more recent national policy. If not, then relevant national policy can be a material consideration that attracts greater weight.

11. LP Policy ENV1 supports sustainable development. LP Policy HO7 generally will not permit new dwellings in the open countryside, (and the limited exceptions do not apply here.) LP Policy ENV24 will only permit development in the rural area where it would respect the key features of the landscape and not be detrimental to its character.
12. LP Policy ENV37 will only permit development affecting the setting of a conservation area where it will preserve or enhance its character or appearance. LP Policy ENV38 will not grant permission for new development that will obstruct important views in or out of a conservation area. The most important views are to be identified in Conservation Area Character Assessments. The Malpas Conservation Area has a brief character assessment prepared in 1981². It makes some general comments about views but without clearly identifying those which are important. LP Policy ENV45 will refuse permission for proposals that fail to have regard to the desirability of preserving a (listed) building or its setting. Unlike more recent national policy (see below), these policies do not make explicit provision for the balancing of identified harm with any benefits of development. To that extent they are not fully consistent with national policy.
13. Part One of the ***emerging Cheshire West and Chester Local Plan*** (the eLP) will replace parts of the LP. It is at an advanced stage following the very recent publication for consultation purposes of the Main Modifications³ which the Examination Inspector is considering recommending as being necessary to make the plan sound. The eLP includes proposed housing requirements for the Plan area. It sets out how Malpas and other parts of the rural area should contribute to meeting those requirements. Relevant policies include STRAT 2⁴, STRAT 8⁵, STRAT 9⁶, ENV 2⁷ and ENV 5⁸. The Inspector has not proposed that any of the relevant housing figures be modified. However the proposed main modifications do include some changes to the reasoned justification of the relevant policies. These clarify that the stated housing targets for Malpas and other rural settlements are not maximum figures.
14. eLP Policy STRAT 2 provides for 22,000 new dwellings in the Council's area between 2010 and 2030. That was stated by the Council at the Inquiry to represent both the objectively assessed need for housing and the identified

² CD7.9

³ Document 5

⁴ CD1.4

⁵ CD1.4

⁶ Howard Appendix 13

⁷ Document 8

⁸ Document 8

housing requirement. Most development will be in or on the edge of Chester and the main towns. But there is also provision for development in the rural areas which will be focused on 'key service centres'. These include Malpas as one of the most sustainable rural locations. eLP Policy STRAT 8 proposes 4,200 dwellings in the rural areas of which 200 would be '*within or directly adjoining*' Malpas. The Main Modifications would delete references to these being maximum figures. Indeed the Rural Areas figure of 4,200 has almost been met by existing commitments for 4,175 dwellings and the Malpas figure of 200 dwellings has already been considerably exceeded with about 367 dwellings permitted. eLP Policy STRAT 9 seeks amongst other things to protect the intrinsic beauty and character of the Cheshire countryside. There is currently no defined settlement boundary for Malpas but the Main Modifications would amend the supporting text to that policy refer to the identification of settlement boundaries in a future plan. In the meantime saved LP Policy HO7 is to be relied on in order to protect the countryside. eLP Policy ENV 2 seeks to protect and wherever possible enhance landscape character and local distinctiveness. eLP Policy ENV 5 seeks to protect heritage assets and, amongst other things, will not permit development that is likely to have a significant adverse impact on designated assets and their settings.

15. The eLP with the proposed main modifications merits significant weight. But there remains a possibility that the policies and text may change as a result of the consultation now being undertaken on the modifications. An appendix to the submitted eLP sets out which of the current LP policies (including HO7) are proposed to remain in use until a further Part Two version of the Plan is adopted.
16. The ***emerging Malpas and Overton Neighbourhood Plan*** (the MONP) has been through a number of consultation stages. It has very recently been submitted to the Council to carry out the required publicity prior to a referendum on whether the plan should be made. The MONP also merits significant weight but not full weight as it has not been made and it may also be subject to change or could fail to attract the necessary majority at the referendum. The MONP seeks to follow the housing requirements set out in the eLP. It does not propose any housing site allocations. However it includes objectives and also various criteria based policies for handling development proposals. The MONP also sets out a number of aspirations that have not all been translated into policies. Relevant draft MONP policies include H1: (New Housing), H3 (Housing Type and Tenure), H4 (Housing Character and Design), BE1 (Scale and Form of New Development), BE2 (Design of New Buildings), BE5 (Archaeology), LC1 (Landscape Character and Development), LC3 (Key Views), LC5 (Biodiversity), SF4 (New Community Infrastructure), and TC2 (Travel and Parking Impacts).
17. MONP Policy H1 seeks to support new housing on '*sustainable and appropriate sites*'. Amongst other things it prefers brownfield to greenfield development and, like STRAT8 it provides that greenfield development '*should*' be on sites that are '*directly adjacent to the village of Malpas*'. Also '*Housing development in the surrounding rural area will not normally be considered appropriate.*' The supporting text refers to the site assessment methodology in MONP Appendix B as one potential means of assessment and comparison of sites.
18. MONP Policy H3 amongst other things seeks to use specific Malpas Ward figures on local housing need when determining the affordable housing component of development. This is to ensure that new development provides for the needs of

- existing local residents. It also seeks that the needs of older people are addressed by ensuring that at least 25% of new houses on developments of more than 10 homes should be fully Lifetime Homes compliant. The policy allows that viability may be taken into account.
19. MONP Policy H4 seeks amongst other things that new residential development should '*ideally*' be delivered as schemes with a maximum of 30 houses or, where a scheme exceeds this number, then it includes areas of distinct and discernible character. Amongst other things it also provides that: '*All new developments should be designed with an outward looking housing layout that positively addresses existing roads.*'
 20. MONP Policy BE1 amongst other things requires consideration of: the scale of development (including height); impacts on the setting and significance of heritage assets; and impacts on views and the existing relationship with the countryside. Schemes for more than 6 dwellings should be accompanied by a '*Building for Life 12*' study as published by the Design Council.
 21. MONP Policy BE2 seeks that the design of new buildings reflects the distinctive character of Malpas and Overton and requires reference to the Malpas Character Study. The latter study examined the character of the existing built up area.
 22. MONP Policy BE5 seeks the conservation of undesignated heritage assets including below ground archaeology. Of particular significance is that Figure 5.2 shows the suggested alignment of Roman Roads and includes routes across the appeal site. The policy provides that there should be a desktop analysis that may indicate that further excavation and/or mitigation may be required. The policy provides that those undertaking surveys should contact the parish council which holds local knowledge.
 23. MONP Policy LC1 provides that: '*New development proposals in the rural area [i.e. outside Malpas village] must preserve and enhance the established landscape character unless there are exceptional circumstances for the development and no suitable alternative sites are available*'.
 24. MONP Policy LC3 provides that new development should protect the key scenic and distinctive views into and out of the village (including the Conservation area) and across the open fields, and minimise the visual impact on the landscape. The key views are identified on Figure 5.1. They include views out to the east and south from the Castle Hill Motte and also views towards the village from Well Meadow, adjacent to the appeal site. MONP Policy LC5 amongst other things seeks that existing hedgerows are retained wherever possible.
 25. MONP Policy SF4 would require developers to assess and mitigate the impacts of significant new developments on community infrastructure. Provision should be based on evidenced local needs and discussion with the parish council and local planning authority. A current list of needs is included at appendix F which provides that there must be conformity with the requirements of the Community Infrastructure Levy Regulations. The appendix distinguishes between 'Community Needs' and 'Community Aspirations'. However it does not distinguish between infrastructure that may be desired to meet current deficiencies and that which is necessary to support needs created by new development. Only the latter is likely to accord with the CIL Regulations.

Amongst other things there is support for the provision of bungalows or other accommodation for older people.

26. MONP Policy TC2 requires developers to ensure that the travel and parking impacts of their proposals are accurately identified, assessed and mitigated.
27. Local Guidance includes the Malpas Character Study (2012) (CD9.9) - which has informed the MONP – and landscape character studies of which the most recent is the Cheshire Landscape Character Assessment (2008) in which the appeal site lies within the RF5 Malpas Character Area.

National Policy, Guidance and Statute

28. The National Planning Policy Framework (2012) (the Framework) is capable of being a material consideration. Amongst other things paragraph 47 requires that local planning authorities identify and maintain a 5 year supply of deliverable housing sites against their housing requirements. An additional 20% buffer is to be identified in circumstances where there has been a persistent record of under-delivery. Paragraph 14 provides in summary, amongst other things, that there should be a presumption in favour of sustainable development and that, where the development plan is absent, silent or relevant policies are out of date, then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. The Framework includes policies that are potentially relevant to the main issues. Amongst other things, the Framework seeks that any identified harm to the significance of heritage assets is assessed as either substantial or less than substantial. Paragraph 133 provides that substantial harm or total loss should result in refusal unless demonstrated to be necessary to achieve substantial public benefits that outweigh such harm or loss. Paragraph 134 provides that less than substantial harm should be weighed with the public benefits of the proposal. The LP lacks such explicit balancing provisions and is thus not consistent with the Framework in this respect.
29. Planning Practice Guidance (PPG) was issued in March 2014 and has since been partially amended. It amplifies, but does not change, the policies in the Framework.
30. The Guidelines for Landscape and Visual Impact Assessment 3rd Ed (GLVIA3) are not issued by the Government but are relevant to the preparation and consideration of such assessments. English Heritage Guidance on the Setting of Heritage assets has also been referred to by the parties.
31. S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be had to the desirability of preserving listed buildings and their setting. The Court of Appeal has recently interpreted the words '*special regard*' to mean '*considerable importance and weight*' which is relevant when applying the planning balance between harm and benefits.
32. S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 creates a similar duty in respect of the exercise of planning functions in a conservation area with special regard to be had to the desirability of preserving or enhancing the character or appearance of a conservation area. It does not explicitly apply

to the setting of conservation areas. However as a matter of policy the Framework does require consideration of the effect of development on the heritage significance of all heritage assets including both conservation areas and listed buildings. This includes consideration of the effect on significance of development within their setting. Setting is defined in the Framework Glossary as: *'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.'*

Planning History

33. It appears that the buildings currently on the appeal site either predate the Planning Acts or, in the case of the largest building, were erected as agricultural permitted development. There is therefore no planning history on the appeal site.
34. However it is material that planning permission has been granted for 367 other dwellings on sites in and around Malpas since the emerging Local Plan period commenced in 2010. This includes an appeal allowed in January 2014 in respect of an outline application for 140 dwellings on greenfield land between Well Street and Chester Road. The site borders the eastern edge of the village and lies to the north west of the appeal site⁹. That site is described as the Gladmans' development and has previously been associated with Broselake Farm. There is an illustrative layout plan at Document 9. The site does not include the site of the listed Broselake Farmhouse itself but would wrap around the curtilage of that property.
35. The frontage of the Gladmans development to Well Street is low-lying land that is likely to remain open and to be used for a sustainable drainage scheme. The eastern edge of that development including the frontage to Greenway Lane is likely to be planted with trees as a landscape buffer. The appeal Inspector considered that the current line of fences on the adjacent housing estate creates an abrupt edge to the settlement and that the landscape buffer would better integrate the village into the surrounding countryside. The appeal was allowed on the basis that there was then an accepted shortfall in the 5 year housing land supply in the CW&C area and the identified harm did not outweigh the benefit of providing the dwellings.

The Proposals

36. The application was accompanied by an illustrative layout plan (Ref INCLA_N177_L01 Rev A) which is not part of the application and which is unlikely to accurately represent either the size or the location of each dwelling. It also indicates other pedestrian and cycle access arrangements which are not included in the outline application and would require subsequent determination. The plan should therefore be disregarded.
37. A second alternative application for essentially the same development is currently before the Council (Ref 14/02136/OUT). That application is accompanied by a modified illustrative layout (Ref INCLA_N177_L01 Rev B). It includes some

⁹ CD5.1 Appeal Decision Ref APP/A0665/A/13/2193956

suggested layout modifications which seek to address some of the Council's criticisms. However it remains only indicative and the size, position, precise number, and location of the dwellings, the pedestrian and cycle access and the open space arrangements would remain as reserved matters. It should be noted in particular that the illustrative layout shows only 32 dwellings, not 35, and that some of the dwelling footprints are notably small. They include some bungalows. The present position of retained hedges is not accurately plotted. Whilst the drawing is annotated to indicate that an acoustic fence would be installed close to the eastern boundary opposite Meredith's Coach Depot, the position and length of that fence is not shown. The drawing suggests that an area of open land opposite Broselake Farmhouse and known as the 'pinfold' would not be developed. That land was excluded from the development site for the second application but it is included in the red line site of the present appeal. The application description is the same for both applications. The second application has been subject to more recent public consultation which has included new and updated responses from interested persons (Document 10). Those responses have also been taken into consideration and no person should be prejudiced if consideration is given to the alternative illustrative layout.

38. Both applications were accompanied by the same 'parameters plan'. However that plan is agreed to be inaccurate or incomplete and is to be disregarded. A planning condition could require the submission for approval of a new parameters plan should the appeal be allowed.
39. Whilst the outline nature of the proposal means that it could vary significantly from either illustrative plan, there are some site constraints that would affect the final layout and design. In particular the intended single point of vehicular access from Well Meadow and the intention to retain as much as possible of the enclosing hedgerow means that the layout is likely to be inward facing, particularly along the Greenway Lane frontages. Back gardens would therefore be enclosed by the field hedge unless boundary fences were to be provided on the inside of that fence. In either case there could be implications for the future retention and maintenance of the hedge.
40. The agreement between the Council and the Appellant that an acoustic fence is needed opposite the coach depot also has implications in terms of the retention and future maintenance of the hedge there and also for the appearance of the fence itself which is likely to be a solid fence between 2.1m and 2.4m high.
41. The illustrative layout suggests the retention of open space along the Well Meadow frontage in order to retain views towards St Oswald's Church which the MONP identifies as a key view. Houses here could be outward facing across that open space. The height and position of dwellings on that frontage may also be affected by the objective to retain views. The position of any additional pedestrian and cycle accesses remains to be determined but would need to have regard to the objectives of hedge retention and also safety. Finally, in the second illustrative layout the Appellant is proposing that some of the land (the Pinfeld) opposite Broselake Farmhouse is kept open to protect the setting of that listed building.
42. Some of these matters can be addressed by planning conditions at the outline stage if they are considered necessary for the development to proceed.

Other Agreed Facts

43. There is a Statement of Common Ground (SoCG) which records the relevant development plan policies but not the emerging local policies. At the Inquiry the main parties agreed that it is no longer appropriate to use the RSS housing figures and that instead the housing requirement figure in the eLP should be used (22,000 dwellings over 20 years). For the purposes of calculating the 5-year supply against the requirement, the parties agree that the supply should include the 20% buffer required by the Framework (moved from later in the plan period). The parties also agree that the 1,300 dwelling shortfall in housing provision in the first 4 years of the plan period (2010-2014) should be added and addressed within 5 years in accordance with the Planning Practice Guidance and also known as the Sedgefield method. There is disagreement as to whether LP Policy HO7 is up to date. There is agreement that there is some harm to the landscape and heritage assets but the extent of that harm is not agreed. The Appellant and the Council agree that the noise impacts of the coach depot can be addressed by the provision of an acoustic fence but the location, dimensions and material have not been agreed. The coach firm and other third parties disagree. Other matters that are listed in the SoCG as agreed also remain disputed by third parties including: traffic and highways impacts, flood risk, impact on hedgerows, and loss of Grade II agricultural land. Malpas Parish Council and others also dispute whether there is adequate infrastructure to support the development including: education; health services; and public transport provision.

THE CASE FOR CHESHIRE WEST & CHESTER COUNCIL

[Edited from the closing submissions of the Council's advocate with some additions drawn from the evidence of the Council's witnesses at the Inquiry]

Overview

44. This application, as originally made, was poorly thought out and presented. The illustrative Masterplan was inaccurate, insensitive and lacking in any proper consideration of the impact on the significance of the heritage assets in the area. The new Masterplan is little better – again poorly thought out and the sizes of the houses unrealistically small. It has been clear that little thought has been given to the future management and maintenance of the hedgerows and of any land between the garden fences/acoustic fence and the hedgerows or, until the end of Dr Dawson's evidence, to the management of the Pinfold area. It is appreciated that these matters can be addressed by conditions. The poor preparation of the applications is also reflected in the poor judgments made in the LVIA and the Heritage Assessment – repeated in the evidence of Ms Howe and Dr Dawson.

Issues

45. There is no question but that there is conflict with the Development Plan (the adopted Chester District Plan). This is not disputed by Mr Collins in relation to HO7. In our submission, the evidence also clearly demonstrates conflict with ENV2 (no positive contribution to the character of the area), ENV24 (failure to respect the key features of the landscape and detriment its character), ENV37 (development affecting the setting of the Conservation Area which fails to preserve or enhance its character and appearance) and ENV45 (failure to have regard to the desirability of preserving the setting of the listed building). All these policies pursue objectives consistent with the Framework.

46. The conflict with even one of these development plan policies should lead to the dismissal of this appeal unless material considerations indicate otherwise (Planning & Compulsory Purchase Act 2004, s.38(6)). The failure to have regard to the desirability of preserving the setting of the listed building also points to its dismissal pursuant to s.66(1) of the Listed Buildings Act 1990.
47. The "other material considerations" could include the housing land supply situation, the need for, or the policy objective to boost, housing and certainly include the policies of the emerging Local Plan which have now reached a stage where, it is agreed, they can be given considerable weight. The relevant policies in the emerging plan are:
- (a) HO7 (of the Chester Local Plan) again which has been saved in Appendix 2 – there is agreed conflict with this policy;
 - (b) STRAT 9 (as proposed to be modified) – again there is no question but that there is conflict with this emerging policy;
 - (c) ENV2 (protection and, where possible, enhancement of landscape character)
 - (d) ENV37 and ENV45 (of the Chester local Plan which are also retained)
 - (e) ENV5 (historic environment).
- Again it is our case that the landscape impact and impact on the setting of the heritage assets leads to a conflict with (a)-(e) above.
48. As a material consideration, therefore, the emerging local plan also points to refusal.
49. So far as any generalised housing need is concerned
- (a) The identified housing need for the period 2010-2030 has been more than met in Malpas (367 compared with 200) [Nick Howard Proof]
 - (b) The identified need in the whole of the rural area for the period 2010-2030 has also been all but met (4,175 compared with 4,200) [STRAT8 of the emerging local plan and Schedule of Main Modifications LPA3]
 - (c) The affordable housing need in Malpas has been already met [Beth Fletcher Re Examination].
50. The objective to boost the housing supply can carry little weight in the light of the above figures – particularly in respect of a site that is in the open countryside.
51. The only "*other material consideration*" that could carry any weight is if the Appellant could demonstrate that there was not a 5 year supply of housing land. This would render HO7 out of date as a policy for the supply of housing. However, none of the other development plan policies quoted in the reasons for refusal are policies for the supply of housing and they would remain up to date as policies consistent with Framework.

Housing supply

52. The Appellant raises four issues. They each suffer from the same fault, that they are generalised and non-specific - as the Appellant has not conducted any analysis of the land supply itself, has not identified specific sites in advance of the inquiry which he might seek to question and has not even requested any meeting with the Council in order to consider any disputed sites. The highest that the Appellant can put these issues is to claim that if the supply had been closely analysed there might have been some sites that could have been challenged. Such an unspecific attack is, in our submission, impossible to respond to and can carry no weight. In any event the generalised points being made are misguided.
53. The first issue is the suggestion that there should be some kind of uncertainty discount of 10% applied to the sites listed as commitments. However the anticipated delivery from commitments has already been discounted – not by applying some arbitrary percentage figure but by carrying out assessments of the circumstances of individual sites. Had the Council been seeking to rely on all its commitments without such an analysis then, in the absence of individual assessments, it might have been right to apply some form of discount. To apply a discount on top of the individual site analyses is unnecessary and unjustified. In any event Mr Collins could provide no rationale for a 10% discount figure compared to any other percentage and accepted that it was essentially an arbitrary figure. So far as the issue of sites taking time to deliver development is concerned, the Council, unsurprisingly, is aware of this phenomenon and takes it into account in its discussion with developers etc. There can be no basis for adding another 6 months of slippage across the whole list of committed sites – this would be even more arbitrary than a 10% discount. Unless evidence is produced (in a timely manner and allowing the Council to respond) which identifies sites where the Council has clearly “got it wrong” there can be no basis for reducing the committed sites supply at all.
54. The second suggestion relates to the question as to whether all the sites identified by the Council can properly be regarded as being “available” or “suitable”. Miss Fletcher’s explanation of the approach adopted as to when a site is to be regarded as being available - given both to Mr Richards and to the inquiry - was consistent with the Practice Guidance. Again the Appellant only raises the generalised claim that not all the sites may be available now. The issue is availability not ‘now’. Without looking at the detail of individual sites to see whether they are available to be marketed now no conclusions can be drawn that the identified supply has included any sites incorrectly. Questioning Miss Fletcher with extracts from the SHLAA establishes nothing when matters have already moved on in evidence to the eLP examination. So far as suitability is concerned considerable weight can now be given to the policies in the emerging local plan and its proposed green belt release.
55. The third suggestion is that the Council has failed to add 20% to the 1300 shortfall as well as to the 5-year supply based on the annualised housing requirement figure. It is accepted that this is a planning judgment but it is totally unwarranted. There is no suggestion in Planning Practice Guidance or the Framework that this should occur. The 20% figure is only applied where there is a shortfall and is designed to increase the choice of sites available to help make up the shortfall as quickly as possible i.e. by bringing sites forward from later in the plan period. The Sedgefield approach (which does appear to be encouraged

by PPG) is also trying to achieve the same purpose – requiring the shortfall to be made up in the next 5 years rather than over the whole plan period. To argue that the requirement figure then incorporates the shortfall figure and that the 20% should be applied to the whole revised requirement makes no sense. The “5 year requirement” figure (or rather the 5-year supply figure in paragraph 47 Framework) is the figure you end up with after applying the 20% buffer and adding in the Sedgefield figure. It is not just the Plan Requirement figure annualised and multiplied by 5; nor is it that figure plus the shortfall; it is the final figure you arrive at when you have taken any buffer into account and when the shortfall figure has been added in.

56. The last point relates to demolitions. The evidence before the Inquiry is that the supply figure is net of demolitions and that they are taken into account in this way. A net requirement figure, therefore, has to be compared with a net supply figure. If Mr Collins wants to use gross requirement figure he would have to use a gross supply figure.
57. None of these points have any merit. The 20%/Sedgefield issue doesn't tip the supply into deficit; the demolition issue should be neutral if like is to be compared with like. The other two points lack any merit but in any event are unquantifiable in their effect. On the evidence there clearly is a 5-year supply.

Landscape

58. There was an unjustified challenge to Mr Harrison's methodology. The only challenge in XX was to his use of intermediate categories when assessing impact such as 'high/medium' rather than just 'high' or 'medium'. He had adopted the same LVIA methodology, as agreed in the SoCG. The fact that he used intermediate categories in his scales of sensitivity and impact ought to assist in understanding his judgments and in no way casts any doubt on those judgments.
59. In contrast, the way that the Appellant's LVIA and ALVIA had reached a final assessment of the significance of impact on the landscape was frankly bizarre and largely unexplained resulting in the remarkable conclusion that there was a beneficial effect on the local character [ALVIA para. 5.8 CD.3.7]. This conclusion is surprising for the following reasons:
- (a) The relevant character area assessment - RF5 Malpas Character Area of the Cheshire Landscape Character Assessment [CD9.8 p.107] - identifies narrow lanes weaving between high hedges in a rural and tranquil landscape as being characteristics of the local landscape.
 - (b) The appeal development will involve the loss of significant lengths of hedgerow to provide for the vehicular access and howsoever many pedestrian and cyclist accesses the development would eventually settle upon. Both illustrative masterplans showed three such accesses. Of the remaining hedgerows part would become the boundary treatment to individual plots and part would have a 2.1 m acoustic fence immediately behind them. No thought had been given to the long-term management of these hedgerows.
 - (c) The rural and tranquil character of the lanes would be replaced by the creation of a suburban environment.

- (d) The existing use of the site with the farm buildings is itself typical of the settlement pattern in the area and will be replaced by untypical urban development spreading out into the countryside.
 - (e) In the wider landscape the development would be seen in the foreground of views of Malpas and St Oswald's Church from various points along Well Meadow ("the gradual reveal") and would appear as a significant extension into the countryside to the east of Malpas in views from the Marches Way (Footpath 4).
 - (f) More generally, whilst Malpas is built on the hill and presents as a dense nucleated settlement on that hill, the appeal development would be sited beyond the break in slope and would represent an incursion of modern suburban development onto the lower ground of the open countryside.
 - (g) The Appeal proposal will negate the efforts of the Gladman proposal to ensure that a landscaping belt was in place to separate the new development from the countryside.
60. This is far from a beneficial change in terms of landscape character. It is adverse and of major significance and, therefore, clearly in conflict with ENV2 (which requires development to have a positive contribution and contrary to ENV24 by being detrimental to the local landscape character.
61. Furthermore, Ms Howe significantly understated the sensitivity of users of the public footpath and of the country lanes who would experience the visual changes brought about by the development.
62. Mr Harrison's methodology is clear and appropriate and his judgments are properly explained - in contrast to the Appellant's LVIA and ALVIA, repeated in evidence to the Inquiry. His judgment of adverse impact makes far more sense than Ms Howe's assessment of beneficial impact.

Heritage impact

63. In their original application the Appellant failed to appreciate the necessity to carry out any expert assessment of the impact of the development on the setting of the Listed Building notwithstanding that building is adjacent to the appeal site and looks out over it.
64. It is agreed (Mrs Hutchinson and Dr Dawson) that the appeal site lies within the intermediate setting of the Listed Farmhouse. Although Dr Dawson's Heritage Impact Assessment and evidence appeared to confine the significance of the listed building to being "*almost entirely, today, its architectural survival rather than its rural setting*" [Proof p. 31] it appears that he regarded the retention of the Pinfold as being sufficiently important to "*to aid the historic legibility of the farm*" requiring an amendment of the illustrative layout.
65. Dr Dawson states that the historic interest in Broselake Farmhouse lies in its "*relationship to the expansion of farming in the late 17th, 18th and early 19th century*" - particularly the increased prosperity brought about by high corn prices. Mrs Hutchinson agrees. He accepts that some association with the land on the other side of the road should be retained. He accepted that it was likely that the appeal site, now in the ownership of the owner of the farm, had

historically been used in conjunction with the farm – the map evidence showing how farm buildings had expanded on both sides of the road.

66. With the Gladman development now consented the only remaining area of farmland adjacent to the site, an area historically associated with it, is the appeal site. The destruction of this last area of open land associated with the historic function of the building – which function gives it its historic interest – and the replacement of that land with a suburban estate can only be viewed as having an impact on the significance of the listed building. In Mrs Hutchinson’s view the cumulative effect of the appeal proposal on the setting of the Listed Building would be to cause substantial harm the significance of the Listed Building as the loss of the last piece of farmland associated with it and visible from it.
67. A proper application of s.66 of the Planning (Listed Building and Conservation Areas) Act 1990 would require, therefore, this appeal to be dismissed. Paragraph 133 of the Framework also applies and would require proof that the harm caused is necessary to achieve a substantial public benefit outweighing that harm or loss. None can be demonstrated here.

Impact on the Conservation Area

68. Views of the village and of the conservation area (especially St Oswald’s Church) are available to all visitors and travellers and recreational users of Well Meadow. This development will appear at the foot of the slope leading to the conservation area and be visible in views of the CA and the Church. There will be a marked impact on the setting of the CA. The site will also be visible as extending the urban area out into the countryside from the Castle Motte. There is, therefore, harm to the setting and to views out of the CA and a conflict with Policy ENV37.

Infrastructure

69. The Council had not sought a contribution to education infrastructure because there appeared to be spare capacity at the village primary school and because extra capacity was expected to be provided at the secondary school using grant moneys. The appeal development was expected to generate a need for 5 secondary school places. The Council had previously argued for an education contribution for the larger 140 dwelling Gladmans development but the Inspector concluded that it did not meet the statutory requirements because another scheme to expand school places at the secondary school was also being funded by grant money.
70. In relation to health services the Council had not consulted relevant authorities during its consideration of the application and therefore had no evidence to justify a contribution.
71. In relation to transport infrastructure, the highway authority did not object to the development on either congestion or safety grounds. However they requested a £7,500 contribution towards traffic orders and other works in the village centre, but that request had been overlooked when the Council informed the Appellant that no contributions were being sought by a S106 obligation. Some off-site works would be required to create the access including changes to extend the 30mph speed limit but they could be addressed by an agreement under S278 of the Highway Acts and a Grampian-style negative planning condition to ensure that the development did not go ahead without those works.

Conclusions

72. There are three separate approaches to looking at the application of the relevant development plan policies to the appeal proposal, each of which should lead to this appeal being dismissed.
- (a) There are conflicts with Development Plan policy on landscape, protection of the countryside and conservation. The impact on the Listed Building alone would be sufficient to meet the test (significantly and demonstrably) in paragraph 14 of the Framework if it were necessary to do so to outweigh the benefits of the scheme. However, this is not a case where the development plan is absent, silent or where the relevant policies (especially the landscape and heritage policies) are out of date and so that stringent test does not apply.
 - (b) If paragraph 133 of the Framework applies then no sufficient benefits to outweigh the harm have been identified and permission should be refused.
 - (c) The conflict with all or any of the Policies identified in the reasons for refusal would, in any event, require refusal pursuant to s.38(6) because there are no other material considerations which should lead to a conclusion other than that the appeal should be dismissed.

THE CASE FOR THE APPELLANT

[Edited from the closing submissions of the Appellant's advocate with some additions drawn from the evidence of the Appellant's witnesses at the Inquiry]

INTRODUCTION

73. It has been clarified that the "access" for which detailed approval is sought at this stage is that for the point of vehicular access from Well Meadow. Pedestrian/cycle access shown on the illustrative masterplan are not for detailed approval now.
74. No party or person has suggested that consideration of the revised illustrative masterplan will cause any prejudice. The access detail sought to be approved has not changed. Mr Collins confirmed that the parameters plan submitted with the second application was in error and should be disregarded.

THE CORRECT DECISION-TAKING APPROACH

75. In respect of the adopted development plan, Mr Howard confirmed that it contains no saved provisions for meeting current housing need. The Framework plainly requires a local plan to contain such policies. It must therefore be the case that 'relevant policies for the supply of housing' are thus not up-to-date as required by the Framework. The emerging local plan ("eLP") acknowledges the need for development in what is now, for planning policy purposes, open countryside¹⁰. Policy HO7 is therefore not up-to-date in so far as it restricts development to the adopted CDLP settlement boundaries. It was accepted in

¹⁰ CD 1.4, p23, ¶5.22

opening that a strict and isolated consideration of the adopted development plan indicates that permission should be refused and the appeal dismissed.

76. Malpas is a second tier settlement in the hierarchy which is amongst “the most sustainable rural locations”¹¹. There is no basis for suggesting that development at Malpas should be restricted to meeting needs that arise in and around Malpas; policy STRAT 2 provides that development at key service centres to maintain the vitality and viability of the rural area; ¶5.67 of the eLP¹² makes it clear that at settlements such as Malpas the plan expects growth. The lower tier local service centres are more restricted to meeting local needs. The eLP inspector’s recommendations for main modifications¹³ include that the plan’s ‘target’ figure for housing (22,000) should be expressed as a minimum, and that the figure in STRAT 8 for Malpas should not be referred to as a maximum.
77. ¶14 of the Framework is therefore engaged, indeed Mr Howard said¹⁴ that he had applied it. The required approach to the decision-taking in this appeal is to grant permission unless the Council can show that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This is the case because relevant policies are not up to date. This is also the case irrespective of whether or not the Council can demonstrate a ‘Five-year Supply’ (“5YS”) of deliverable sites for housing. If the Council cannot demonstrate such a supply, then the weight to be given to the need to boost significantly the supply of housing as a ‘benefit’ increases. Further, if the Council is able to demonstrate a 5YS, it is no part of the approach in the Framework to regard such a state of affairs as a ceiling or upper limit on permissions; further permissions in a situation where supply may already meet the estimated level of need does not represent ‘harm’ having regard to the objectives of the Framework¹⁵.
78. The Council’s 1st RFR¹⁶ also averred that the appeal site was not “sufficiently sustainable” so that the “presumption in favour of sustainable development does not apply”. In so far as this might be a reference to a sequential ‘gateway’ test to be passed before applying the presumption, this approach is no longer correct in law¹⁷. The application of the ‘adverse impacts vs benefits’ approach, having regard to the policies in the Framework as a whole, will lead to a conclusion on the sustainability credentials of the appeal proposal. If the application of that planning balance to the appeal proposal indicates permission should be granted then the appeal should be allowed unless material considerations indicate otherwise. The SoCG records that the appeal site is a sustainable location; the only possible issue is whether what is being proposed on it is sustainable development.
79. In XX Mr Howard confirmed the following components of alleged harm relied on by the Council: effect on the character and appearance of the area including at a “key entrance point” to the village and the loss of a “visually important area of open countryside”; adverse effect on the setting of the Grade II listed Broselake

¹¹ CD 1.4, p22, policy STRAT 2.

¹² As proposed to be modified in LPA 3

¹³ CD 1.21

¹⁴ In XX

¹⁵ NH in XX

¹⁶ CD 2.19

¹⁷ CD 6.5, the *Dartford* case at [52] – [54]

Farmhouse; adverse effect on the setting of Malpas Conservation Area. To the extent that he sought to ally himself with any additional harm raised by third parties his approach was to depart from the SoCG and was wholly and unconvincingly opportunistic. It appears that he does not understand the 'solutions not problems' approach to development management espoused by the Framework.

ADVERSE IMPACTS

80. The alleged adverse impacts identified above, and any others, thus fall to be considered.

Landscape character

81. In terms of effect on character of the site itself, there is no doubt but that there will be a change. What is now an area containing utilitarian agricultural buildings and pasture will become a housing development. But any greenfield development adjacent to Malpas or any other settlement in Cheshire will have this effect. The real issue is whether there will be a materially adverse effect on the character of the area as a whole¹⁸. It would appear that there is a consensus that it is appropriate to assess an area with a radius of about 3km from the appeal site¹⁹; on that basis we are concerned with Malpas and its immediate environs.

82. In that regard Mr Harrison for the Council contends for the following adverse effects²⁰:

- a. The introduction of a mass of built development of similar height to the existing barn which is suburban in character; an effect which would be apparent from all the surrounding lanes and countryside. The urban influence of Malpas would be extended further into the countryside adversely affecting rural character and tranquillity.
- b. Removal of c60m of hedgerow, and probably some in addition at the three corners of the site to allow pedestrian access, increasing and exacerbating the suburban influence.
- c. The change in character as experienced from the rural lanes would be apparent by reason of the visibility of domestic paraphernalia.
- d. The 2.4m acoustic fence opposite the coach yard would give a suburban feel.
- e. The distinctive eastern edge of Malpas rising from the base of the slope to the 'crown' of St Oswald's Church on the top would be lost.
- f. There would be a "poor transition" between town and countryside, effectively re-introducing the current position remedied by the consented Gladman's development.

83. The existing barn is about 6.2m to eaves and 8.8m to the ridge²¹. A typical 2 storey dwelling might be 5m to eaves and 8.3m to ridge so the barn is a reasonable proxy as to height, but not of course mass; a typical bungalow might

¹⁸ As agreed by PH in XX

¹⁹ XX of SH by SS QC.

²⁰ See PH ¶4.4.2

²¹ See survey heights at CD 2.6

be 2.5m to eaves and 5.5m to ridge. The final dimensions of new buildings, and their slab heights, would be determined at the reserved matters stage. Close to the site, users of the lanes would appreciate that they had 'arrived at Malpas' sooner than they do now, or would realise that they had not 'left Malpas' until later than they do now. That there should be modern development on the edge of this settlement should not come as a surprise and neither will it be harmful. This is the natural consequence of the growth of the settlement which has a long history of such growth and which is accepted in principle in the eLP. The general description of the landscape "*land use is mainly pasture and settlement is a mix of nucleation and dispersion*"²² will not change. The nucleated settlement of Malpas will simply 'grow' as it has done for many generations.

84. There will be a loss of hedgerows as shown on the revised illustrative masterplan, but this will not affect the character of the wider area. The impact of domestic paraphernalia is over-played, but is, it is submitted, characteristic of what would be expected inside the confines of a nucleated settlement. It is now clear that the acoustic fence will form the outer boundary of the development. Its final position will be fixed at reserved matters, and it can be assumed it will be fixed so as not to have a materially harmful impact on the existing hedgerow that remains and that appropriate measures for the maintenance of the hedge will be secured through the imposition of a landscape management plan condition.
85. The character of the eastern side of Malpas will not materially or harmfully change; it will continue to be nucleated and rise up the slope to St Oswald's Church. This will be examined further under 'visual impact' below.
86. The transition between settlement and countryside will be appropriately secured at the reserved matters stage. Contrary to the suggestion of Mr Harrison, 'buffer planting' is not a key characteristic of the landscape at Malpas, nor do local landscape guidelines suggest it is appropriate to introduce it. The one reference to 'buffer planting'²³ is in the context of screening views of development outside of settlements²⁴. The Malpas local guidelines²⁵ refer to no such requirement; they suggest boundary treatment should include hedgerows and "*simple pockets of trees*". This is a landscape in which a nucleated settlement is a wholly acceptable and characteristic feature; if the development is designed to settle into the landscape, there is no requirement to completely screen it or enclose it in a woodland buffer. To the extent that the existing hard-edge of Malpas exercised the Gladman's site inspector, it should not be assumed that the 'edge' he was hoping to remediate would be reproduced on the appeal site.
87. In XX of Miss Howe it was suggested that it was risible to conclude that there might be a 'negligible' overall effect on landscape character. However, if one has regard to the effect overall in the area rather than simply on the site then the judgment is perfectly understandable and logical. This development would simply see some further small incremental growth of a settlement in a location that allows it to continue to sit comfortably in its landscape setting.

Visual impact

²² PH appx 4.1, p87

²³ Quoted at PH ¶4.1.3

²⁴ PH appx 4.2, p5

²⁵ PH appx 4.2, 2nd part

88. It is clear that the Council, through Mr Harrison, is particularly concerned about visual impact for receptors at the following locations: Well Meadow approaching Malpas; Well Street and Well Meadow leaving Malpas; Greenway Lane north of the site and on the north and west sides of the site; Footpath 4 to the south of Malpas, Footpaths 16 and 17 north of the site. These views are best appreciated on a site visit, but the following points can be made.
89. The approaches down Well Meadow are illustrated in the VP M series in the aLVIA and VP 1 in the original LVIA. The importance of the view of St Oswald's Church is recognised by all parties and will not be lost if the appeal site is developed because it will be a key consideration at the reserved matters stage and is why the revised masterplan illustrates bungalows in the south eastern part of the site and the removal of the previous illustrative 'gateway building'. At present the church dips in and out of view²⁶. Users will appreciate an arrival in Malpas sooner than they do now, but the overall effect will not be significantly harmful.
90. The views leaving Malpas along Well Street and Well Meadow are illustrated in VP F & G in the aLVIA and VP 2 in the LVIA. Users will appreciate that they will leave the settlement later than they do now. While in the settlement they already have views of houses and gardens as they would expect; this will be no different if the appeal site is appropriately developed.
91. The approach from the north down Greenway Lane is illustrated sequentially in VP A, B & C. There is already a sense that one is approaching a residential area, and this will not substantially change in VP A and B. At VP C, one has a sense of already arrived at Malpas, and the fact that this is re-enforced by further views of roof-tops or into the appeal site through a new pedestrian/cycle access will not be significant. In essence there will be a 'gradual reveal' down Greenway Lane.
92. Users of Footpath 4 are illustrated in VP 7 & 8 in the LVIA. At VP 8 approaching the village Malpas is clearly visible as is the church on the skyline which draws the eye. The village spreads out below it. In essence that experience will not change. At VP 7 the view of the appeal site will be peripheral to the direction of travel as one approaches Malpas and even more so as one walks away from it. By this stage the user of the footpath is well aware that he/she is getting close to the settlement, and this situation will not change. The appeal site development will not bring the settlement closer to the user. The Gladmans development landscaping scheme shown on its illustrative masterplan²⁷ in these views the existing planting in the area of Well Street and to the rear of Broselake Farm²⁸ is that which is to be relied on. It is against that baseline that the appeal scheme should be judged.
93. Users of Footpaths 16 and 17 are illustrated in VP D & E in the aLVIA and VP 3 in the LVIA. Again there will be a 'gradual reveal' of what would be Malpas, with the views of the coach depot announcing one's arrival.
94. There is some dispute over the sensitivity of local users of the footpaths and lanes. Ms Howe for the appellant contends for 'medium' while Mr Harrison

²⁶ PH in chief and XX

²⁷ Doc APP 2

²⁸ See also the photo in MD's proof at p10, Fig 5.

suggests²⁹ 'medium to high'. Both reference guidance in the GLVIA³⁰. ¶6.33 of the GLVIA advises that the most sensitive receptors are generally likely to include those "whose attention is likely to be focused on the landscape or particular views". ¶6.34 advises that less sensitive receptors include people engaged in outdoor recreation "which does not involve or depend on appreciation of views of the landscape." ¶6.35 advises the division "is not black and white and in reality there will be a graduation in susceptibility to change". For local residents, walking their dogs or simply taking exercise, it is submitted that they will not be so susceptible to change as to warrant higher than medium sensitivity.

95. Footpaths around Malpas do feature in walkers' guides³¹, however:
- a. In the Chester City Council 'Explore!' leaflet Walk 3 the route is from the centre to FP 4 and a circuit which will not include views of the appeal in the direction of travel and when oblique views are possible the attention of the walker will be on the spectacular views to the south;
 - b. In the 'Marches Way' guide, the walker is again instructed to begin the walk in Malpas and the appeal site will again simply be part of Malpas which the walker is seeking to leave down FP4 (through the reverse of VP 7 & 8) in which he/she will not regard as the principle view to be enjoyed.
96. The magnitude of change is also a matter of difference between Ms Howe and Mr Harrison: the one contending for 'low' the other 'low medium' or 'medium'. The GLVIA (p115) advises that the size or scale of the development and the geographical extent of the change of view should be taken into account. It is submitted that Ms Howe has carried out the analysis correctly and that her opinion should be preferred.
97. Taking a holistic and common sense approach, it is submitted that it is simply fanciful to suggest that the development of the appeal site will either discourage walking or make the experience or enjoyments of walking in the area materially less enjoyable.

Setting of the Listed Building

98. There is a statutory requirement to pay "special regard" to the desirability of preserving the setting of a listed building³². That desire should be given "considerable importance and weight" in carrying out a planning balancing exercise³³.
99. The settings of listed buildings are important because they can contribute to the significance of the heritage asset and such significance can be harmed or lost through development within its setting³⁴.
100. The question thus arises: is development proposed within the setting of the Grade II listed Broselake Farm (the farmhouse), and if so, what effect will it have

²⁹ See PH proof ¶¶5.2.8 to 5.2.10

³⁰ CD 9.6, p113-4

³¹ See PH appx 4.3

³² S66(1) of the LBA 90

³³ See *Barnwell Manor* case at CD 6.1 at [29]

³⁴ Framework ¶128, 132 and HH in XX

on its significance as a heritage asset³⁵. If it will have a negative effect, then the law requires the harm that arises to be given considerable importance and weight in the planning balance.

101. The significance of Broselake Farm, Mr Dawson opines, lies in its architecture and survival from the early 19th century³⁶. This is why it was listed.
102. The setting of Broselake Farm is described by both Mr Dawson and Ms Hutchinson by reference to an "immediate setting", and "intermediate setting" (which includes the appeal site) and a "wider setting".
103. The immediate setting includes the outbuildings and former 'pinfold' area opposite³⁷. There is no real dispute as to the extent of the intermediate setting³⁸, nor the wider setting³⁹.
104. The dispute centres on whether development in the intermediate setting will have any harmful effect on the significance of the heritage asset. Ms Hutchinson in her proof identifies but one aspect of significance that might be harmed by the proposed development namely the aesthetic: "The harmonious relationship between the house, outbuildings and surrounding landscape also has attractive aesthetic qualities"⁴⁰; however, she acknowledges that the principal aesthetic value lies in its vernacular architecture.
105. The immediate setting will be preserved; the association of the pinfold with the house will be re-enforced adding to the legibility of the building as a Farmhouse.
106. In the intermediate setting, the demolition of the agricultural sheds is judged to be an acceptable degree of change⁴¹ and an improvement.
107. The real issues / complaints of Ms Hutchinson are twofold:
 - a. First, that the development of the appeal site will cause Broselake Farm to be read as an isolated historic anomaly⁴². However, as Mr Dawson explains, it will still be possible to appreciate the architectural significance of the asset⁴³ and its historic use as a farmhouse will remain evident⁴⁴ aided by the historic legibility of the pinfold. It is submitted that the real test is to ask whether developing the appeal site as proposed will cause an observer to have any real doubt that the listed building was once a farmhouse as opposed to any other type of building. The answer of course is that the relationship with the 'land' will remain readily apparent through the very many remaining 'triggers' in its immediate setting. The wider setting remains agricultural. The fact that much of the intermediate setting is now the settlement of Malpas will enable the observer to appreciate that

³⁵ As agreed by HH in XX

³⁶ See MD proof §4.9

³⁷ HH ¶5.10

³⁸ HH ¶5.11 and MD ¶4.9.8

³⁹ HH ¶5.12 and MD ¶4.9.9

⁴⁰ HH ¶5.6

⁴¹ HH ¶8.2

⁴² HH ¶8.2

⁴³ MD ¶4.9.10

⁴⁴ MD ¶4.9.12

this building sits in a landscape that has evolved, but the original relationship will be readily apparent.

- b. Second, that the contextual relationship with the countryside to the east will be lost⁴⁵. However, this loss, while real, does not amount to harm that is any more than 'slight adverse' in terms of the effect on the significance of the asset. Ms Hutchinson seems to have assessed the effect on the setting, rather than on the heritage asset.

108. Therefore, as Mr Dawson opines, there is a slight adverse impact albeit one to which "considerable importance and weight" should be given in the planning balance.

Setting of Conservation Area

109. There is a statutory requirement to pay "special attention ... to the desirability of preserving or enhancing the character or appearance" of a conservation area⁴⁶. Again, this is a matter which is required to be given considerable importance and weight in any planning balance.

110. The following matters are identified by Ms Hutchinson in her proof as having an adverse impact on the setting of the conservation area:

- a. Alteration of the unfolding views on the approach down Well Meadow as foreground views will be dominated by new houses rather than being seen across agricultural landscape.
- b. The appeal scheme will not be read as part of gradual expansion of the settlement because it will be beyond the break in the slope.
- c. A lack of relationship between the street pattern on the appeal site with that in the conservation area and the majority of late 20th century expansion.
- d. Erosion of the setting of the town as experienced from the castle motte so that the town begins to be linked to the scattered houses in the surrounding landscape.
- e. 'Sprawl' over the lower ground making the transition from 'rural' to 'urban' become 'suburban'.

111. Ms Hutchinson seems to have equated 'change in the setting' with 'harm to the conservation area' which is an erroneous approach. This was plain once she told the inquiry during her evidence in chief that developing the appeal site would lead to the effect that the "*sense of Malpas being an island in the surrounding landscape would be somewhat diluted*". It is submitted that such an effect is not harmful to the character of the conservation area.

112. Mr Dawson opines that there will be a slight change to the character of Malpas in the sense of increased perception of modern growth, but this will not cause any material harm to the significance of the conservation area. There is thus no harm to give "considerable importance and weight" in the planning balance.

113. The Council's objection came down to two things. First the view from Castle Motte will include sight of the appeal development. That is true, but the viewer

⁴⁵ HH ¶8.3

⁴⁶ S72(1) of the LBA 90

already knows that Malpas has evolved and expanded outwards from its historic core and so the view will not harm the setting of the conservation area. The same applies to the Council's second point – that views into the conservation area from the vicinity of the appeal site will be influenced by the presence of the appeal site development. It is just not credible to aver, as the Council does, that this of necessity means harm to the significance of the conservation area. There will be no loss of an ability to appreciate and understand that historic Malpas was a hill-top settlement that has gradually spread down the hill to the lower land below.

Noise

114. It is now agreed with the Council that the living conditions of future residents on the appeal site will not be unacceptably compromised by noise emanating from the nearby coach depot. Subject to detailed design, the Council accepts that all applicable standards for internal rooms and outside space can be met. The detailed design measures will include the layout of the site, the orientation and internal layout of dwellings and the materials the façade facing the depot are constructed from. If as a result it is necessary to design ventilation for any bedroom facing the depot that assumes windows will be shut to prevent sleep disturbance between the hours of 23.00 to 07.00 it is agreed that can be done and is not objectionable or unusual in principle. The Council's EHO has certainly not objected on that basis. Mr Woolley told the inquiry that sleep is only taken to be disturbed if the LAmax standard is exceeded about 10 to 15 times a night.
115. The Meredith family and their employees remain understandably concerned that there might be a long term effect that threatens the very existence of their business on its current site. That is not borne out by the evidence to the inquiry. Indeed the noisier elements of the early morning checks on the coaches are currently carried out at other times in order to peacefully co-exist with current residential neighbours without apparent threat to the business.

Others issues raised by third parties

116. The Parish Council in its representations submits that any scheme that does not enjoy the support of the local community should not be permitted; in that regard it relies on the emerging Neighbourhood Plan ("the eNP"). The inquiry was told that the eLP has been submitted to the LPA and there will now follow a period of 6 weeks publicity following which (and having taken into account the consultation responses) the LPA will decide whether to submit it to independent examination.
117. PPG is clear⁴⁷ that "*Refusal of planning permission on grounds of prematurity will seldom be justified in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period.*"
118. In so far as weight may be given to an eNP, it falls to be considered under ¶216 of the Framework: but it has not reached an advanced stage, and there has not yet been the opportunity for formal objections to be made. It is submitted that the eNP can be given very little weight on this basis.

⁴⁷ Reference ID: 21b-014-20140306

119. However, on 10 July 2014 the Secretary of State announced he will consider recovering appeals for more than 10 dwellings which are in or near an area for which a neighbourhood plan has been submitted to the LPA. The day before this inquiry opened this was the case at Malpas⁴⁸. The Secretary of State is "*keen that all planning appeal decisions should reflect the Government's clear policy intention when introducing neighbourhood planning, which was to provide a powerful set of tools for local people to ensure they get the right types of development for their community, while also planning positively to support strategic development needs.*"

120. So to the extent that the eNP is now a material consideration, the question arises as to whether it gives a clear indication that militates against the proposed development:

- a. In terms of the quantum of appropriate development for Malpas, the eNP aligns itself with the eLP. It is clear that the neighbourhood forum and local residents were very content that the dwelling target for Malpas and the overall requirement for the rural area in general were expressed as maxima in the submission draft of the eLP. However, the eLP inspector has now informed the Council and the Council accepts this is not sound. The eLP and eNP 'target' for Malpas are thus not maxima but an indication. It is submitted that if that indication can be exceeded without harm to interests of acknowledged importance then this will accord not only with the eLP but also the eNP.
- b. The eNP supports 'homes for all' which are, like the appeal site, sustainably located⁴⁹. Policy H1 provides that housing sites should be within 10 minutes walk of the village centre (which the appeal site is) on a sustainable site. The Council agrees that the site is sustainable and the assessment against the "one potential means of assessment" at appendix B to the eNP carried out by Ms Howe for the appellant scores well. Ms Broad for the neighbourhood forum presented an alternative assessment, but for the reasons put to her in XX it is not a balanced assessment. To the extent that supporting text in the eNP favours sites with 30 dwellings or fewer, this can be achieved by condition.
- c. Detailed design will now have to consider the eNP as material. To that end the illustrative masterplan, in terms of density, fits well with the settlement character⁵⁰. It was also have to take into account the requirement in the eNP to give more attention to the needs of one person households and the increasing number of retirement age people⁵¹. There is no reason to suppose that at the reserved matters stage policy H4 on character and design and the BE series of policies will not be complied with.
- d. The inquiry has considered the 'key views' identified in the eNP.
- e. Any requirement for new community infrastructure under policy SF4 has already been taken into account by the Council and statutory consultees; SF4 is still subject to the provisions of the CIL Regulations 2010 and it cannot require unlawful contributions.

⁴⁸ The eNP is doc LPA 5

⁴⁹ eNP p19

⁵⁰ As described in table 2.2 on p5 in the eNP.

⁵¹ eLP p11, ¶13

- f. The eNP commendably accepts Malpas will continue to grow and that infrastructure and villages services need to grow in response⁵². The approach is not to 'pull up the drawbridge' because existing services cannot cope.

121. It is submitted that there is no material conflict with the eNP.

122. Third parties have also raised the following matters:

- a. Loss of agricultural land: the agricultural report accompanying the application explained that while technically the land is grade 2, it is not suited to modern agricultural practices. In addition Mr Howard explained that a 'BMV' point had not succeeded in the Gladman's appeal.
- b. Impact of traffic in the village: it seems that there are periods of the day when the village centre suffers from congestion. However, all this was known to relevant officers during consideration of both planning applications and no technical objection was raised. In addition, it would appear that a contribution to mitigation measures was secured in the Gladman's appeal and so no further measures were considered justified in this case.
- c. Flood risk: it is clear that there is no technical objection. Run-off from the appeal site will cause no additional problem locally and there may be benefits depending on the detailed design solution adopted for the appeal site development.
- d. Pedestrian access up steep hill to village centre: It is clear that the distance to the village centre (c500m) is within a reasonable walking distance (c800m) even allowing for the incline on the inward journey.
- e. Pressure on health and school facilities: there is no requirement from the Council for a contribution.
 - i. During the inquiry it became clear that alternative sources of funding have been secured to expand local education infrastructure. Anecdotally, the schools are popular and high-achieving. That being the case it is not surprising that they are consistently near capacity. But village children will receive priority over those travelling from over county/national borders and so there is no reason to doubt that children on the appeal site will be able to attend local schools if that is their parents' wish.
 - ii. The inquiry heard evidence that land has been provided for a new medical centre and it must be assumed that no contribution is required from this development towards further capital expenditure.

123. None of these local residents' concerns is supported by the Council or technical/statutory consultees.

BENEFITS

124. The benefits relied on by the Appellant are social, economic and environmental. Each will now be considered in turn.

⁵² eLP, p11, ¶6 & p14, ¶9

Social benefit – a boost to the supply of housing

125. In calculating the 5 Year Supply it is important that all figures used are either 'net' or 'gross' of demolitions / losses. In this appeal all parties have used 'net' figures.
126. There is no up to date adopted local plan therefore the 'requirement' used in the 5YS calculation must be the figure for the full Objectively Assessed Need ("OAN"); so much is clear from the Gallagher Homes case⁵³, ¶188(ii). OAN is the 'policy-off' figure for needs for market and affordable housing⁵⁴. The Council says this is 22,000 for the 20 year plan period or an average of 1,100 a year. On the basis that the eLP inspector has not suggested any change to the 22,000 requirement on the basis that it does not represent OAN the Appellant accepts this figure as being OAN. However, his conclusions / explanation are not yet in the public domain to be scrutinised. Therefore this position pertains for this inquiry only.
127. Completions since 2010/11 are 1,300 less than the annual average requirement. It is agreed that this shortfall is part of the 5 year requirement adopting the Sedgefield approach.
128. The figure for the 'buffer' is agreed to be 20%. However, there is an issue as to how it should be applied. There is no expressly approved methodology in the Framework or PPG. It therefore becomes a matter of planning judgment. There are competing judgments before the inquiry:
- a. The Council's which applies the 20% buffer before adding the shortfall. This is contrary to the plain reading of ¶47 of the Framework which requires the buffer to be applied to "their housing requirements"; it is submitted that the housing requirements include the shortfall.
 - b. The Appellant's which applies the 20% buffer after adding the shortfall has been very recently approved by the Secretary of State on appeal at Droitwich⁵⁵, and in terms where the inspector obviously considered the matter in some detail.
129. In an attempt to show that the Secretary of State was not fixed in his clear conclusion at Droitwich, the Council introduced the Malmesbury appeal decision⁵⁶. However, in this decision the point was obviously not argued as at Droitwich⁵⁷, and it is not set out clearly and expressly what the inspector did⁵⁸. At Droitwich the inspector's reasons and conclusion were clear and the Secretary of State clearly agreed with them. At Malmesbury the inference was not clear and the Secretary of State agreed with the overall conclusion as to the year's supply but simply "carefully considered" the inspector's arguments and conclusions.
130. The Appellant's approach should be preferred. Having read Mr Collins' proof on the matter, Ms Fletcher in 'rebuttal' simply sets out her planning judgment –

⁵³ CD 6.6

⁵⁴ Framework ¶47, 1st •

⁵⁵ TC appx 2

⁵⁶ LPA 7

⁵⁷ See ¶3.55 and fn 102 – the point was obviously contested because it was cross examined

⁵⁸ In XX of TC, SS QC had to conduct a mathematical calculation ranging over 3 disjointed paragraphs.

she does not deal or engage with the fact of the Secretary of State has very recently endorsed Mr Collins' approach⁵⁹, nor did she suggest that the Secretary of State has taken a different approach elsewhere. Further, she obviously did not feel confident in her advocate's ingenious 'Malmesbury' approach to be able to give evidence on it herself.

131. The total requirement is 7,900 according to the Council or 8,160 according to the Appellant – a difference of 260 units. The Council's claimed supply represents 1,006 dwellings in excess of 5 years.
132. On the supply side it is clear that the land relied on must be 'deliverable' in the terms of fn11 to ¶47 of the Framework. Ms Fletcher's starting point appears to have been that they should simply be "achievable"⁶⁰. Her answers in XX made it plain that (a) the Council had given very little consideration to the requirement that sites in the 5YS should be available now and suitable now, and (b) the Council does not have a clear idea what these terms mean.
133. The textual interpretation of policy is a matter of law, not planning judgment⁶¹.
134. The Court considered their meaning in *Wainhomes*⁶² which is binding on planning decision-takers. It held:
- a. " 'available now' connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent **immediate** development;" (emphasis added)
 - b. 'suitable now' means suitable in planning terms, "now".
135. Ms Fletcher and her colleagues at the eLP examination were not engaged with the "now" element of the requirement. At this appeal the "now" must, as a matter of law, be engaged with. In doing so, the conclusion to reach is that the supply claimed by the Council has not been prepared in a context that anyone has given any attention to whether the sites are available now. In XX of Mr Collins it was suggested that the advice in PPG does not suggest such a strict approach as is evident in *Wainhomes*. As Mr Collins explained, PPG advises on 'availability' and does not appear to consider the 'now' element of footnote 11. Further, the section of PPG also seems to be giving advice applicable to both 'deliverable' and 'developable'. In any event, if PPG is contrary to law, the law prevails. Finally, it was suggested that applying the *Wainhomes* approach would lead to practical difficulties for LPAs because it would lead to requirements that would make it very difficult to show a 5YS. But if a LPA has such a shortfall because of previous prolonged under-delivery the intention of the Framework is clear: there is no practical difficulty, housing applications should be determined not by giving priority to the development plan but to the "adverse impacts vs benefits' balance in ¶14.
136. It is for the Council to demonstrate a 5YS; it cannot be so concluded. An express finding on the 'available now' issue as being necessary to resolve a principal controversial issue in this appeal.

⁵⁹ See TC appx 2, IR ¶86 and DL ¶14

⁶⁰ BF ¶4.1

⁶¹ See *Hunston Properties*, CD 6.7, at [4]

⁶² CD 6.4 at [34] – [35].

137. The Appellant has been able to identify at least one site in which the question of 'suitable now' has been considered by the Council. In its letter of 6 August to PINS⁶³ the Council gave notice that it would not be relying on the Wrexham Rd site as its future release from the green belt was not yet sufficiently certain (no doubt because a green belt site could not be regarded as being sufficiently 'suitable'). Without further explanation this site was then included in the supply relied on in Ms Fletcher's proof. Following her XX in which she was unable to offer a proper understanding of the meaning of 'suitable now', there is now no doubt that its re-inclusion in the supply was erroneous.
138. What this shows is that the Council has approached the whole exercise of compiling the 5YS calculation labouring under a serious misapprehension. This can have only two consequences: either the whole exercise is so contaminated as to be worthless (in which case the Council cannot demonstrate a 5YS as it is required to do) or the claimed supply needs to be discounted to reflect the erroneous approach.
139. There are further reasons to discount the claimed supply. The Council claims a supply of 8,906 comprising 'commitments' (in which are included sites with a resolution to grant pending the completion of a s106 planning obligation), strategic site allocations, other specific sites identified in the SHLAA and a small site allowance of unidentified sites. Ms Fletcher avers that all sites (save the small sites allowance) have been individually assessed for inclusion against the requirement that there is a realistic prospect of delivery within the 5 year period.
140. In terms of 'achievability' (which is a matter of planning judgment) the Appellant has faced a difficulty: it had assumed that the evidence base for the sites relied on is that in the publically available data sheets in Part 2 of the SHLAA. A very small sample⁶⁴ shows both internal inconsistencies and information as to deliverability that is inconsistent with the tables in Ms Fletcher's appendix 3. In XX Ms Fletcher's explanation was that the SHLAA Part 2 database had been updated, but this is not publically available. In XX of Mr Collins it was suggested that he should have asked for the updated data sheets, however, Mr Collins did ask for clarification of the claimed sources of supply in the 6th August letter⁶⁵ but was simply referred to the Council's MM8 statement and supplementary information. His evidence that no updated data sheets were online at the inquiry examination website was not challenged in XX.
141. In the circumstances any criticism of Mr Collins was undeserved; the onus is on the Council to demonstrate a 5YS and to evidence it in the event that it is placed in issue which it very clearly is in this appeal. Indeed Mr Collins in his proof put this in issue and reserved the right to comment on any further evidence produced by the Council (in the event none was produced).
142. There are also issues about the Council's approach to assessing the realistic prospect of delivery within 5 years, in particular over the time likely to be taken to commence development and achieve completions. It appears that the Council has taken two approaches:

⁶³ TC appx 1

⁶⁴ APP 5

⁶⁵ TC appx 1

- a. With some sites it has information from promoters/developers.
- b. With other sites it relies on the application of assumptions set out in its eLP examination MM8 statement⁶⁶ at table A2.

143. It is not clear which sites' delivery assessment relies on the general assumptions and which do not. Table A2 shows that sites with planning permission are assumed to deliver completions in Y1. However, research shows⁶⁷ that in the Northwest in 2012/13 it took 12 months from grant of permission to commence construction of dwellings, and so probably about 16 months to first completions.
144. Table A1 includes forecasting assumptions per year based on 1 developer on site. For large schemes (over 200 units) the assumption is up to 40. This means that where more than 40 are claimed for a site, there needs to be evidence that more than 1 developer has been secured. This does not appear to be the case. This would appear to be particularly important at large sites such as, for example, the 2 Ledsham Rd sites in Ellesmere Port⁶⁸.
145. What all this shows is that even though the Council claims to have assessed sites on an individual basis, there is some real concern about the quality of the evidence base and the assumed timing of completions. If there was 12 months slippage (so that Y5 dropped out of the supply) 1,926 units would be lost; if there was to be as little as 6 months slippage across the board, then 963 units would be lost.
146. The 6 months / 12 months approach also would serve as a proxy for a robust deduction in the face of the Council's failure to properly understand the available/suitable 'now' issues.
147. The proper conclusion to reach is that the Council has not demonstrated a 5YS although it is difficult to state what the supply actually is.

The particular case of affordable housing

148. For self-evident reasons, it is important that the need for affordable housing in the borough is met. That is not the case in this borough at present. The Council's MM2 statement⁶⁹ indicates that to clear the base-date backlog over 5 years would require an additional 714 units of affordable housing per year for 5 years. That indicates a very substantial backlog. If 714 units of affordable housing were to be 30% of the total number, then the number of houses needed per year would be 2,380. The Council is not forecasting anything like this annual rate of completion in the next 5 years. Each unit of backlog represents a real person or family. In effect, the Council is saying to people who need an affordable house now, 'some of you will have to wait many years'. This is a matter which should cause the delivery of affordable housing in this appeal to be given very considerable weight.

⁶⁶ BF appx 2

⁶⁷ APP 3, LGA analysis, at p62, table 23

⁶⁸ LEM/0001/H & LEM/0003/H

⁶⁹ BF appx 1, ¶1.3

Economic benefits

149. There are self-evident economic direct and indirect economic benefits. During the occupation phase there will be the economic benefits of additional receipts to LPA in the form of New Homes Bonus and council tax. Local businesses will enjoy additional spending.

Environmental benefits

150. The reports / statements accompanying planning application indicated that there will be environmental benefits in terms of managed hedgerows and the implementation of SUDS.

SUSTAINABLE DEVELOPMENT AND THE PLANNING BALANCE

151. Having regard to the totality of the policies in the Framework, the proposed development is sustainable when looking at its social, economic and environmental credentials in the round. The adverse impacts of the development (taking into account the considerable importance and weight to be given to the very limited harm to the significance of the listed building) do not significantly and demonstrably outweigh the benefits. In the circumstances, there are material considerations that indicate a grant of permission contrary to the indication of the development plan.

152. The testing of the evidence at the inquiry has highlighted the need for conditions concerning the maximum number of dwellings on the site, the approval and implementation of a landscape management plan to cover the maintenance of the existing boundary hedges, the pinfold and the open space and trees on site, drainage and noise attenuation measures.

CONCLUSION

153. This appeal should be allowed.

THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY

154. The **Chairman of Malpas Parish Council, John Webb**, (Document 15) stated that Malpas Parish Council is pro development but considers that the level of housing growth already approved together with the appeal site cannot be supported by the level of infrastructure available in Malpas. In particular he reports conversations to the effect that Allport Primary School is at full capacity in some years including the reception year and has very limited opportunities for extension. The secondary Bishop Heber High School is a very popular foundation school with an 'outstanding rating' and it attracts students from across the borders with Shropshire and Wales. The head teacher reportedly states that the school has no capacity for any houses built after September 2015. The practice manager at the Laurel Bank GP Practice is reported as stating that the practice surgery is at full capacity. A site for an additional practice had been secured as part of another development proposal but without funds to construct the building. There are traffic and transport issues including congestion in the village centre, scarce parking and poor public transport. The development would add nothing to village infrastructure and is not a sustainable development so should be rejected.

155. The local ward member **Councillor Anne Wright** (Document 20) has supported other developments but not this one. The Council now has 5 years' supply of housing. This development would harm the countryside and conservation area and would negate the softer village edge that would be provided by the adjacent Gladmans development. The village lacks the infrastructure to support the development and it would place at risk the future of the adjacent coach business which is a vital component of the economic viability of Malpas.
156. **Carol Broad** (Documents 23-25) is a member of the MONP Steering Group. She suggested that the development would conflict with MONP Policies H1 (site in open countryside and performed poorly on site assessment matrix), H4 (over 30 dwellings), BE1 (not a positive addition and harm to heritage assets and views), BE2 (suburbanising effect, in open countryside, and not needed as 5 year supply available), BE4 (due to harm to character and setting of Broselake Farmhouse and St Oswald's Church)⁷⁰, BE5 (lack of assessment of potential Roman roads), LC1 (harm to landscape character and local rights of way), LC3 (harm to key views), LC5 (loss of hedgerow habitat and potential bat corridors) and TC2 (added congestion in village and along the narrow Cross o' the hill road to the A41).
157. **John Lewis** (Document 17) objects to: the harm to the view of St Oswald's church which the development will 'obliterate'; the appearance of the acoustic fence; the loss of land to agriculture (albeit 'insignificant' in area); the unrealistic amount of housing proposed in Malpas above the eLP target; granting of permission when there is already a 5 year housing supply; a lack of local employment leading to congestion from commuters in the High Street; inadequate public transport; impact on the coach business; and the extension into open countryside and the lack of a planted buffer zone as was proposed in the permitted Gladmans development.
158. **Adrian Waddelove** (Documents 18 and 19) was a daily commuter by bus to Chester for 7 years. Only 1.3% of people in this rural area use buses to travel to work. Only the Whitchurch to Chester corridor is accessible by bus for work and it would not be possible to commute to Wrexham or further afield by public transport. Most residents would therefore rely on the car and this would not be a sustainable development. Mr Waddelove has a degree in Archaeology and his amateur research suggests that Roman roads cross the site as now indicated in the MONP. This had not been considered in the desktop study for the appeal site and he wishes his evidence to be considered in a new study which may result in a need for on-site investigation before the development proceeded.
159. **Fiona Dudley** (Document 21) considers that the noise assessments had underestimated the impact on future residents of noise from coaches. This would be experienced at all the road junctions and not just adjacent to the depot. Additional mitigation would be needed. However the proposed acoustic fence would be a harsh fortress-like structure that would harm the appearance of the area.

⁷⁰ Broselake Farmhouse and St Oswald's Church are heritage assets to which Policy BE1 applies, but they are not amongst the undesignated buildings to be protected by Policy BE4 and which are listed in MONP Appendix D

160. **Joan Meredith** (Document 26) is not connected with the family of the same name that owns the coach business but she represents a group of elderly residents who live in a group of modern bungalows on the edge of Malpas which would directly adjoin the Gladmans development to which they had objected. Together with the Gladmans development the appeal proposal beyond would lock the residents even further into a suburban environment with the loss of their present views of the countryside. The rash of applications means the village will be encircled by modern red brick houses. She wonders what the SoS means when he writes in the Daily Telegraph of his determination to keep Britain 'a green and pleasant land'. In Norton St Phillips in Somerset, when the housing quota had been met greenfield development outside the development envelope was ruled out⁷¹. That should happen here.
161. **Lorraine Thornecroft** (Documents 27-28) is a frequent bus user but finds the service unreliable and knows of one person who lost his job in Whitchurch when the service was reduced. The buses often break down resulting in 2 hour delays. No one of working age will buy a house without a car, leading to extra congestion. The loss of hedgerows will affect small mammals with a loss of cover from predators. The removal of overhead power lines will harm the swifts and swallows which use the wires when feeding in the marshy area on the adjacent Gladmans site.
162. **Justin Paul** is a professional planner employed by Meredith's Coaches and he has been assisted by **Mr Woolley** who is a noise consultant. The noise assessment is not disputed and noise levels from the coach depot could in theory be contained to acceptable levels by means of an acoustic fence, but only if the residents kept their windows closed, which would be unreasonable. The firm operates early in the morning and late at night and there would be a likelihood of complaints from future residents leading to constraints that would impede any expansion of the business and put its future at risk. The fence and the development would also have other harmful effects to the character and appearance of the area. **John Whiteley** (Documents 22) is a driver/administrator with Meredith's coaches who also considers that residents would complain about noise from the coach depot leading to the closure or transfer of the operation which has been on this site since 1938. He also considers the pedestrian access on the illustrative layout to be unsafe.⁷² **Karen Meredith** is a member of the family which owns the coach business and a daughter-in-law of the occupiers of Lydgate House, which faces the appeal site across Greenway Lane. She objects to the effect of the development and the acoustic fence on the outlook from Lydgate House and on natural light there. She considers that the impact on wildlife has been under-assessed as there are bats, badgers and frogs in the vicinity. She also points to existing problems with surface water drainage which runs off the site and other agricultural land in the area during high rainfall events and causes flooding of Greenway Lane and Well Meadow. The development could increase the incidence and severity of flooding.

⁷¹ No information has been provided as to the development(s) being referred to or the full circumstances of any planning decisions.

⁷² The pedestrian accesses would be reserved for subsequent determination

Written Representations

163. At the application stage Malpas Parish Council and about 148 individuals objected on similar grounds to those raised by persons appearing at the Inquiry. There was also a petition with about 260 signatures again objecting on similar grounds.
164. At the application stage for the undetermined alternative application with the revised illustrative layout Rev B the same petition was resubmitted. There were further letters then from many of those who subsequently appeared at this Inquiry and a similar number of letters of objection from other persons as before, many using standard letter formats. They included a number of employees of the coach company.
165. At the appeal consultation stage there were letters of objection from Merediths Coaches (see above), Joan Meredith (see above) and Simon and Rachel Redshaw (see below). Further written submissions at the Inquiry as follows.
166. For the Laurel Bank Surgery, **Dr Hanney** points out (Document 16) that permission has already been granted for 519 homes within the practice's immediate catchment area with a potential 1,350 patients to add to the existing 6,500 patients. The practice lacks the physical capacity to accommodate the increase. The proposed development would result in a need to expand both premises and service and he has grave concerns as to how an effective and efficient NHS service can be delivered to the population if it continues to grow.
167. **Rachel Redshaw** added to previous written comments with a statement (Document 29) that concentrates on the area's poor road infrastructure and the cumulative effect of developments. There are implications for congestion and for the safety of all roads users from increased traffic and high car dependency.

CONDITIONS

168. The conditions that might be required were the appeal to be allowed were drafted by the Council, commented on by myself and the Appellant and then discussed further in open session at the Inquiry. A schedule of conditions with some further amendments is attached to this report.
169. Conditions 1, 2, and 3 are needed to reserve for subsequent determination those matters which were not included with the outline application. Condition 2 is an amended version of the time limit for submission of these reserved matters which requires the prior submission for approval of a parameters plan. This is needed because of errors and omissions in the parameters plan submitted with the outline application and to reflect measures needed to identify and protect important features, including the setting of listed buildings and the protection and retention of a hedge. These need to be resolved before further work is undertaken on the buildings' layout.
170. Condition 4 is needed in the interests of certainty as to what is permitted.
171. Conditions 5 and 6 are needed to protect the character and appearance of the area and to reflect provisions in the existing and emerging development plan. The provision to restrict development to only 30 dwellings relates to a provision of the MONP and was agreed by the appellant at the Inquiry. It also reflects that

the illustrative plan only showed 32 plots, some of which used unrealistically small building footprints that are unlikely to be implemented as shown.

172. Condition 7 is needed to reflect development plan requirements and to address the need for affordable housing. There is insufficient information to support any changes to reflect the MONP, which in any event were not requested at the Inquiry and have not been the subject of any necessary negotiation.
173. Condition 8 is needed to ensure that suitable play provision is made to serve the occupiers.
174. Condition 9 would address concerns about local drainage and should at least prevent off-site local surface water problems being exacerbated by storing surface water on site.
175. Condition 10 is to control construction and reduce the risk of harmful effects.
176. Conditions 11 and 12 are needed in the interests of the safety and convenience of residents and other highway users.
177. Condition 13 is needed to protect the character and appearance of the area.
178. Condition 14 is needed in the interests of biodiversity.
179. Condition 15 is needed to protect the living conditions of future residents.
180. Condition 16 is needed in case there are undesignated archaeological assets that merit recording or other works.

INSPECTOR'S CONCLUSIONS

Figures in square brackets [] refer to other paragraphs in the report.

The Main Consideration

181. The main consideration is whether this would be a sustainable development to which a presumption in favour of such development should apply and in particular:

- a) What weight should be given to the relevant policies of the adopted Chester District Local Plan, the emerging Cheshire West and Chester Local Plan, and the emerging Malpas and Overton Neighbourhood Plan
- b) Whether there is a social and/or economic need for the market and affordable housing and an adequate 5 year supply of housing to meet that need
- c) Whether any benefits of the development in terms of housing provision are significantly and demonstrably outweighed by any adverse impacts to include consideration of what effect the development would have on the environment including:
 - i. the character and appearance of the area,
 - ii. the setting and heritage significance of the Grade II listed Broselake Farm, St Oswald's Church and the Malpas Conservation Area,
 - iii. the living conditions for future residents in respect of their noise environment.

Housing Need and Supply

182. At the date that the application was determined by the Council in August 2013, the Council accepted that it could not demonstrate a 5 year supply of housing against the then housing requirement. That was repeated in the Council's Statement of Case for this appeal (April 2014). However in the absence of any local plan figure the housing requirement was then being calculated according to the figures in the revoked RSS and its supporting evidence, which then represented the most recent available objective assessment of need [10].

183. Since then there has been significant progress on the preparation of the emerging Local Plan (eLP) [13]. This has included the examination hearings and the subsequent publication in September 2014 of the proposed Main Modifications which the Examination Inspector has indicated are necessary to make the eLP sound [13]. eLP Policy STRAT 2 includes an overall housing delivery figure of 22,000 dwellings between 2010 and 2030 and amongst other things it identifies Malpas as a Key Service Centre and as one of the most sustainable rural locations [14]. eLP Policy STRAT 8 sets out criteria for development in rural areas and includes targets to provide 4,200 dwellings in the rural area and 200 dwellings in Malpas by the end of the plan period in 2030 [14]. The 4,200 target has almost been achieved (4,175 consented dwellings) and the Malpas target has been considerably exceeded (367 consented dwellings). The main modifications would delete references to these being maximum targets [14].

184. The Examination Inspector will have had before him the supporting evidence for the housing figures in the submission eLP. The matter was also debated at

the hearings where there would have been contributions from Representatives seeking changes to the eLP figures. Nevertheless the Main Modifications indicated by the Inspector do not include any change to the overall housing requirement in the eLP. The Council confirmed at the Inquiry that this is the same as the full objectively assessed need [14]. At the Inquiry the main parties agreed that in these circumstances it is no longer appropriate to use the RSS figure and that the housing requirement figure in the eLP should be used instead (22,000 dwellings over 20 years) [43] [126].

185. For the purposes of calculating the 5 year supply against the requirement, the parties agree that the supply should include the 20% buffer required by the Framework when there has been a record of persistent non-delivery. This additional supply would be moved from later in the plan period [128]. The parties also agree that the 1,300 dwelling shortfall in housing provision in the first 4 years of the plan period (2010-2014) should be added and addressed within 5 years [43].
186. The Council maintains that it has 5.64 years' housing supply amounting to 8,906 dwellings against a calculated requirement figure for 7,900 dwellings. That requirement comprises the basic requirement of 5,500 dwellings plus the 20% buffer (1,100 dwellings) and an additional 1,300 dwellings to address the shortfall since 2010. The Council argues that the 20% buffer should not be added to the shortfall figure itself. The calculation also assumes that the eLP will be adopted with the Main Modifications as currently proposed. The eLP includes the overall housing requirement and it also allocates some strategic housing sites. However within the first 5 years the largest contributor to supply is made up of extant planning permissions. In that period the strategic sites are only expected to deliver 278 dwellings. The Council supports its 5-year supply calculation with a schedule of the sites which are expected to contribute to that supply. Its witnesses explained the Council's procedure for assessing and monitoring the deliverability of sites which includes regular site visits to assess progress, interviews with landowners and developers, and the involvement of its in-house surveyors.
187. The Appellant asserts that the Council has not demonstrated that there is currently a 5 year supply. Particular criticisms are:
- The 20% buffer should also be applied to the 1,300 dwellings shortfall, increasing the requirement by 260 dwellings (to 8,160 dwellings). The Appellant relies on a recent decision by the Secretary of State at Droitwich in support of this position⁷³. However the Council refers to another recent Secretary of State decision at Malmesbury⁷⁴ where the buffer was not applied to the shortfall. The Appellant claims that the inconsistency arises because the point was not argued at Malmesbury but was argued at Droitwich and therefore merits more weight in that decision [128-129].
 - There are inconsistencies in some of the individual site data in the Council's SHLAA 2013 [140]. Also the Council has not demonstrated that all of the sites are available 'now' but has only considered whether they would deliver completions within the 5 year period. The Wainhomes

⁷³ Collins Appendix 2 - Appeal Refs APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

⁷⁴ Document 33 – Appeal Ref APP/Y3940/A/13/2200503

decision⁷⁵ endorsed submissions for the Secretary of State that: *“available now” connotes that, if the site had planning permission now, there would be no legal or physical impediment integral to the site that would prevent its immediate development’* [134].

- One strategic housing site at Wrexham Road in Chester (that is proposed to be allocated by the eLP as a strategic site) is in the Green Belt and therefore should not be treated as suitable unless and until the Green Belt is amended in the adopted eLP. Its omission would reduce supply by 208 dwellings within the 5 year period. That would consequently reduce the overall supply to 5.5 years. This was the figure relied on by the Council in a letter of 6 August 2014 when that Green Belt site was not included [137].
- The Council over-estimates on some sites how soon completions will be delivered once permission has been granted. Comparisons are made with a Local Government Association survey in which the average delay in the North West Region between permission and delivery was put at 12 months [143].
- The Council has not identified the sites where more than one developer may be involved. The Appellant considers that this is necessary in order to justify an increase in the forecast delivery rate for such sites above 40 dwellings per annum [144].
- For these reasons the Appellant asserts that there could be either 6 months or 12 months slippage in the forecast supply with the loss of 963 or 1,926 units respectively; in which case the Council would not have demonstrated a minimum 5 year supply [145]⁷⁶.
- Whilst the Appellant’s witness had suggested that a 10% discount should be applied to the identified housing supply to represent uncertainty as to delivery, that suggestion was not relied upon by the Appellant in closing and could represent double counting if the above slippage rate was also assumed.

188. The 20% buffer is only required by paragraph 47 of the Framework where there is a record of persistent under-delivery. That past under-supply will, by definition, have created a shortfall. However there is not an explicit national policy requirement or guidance to confirm that the 20% buffer should be applied to that past shortfall as well as to the future requirement. Indeed whilst paragraph 47 of the Framework requires the buffer it makes no reference to how any shortfall is to be addressed. The shortfall is referred to in the PPG at paragraph 3-035-20140306 but that also does not explicitly advise that the 20% buffer should be applied to the shortfall itself. The Appellant’s witness accepted at the Inquiry that it is a matter of planning judgement whether to apply the 20% to the shortfall and that the calculation in the Malmesbury appeal decision had not done so albeit that the Droitwich judgement had done.

⁷⁵ Wainhomes (South West) Holdings Ltd v SoSCLG & Wiltshire Council [2013] EWHC 597

⁷⁶ The Appellant has not suggested an alternative figure

189. In my view it is instructive to consider what the objective of the 20% buffer may be. Paragraph 47 describes it as being: *'to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market.'* It also provides that the supply is to be moved forward from later in the plan period and thus it is not intended that the overall supply throughout the plan period must exceed the identified requirement by 20% or any other figure. I interpret the wording to mean that the identification of additional sources of supply would allow developers to select their preferred sites for early development. This may mean that even if some sites have been identified as deliverable, but are not taken up in the first 5 years, then the originally planned supply is nevertheless still likely to be achieved. The buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites. Moreover in the present case, even were 20% also to be applied to the shortfall, the increased requirement for 8,160 dwellings would remain below the 8,906 identified supply and there would still be over 5 year's supply of housing.
190. The Appellant has not sought to comprehensively challenge the sites schedule which the Council has used to justify its supply figure. Little weight should be accorded to the few errors identified in the SHLAA data since they arise from inconsistencies which are obvious from the contradictory information that appears on the same page. The Council claims that the information was updated during the eLP examination and I have no reason to doubt that.
191. Other than the Wrexham Road site, which is considered below, there is a lack of evidence before me to indicate that any site on the Council's schedule is not 'available now'.
192. The publication since 6 August of the proposed main modifications to the eLP includes the retention of the Wrexham Road allocation and adds weight to the likely associated alteration to the Green Belt. The allocation and the modification of the Green Belt would both take effect on the adoption of the emerging LP. Nevertheless, were that site not to be regarded as available now, the loss of 208 dwellings from the supply would not on its own result in less than 5 years' supply, even if the 20% buffer were also added to the shortfall as in the Droitwich decision.
193. Greater weight should be attached to forecast delivery rates from individual sites in the local area which result from direct contact with landowners and developers than to an average rate derived from a survey across the North West region as a whole which would include all types of development in a wide variety of areas with different local circumstances.
194. The Appellant has not provided an analysis of the sites where it is claimed that annual delivery rates above 40 may be too high. However, these appear from the sites schedule to relate either to large strategic sites, where it would be likely for more than one housebuilder to be involved or to smaller, probably flatted, developments where completions are likely to be provided by a single developer and concentrated into a short time period.
195. Finally 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. In any case the detailed monitoring

being undertaken by the Council also allows for a realistic appraisal of when and whether sites will be delivered such that no additional slippage or discounting is justified. There is insufficient information before me to determine whether or not every site in the Council's schedule is immediately available. However neither does the site schedule suggest that there needs to be delivery on every site within the first year of the 5 year period. The PPG at paragraph 3-031-20140306 allows that deliverable sites can include those with outline or full planning permission or allocated for housing unless there is clear evidence that schemes will not be implemented within 5 years.

196. It is concluded for the above reasons and on the balance of probabilities that there is at least an overall 5 year supply of housing in the Council's area. It follows that LP Policy HO7 is not out of date insofar as it affects the supply of housing by restraining development in the countryside.
197. The Appellant argues that even if there is a 5 year supply then additional housing can be a benefit given the overall aim of national policy to boost housing supply and also because the identified need for affordable housing in particular may not be satisfied across the Council's area. In these regards: the development would provide up to 35% affordable housing; there is a widely reported national shortfall in housing provision and the development plan; and the eLP does not set a ceiling on housing provision either in the rural area or across the Council's area as a whole. The provision of housing can have social benefits for the occupiers and economic benefits from the activity of construction and the contribution to future economic activity in the area such as the support for local shops.
198. The extent to which these benefits merit weight is however reduced in the particular case of Malpas given the extensive commitments for new housing development around the village that already exist. At about 367 dwellings these would already expand the village by about 50% and would considerably exceed the eLP identified provision for only 200 dwellings by 2030. The parish council and others indicate that there is little or no spare capacity in local services. Together with other commitments across the rural area the overall 4,200 dwelling target for that area has also almost been met with 4,175 dwellings permitted since 2010 [49]. That is even though commitments in some other villages remain below their individual eLP target. The housing commitments already include significant affordable housing provision in Malpas. These factors alone do not prevent the provision of additional housing from being a benefit, particularly to those who would live there and especially for those in need of affordable housing. However the wider public benefit would be moderated and would need to be weighed with any other identified harm in the overall planning balance.
199. In conclusion on this matter, there has been no adopted development plan policy for housing supply since LP Policy HO1 was not saved and the RSS was revoked. The development plan is thus literally out of date in this regard. However significant weight can be accorded to the housing requirements and provisions set out for its supply in the eLP. Significant weight can also be accorded to the recent monitoring work to demonstrate that a 5 year supply is available without a need for additional housing in the countryside beyond that already committed. Given that existing commitments in Malpas already considerably exceed the eLP target for the village, and notwithstanding that this

is not to be a maximum target, it is appropriate to still accord significant weight to saved policy HO7 which does not support general housing development in the countryside, where this site is located. Neither would this site directly adjoin the village for the purposes of eLP Policy STRAT 8 and MONP Policy H1.

Character and Appearance

200. Whilst there is at present no defined boundary to the settlement of Malpas, it is not disputed that the appeal site lies in open countryside for the purposes of LP Policy HO7 [11, 14]. eLP Policy STRAT 8 provides that some housing development will be necessary '*directly adjoining*' key service centres such as Malpas [14]. That suggests a need for some greenfield development on land regarded as countryside. A number of such housing sites have already been permitted at a time when the Council could not demonstrate that it had a 5 year supply of sites and when Policy HO7 was consequently regarded as out of date in respect of housing supply.
201. It is obvious that the appeal site does not at present directly adjoin the physical built up area of the village. Nevertheless the Appellant argues that it will do so once the consented Gladmans development on land to the west is implemented. However, whilst the red line defining each development site is only separated by a narrow lane, the likely layout of the nearest parts of the Gladmans site will include areas of open space, ponds and woodland that would continue to isolate it from the appeal site. These features are intended to provide a new soft edge to the village and they would screen the new built development to varying degrees [59(g)]. Apart from some isolated buildings, the current appeal development would otherwise adjoin open fields on all sides. The illustrative layouts for the appeal site would compromise the intended approach for the Gladmans site and they would not present an equally soft edge to the countryside, particularly on the eastern side [59(g), 155, 86]. Whilst they do indicate an area of open space along the south eastern frontage with Well Meadow, if that were to be fully planted up with trees as screen planting to screen the houses in views from the south, the trees would be likely to also obstruct a key view of the village and St Oswald's Church from Well Meadow, as identified in the MONP [24].
202. The appeal site is presently of obvious open and rural character, notwithstanding the presence of a large agricultural shed and other buildings. The narrow lanes around the site, particularly to the north and east, and the hedges that line the lanes and surround the site on all sides, are characteristic features of the local landscape. The illustrative layouts suggest that most of the hedges could be retained. However a substantial length would have to be removed to create the access and visibility splays along Well Meadow. Further gaps would be sought to add additional pedestrian and / or cycle accesses. However the single vehicular access point suggests that except along Well Meadow it would be difficult to avoid the inward looking layout of suburban character that is indicated on the illustrative layouts. That would contravene the objectives of MONP Policies H4 [19] and LC5 [25]. If the retained hedges were used to enclose rear gardens, and managed by the owners, there is likely to be inconsistent management with hedges cut to different heights and supplemented or replaced by fencing to improve security or reduce maintenance, harming the contribution of the hedges to landscape character.

203. Some means of excluding the hedges from the gardens and managing them separately might be devised. However that would also likely require a tall fence behind the hedge to provide privacy and security in the gardens and, in the case of the eastern boundary, to provide an acoustic barrier from the coach depot. Allowing the hedges to grow to a sufficient height might conceal the fences in time, but only when the hedge is in full leaf. It is likely that the rear elevations of the houses would remain clearly visible above the hedges and fences, particularly as many would be sited on higher ground than the adjacent lane and also because the individual houses are likely to be of larger scale than the unrealistically small dwellings indicated by the footprints on the illustrative drawings.
204. In that context the 35 dwellings referred to in the dwelling description would exceed the 30 dwellings which the MONP seeks as a maximum unless a scheme can be divided into separate character areas. Such a division would be difficult to achieve on this site. The Appellant would accept a limit to 30 dwellings by way of a planning condition although neither that restriction nor a suggested height limit of 9m would ensure that the design of the buildings reflected local character as the MONP seeks. Whilst the MONP favours bungalows, they are not characteristic of the area and their suggested location here in a prominent position fronting a main route into the village also risks a more suburban character, contrary to other MONP objectives.
205. To adopt the outward looking layout preferred by MONP Policy H4 might create a more attractive streetscape but would probably result in a need for additional access points with even greater hedge loss. In either case the result is likely to be a development of suburban character with the loss of the distinctive character of hedge-lined weaving narrow lanes [59(c)]. The Appellant suggests that the loss of hedgerows will not affect the character of the wider area [84] but that and the other changes would have a significant adverse effect on local views from the surrounding roads and to the positive contribution that these lanes currently make to landscape character and to the landscape setting of the village.
206. Whereas the Appellant suggests that the development would represent only small incremental growth of the settlement [87], there would be a more significant cumulative impact with the adjacent Gladmans development of 140 dwellings.
207. In conclusion on character, the development would not be in the countryside contrary to LP Policy HO7 and would not be directly adjacent to the built up area as required by the eLP and MONP. It would continue to be isolated from the built up area even after the Gladman's development has been implemented. The development would result in a significantly harmful loss of openness and open countryside to the detriment of the character and appearance of the area. This would be aggravated in that the site is surrounded on all 3 sides by the narrow weaving lanes lined with hedgerows that are a key landscape characteristic of the area.
208. The visual impact of the development would be greatest for recreational users of the lanes adjacent to the site and for footpath users in the wider area. Their sensitivity has been under-estimated in the LVIA. They include cyclists using Well Meadow as part of a national cycle route, long distance walkers on FP4 Marches Way to the south of the site and local recreational users of rights of way

for whom enjoyment of the landscape is important. The development would extend the settlement away from the hill on which most of the existing village sits and on to lower ground. The visual impacts and the change in landscape character would be most apparent from the adjacent lanes. Whilst they would also be perceived from FP4 and from the footpaths to the north east, this would be at a greater distance such that the magnitude of effect would be reduced. This is particularly because there are already some buildings on and adjacent to the site and because development would be seen from the north east in the context of the unsightly coach depot and from the south and east in the context of a backdrop of the extensive Gladmans development on the hillside beyond.

209. The degree to which the development affected the MONP key view west along Well Meadow towards the village and St Oswald's Church would depend in part on the siting, scale, and appearance of the dwellings at the reserved matters stage. The impacts could be mitigated by setting the development back and possibly by limiting the height of some buildings. There would be no need to 'obliterate' that view. The effect on the setting and significance of heritage assets in these views is addressed below.

210. There would also be a significant adverse visual impact for residents of the nearest dwellings that directly face the site including dwellings at Lydgate and Well Meadow as well as Broselake Farmhouse (currently occupied by the Appellant) and the adjacent Broselake Cottages. However, and subject to the final design, whilst the view and outlook would be affected to varying degrees with a general loss of an open outlook that is likely to be perceived by the residents as adverse, it is unlikely that the development would make these neighbouring dwellings come to be generally perceived as unattractive or unsatisfactory places to live. They would simply be dwellings facing other houses across the road.

211. In conclusion on this issue, the loss of countryside and of some hedgerow, the change in character due to additional fencing, including acoustic fencing, and the introduction of inward facing houses on raised ground would all significantly harm landscape character, and there would also be a significant adverse visual impact, especially for sensitive recreational users of the nearby lanes and footpaths. This would contravene LP Policy ENV24, eLP Policy ENV 2 and MONP Policy H4.

Heritage

212. **Broselake Farmhouse** is a Grade II listed building. Its principal and symmetrical Georgian façade faces the appeal site across Greenway Lane (Hutchinson Proof Figs 1 and 2). The listing description (CD7.1) describes the listed building as a house, and as a former farmhouse. However, whilst the building is not shown in the application as being in the ownership or control of the Appellant, it was obvious at the site visit and confirmed by the agent in the presence of the Appellant that this is the Appellant's home [65]. The heritage significance of the building lies mainly in its survival as an outwardly early 19th century farmhouse with some earlier internal features [64, 101]. However its setting also makes some contribution to its heritage significance insofar as it remains open, rural and agricultural in character [64, 65, 103]. That the land may or may not have been at times have been in the same ownership as the farmhouse has less effect on its heritage significance.

213. It is not disputed that the immediate setting of the farmhouse includes its own curtilage and also an open grassed area on the opposite side of Greenway Lane. The buildings within the farmhouse curtilage are not in operational use for agriculture but have been adapted to domestic purposes or rebuilt as stables. These changes and the general appearance of the property, its neatly landscaped garden and paved parking areas, have together created a curtilage that is domestic and contemporary in character rather than agricultural and early 19th century. The setting and the function of the site and its buildings will certainly have changed considerably since the farmhouse was first erected.
214. The open land opposite previously contained a pinfold (animal pound). Old maps suggest that it has also been used for a variety of other small farm structures that have since been removed [65]. Whilst it now lacks any visible structures that would have been contemporary with the farmhouse, the land contributes to an open and rural setting for the farmhouse [64, 105]. It is within the red line defining the appeal site. However the Revision B illustrative layout suggests that the land need not be subject to built development or included in the enclosed private gardens. Subject to how that land and its trees and enclosing hedgerows are treated in the reserved matters design, it is not disputed that the immediate setting of the listed building and its significance need not be harmed.
215. The permitted Gladmans development would be mainly within the intermediate or wider setting of the farmhouse and on land previously associated with the farmhouse. The housing development on that site would wrap around the rear (north western) side of its curtilage, changing its currently open agricultural setting. However those effects would be mitigated in that there are mature trees along the boundary of that curtilage which are likely to be supplemented by an extended planting belt. These would provide significant visual separation. Also land to the west adjacent to Well Street and beyond the adjacent the Broselake Cottages would be kept open.
216. The appeal site is owned by the Appellant who uses it in part for grazing but otherwise uses the buildings on it for his agricultural hay and straw business including the open storage of machinery. The largest and most recent shed is of an entirely different scale and function to the farmhouse, being similar in scale and appearance to a modern storage warehouse. It does not make a positive contribution to the setting and heritage significance of the farmhouse. Neither do the adjacent utilitarian and semi derelict brick and corrugated iron structures make a significant contribution. The buildings all reduce the site's openness. These 20th century buildings long postdate the farmhouse and their proposed demolition and removal would not harm its setting and may indeed be an enhancement [106].
217. The changes associated with the proposed housing development would nevertheless mean that the site's general openness and agricultural character would change and thus the intermediate setting of the farmhouse would not be preserved in the terms of S66. The Appellant acknowledges a slight adverse and less than substantial effect [107b]. That nevertheless merits considerable weight and importance in the planning balance. However the extent of the change and any associated harm to significance would depend upon the final layout and design of the buildings and open space and other design considerations, including the future treatment of the hedge and trees opposite the farmhouse. Careful

design and landscaping and the retention of the open pinfold land should mean that there would only be less than substantial harm to setting and significance, not substantial harm as the Council claims [66]. That would need to be weighed with the public benefits of housing provision.

218. Planning permission was also refused because of alleged harm to the setting of the **Malpas Conservation Area** (the CA). The advocates were undecided as to whether the S72 duty applies literally to the consideration of development that is not within a conservation area but may affect its setting. Nevertheless the LP requires consideration of setting and there is also a policy requirement in the Framework to consider the effect on the setting and significance of heritage assets including conservation areas. According to the Conservation Area Character Assessment (CD7.9) the central core of the village which makes up most of the CA has a strong urban character with a relatively intact hierarchy of scale and density that decreases as one moves away from the centre. Views into and out of the area can be important and the assessment counsels against backland development but without clearly defining what is meant by that term.
219. In this case the boundary of the CA is some distance from the appeal site and there is already a considerable amount of relatively modern built development between the site and the CA. Thus the only significant building in the CA that can readily be identified from the vicinity of the appeal site is the **Grade I listed St Oswald's Church**. The Council's main concern is with the effect of the development on views towards the CA, especially the church, and with views out from the Castle Hill Motte, which is on the hilltop adjacent to the church and within the CA [68]. The MONP identifies 2 relevant key views. One is a view west along Well Meadow towards the village and the church. The other is a view east from the Castle Hill Motte.
220. Travelling west from Cross o' the Hill and along Well Meadow there is an unfolding sequence of views of the village in which the church tower is prominent (Hutchinson Proof Figs 9-12). The MONP identified the key view as that from the road beside the eastern end of the appeal site. In that view the church is seen to surmount the hilltop centre of the village and to be surrounded by a jumble of roofs of smaller buildings, only some of which are however within the CA. So long as the church is not screened by either buildings or tree planting this view would be retained and its hilltop setting in the village centre would remain apparent. There need be no significant effect on the character or appearance of the CA. The Revision B illustrative layout suggests that this view could be preserved by setting dwellings back beyond open space and possibly in part by substituting bungalows for 2 storey dwellings. This is an outline application and thus the final design and appearance of the dwellings is not known. However there is a lack of evidence to substantiate claims that, even if the view towards the church is preserved, then the ability to see the new dwellings to the side of that view and well outside the CA would somehow harm the character or appearance of the CA itself.
221. In relation to the reverse view from **Castle Hill Motte**, this is a privately owned mound and scheduled ancient monument with limited public access. It cannot be seen in views from the vicinity of the appeal site. Whilst the Motte would originally have provided open views in all directions for defensive purposes, views are now constrained by trees and by buildings. These buildings include the adjacent church. Some glimpsed and distant views nevertheless

remain, mainly to the east and beyond a foreground dominated by housing development. In the Hutchinson Proof at Fig 8 there is a photograph of one such view in which the large agricultural shed on the appeal site can be seen above the roofs of nearer buildings. The photograph was apparently taken on a zoom setting which may exaggerate the site's proximity. That building and the small area of adjacent visible open land would be replaced by housing in the appeal scheme. Subject to the final design and layout of the houses at the reserved matters stage I do not consider that this would materially affect the character or appearance of the CA.

222. The Council also considers that the expansion of the settlement on to lower ground and the lack of relationship between the street pattern on the appeal site and that in the CA would harm the setting of the CA [110]. However the east side of Malpas outside the CA has already experienced much suburban-style estate development which is at variance with the denser development and street form within the CA. There is already some development on lower ground and the Gladmans development will itself affect the overall form and character of the village on its eastern side. Neither is the internal street pattern or design of the buildings on the appeal site included in this outline application. These would be matters for consideration at the reserved matters stage.
223. The key views of the CA cited by the Council are also views respectively either towards the Grade I listed church or from a scheduled ancient monument. However, and subject to the detailed scheme design to include the safeguarding of views of the church from Well Meadow, I do not consider that there would be any material harm to the setting or significance of these designated heritage assets or any other designated or undesignated heritage assets in the vicinity. In the case of the church the reasons for its listing on the listing description relate entirely to the fabric and history of the building. Its siting and tower were obviously intended to have a symbolic effect and are a striking feature of many views approaching the village. But as long as they remain visible in the key view from Well Meadow, and subject to suitable design at the reserved matters stage, the setting and significance would not be harmed. The Motte cannot be identified above the surrounding buildings in views towards the village. Whilst views out from the Motte are of some heritage significance as a defensive structure, those views are already dominated by existing development. The visible part of the appeal site is a small portion of the overall view and is already occupied by a large modern shed. Subject again to the detailed design and layout, such a marginal change to a small part of the distant outlook from the Motte should not affect its setting or heritage significance.
224. It is concluded on this issue that, subject to the design and layout at the reserved matters stage, the development need not harm the setting, heritage significance, character or appearance of the Malpas Conservation Area or other heritage assets including St Oswald's Church and the Castle Hill Motte. However there would be some, less than substantial, harm to the significance of the Grade II Broselake Farmhouse in that its intermediate open and agricultural setting would not be preserved. Whilst that harm would only be slightly adverse, that merits considerable weight and importance in relation to the S66 duty. There would also be associated conflict with LP Policy ENV45, eLP Policy ENV 5 and MONP Policy BE1. That harm would need to be weighed with any public benefits of the scheme in the terms of paragraph 134 of the Framework.

Living Conditions

225. A concern of Meredith Coaches, their employees and other local people, is that noise from their coach depot adjoining the site, particularly late at night or early in the morning, would cause disturbance to the nearest residents of the appeal scheme [162, 159]. If so it is suggested that it would lead to complaints that in turn may result in restrictions on the operations of the company and damage its ability to operate or expand and to continue to provide significant local employment [162]. The noises can include the use of a compressor to power tools or inflate tyres as well as horn testing, reversing alarms and engine noise. It is suggested that light spillage may also occur from headlights. At present the only dwelling close to the depot is Lydgate which is occupied by retired members of the family that owns the business.
226. Whilst this concern was initially shared by the Council as a reason for refusal, subsequent noise assessment established that the noise levels could be contained to satisfactory levels by sound insulation of the affected houses and by the erection of an acoustic barrier within the appeal site adjacent to the coach depot. There remain concerns expressed by the objectors about the effectiveness of such measures, including whether it would be reasonable for residents to have to keep windows closed, and also the scale and visual impact of the acoustic barrier.
227. There are available means to ventilate bedrooms without opening windows and many people live close to roads with passing traffic including heavy vehicles without suffering undue disturbance. The noise of coaches using the junctions of Greenway Lane with Well Meadow is unlikely to be distinguishable from that generated by other traffic movements on Well Meadow. Whether an acoustic barrier would be necessary in the final scheme, and over what length and height, depends upon the design and layout of the dwellings. A fence could also reduce the incidence of light spillage. But if it is needed then it is likely to be higher and more substantial than a typical garden fence. That risks some additional harm to the character and appearance of Greenway Lane, as is explained above. If such a barrier is provided but did not prevent noise nuisance to the residents, there are still likely to be some modest operational measures which could reduce the incidence of complaint without significantly harming the operation of the business. For example these could avoid horn testing or the use of reversing alarms at unsocial hours as apparently is sometimes the case now to avoid disturbing the occupiers of Lydgate.
228. No relevant development plan policies on this issue have been drawn to my attention and subject to conditions to require measures to protect amenity I do not consider that there would be a conflict with relevant provisions of the Framework.

Other Matters

229. All other matters raised at the Inquiry and in written submission have been taken into account. Whereas Malpas Parish Council and others have raised a number of infrastructure capacity issues, no contributions have been requested by CW&C Council towards increased capacity [154, 155].

Transport

230. In relation to transport, whilst some interested persons suggest that this is not a sustainable location due to poor public transport provision [161, 156, 157, 158], there is a regular bus service to Whitchurch and Chester (except in the evenings and on Sundays). It passes the site and could provide a means to reach both Whitchurch and Chester. Access to the services could be improved if there were a bus stop at the site but there is no provision for that in the proposals. Malpas has a wide range of local services including a GP, a pharmacy, a bank, and at least 3 convenience foodstores plus other shops and primary and secondary schools. It has therefore been identified as a key service centre. 367 dwellings are already proposed to be built in the village. Whilst most residents who can drive are likely to rely heavily on cars [166], the bus service and local facilities would be accessible on foot. Additional residents could potentially improve the viability of the bus service which would be used by those who cannot drive including children and some elderly people. The service does not provide access to all potential employment centres and the times may be inconvenient for some, but not all workers. However Chester is an important centre for employment and services. Moreover a high proportion of the village residents are retired and therefore do not need to commute daily to work. Public transport is often less frequent in the rural areas but only 4,200 of the 22,000 houses proposed in the eLP are to be built in such areas [14]. Most development is thus still likely to occur in or adjoining urban areas where better services and transport provision are likely to be available but that does not warrant preventing all development in rural areas and Malpas will have a better service than many smaller villages. The development would also provide local economic benefits including support for village shops.

231. From what I saw the traffic congestion in the village centre of which some complain typically occurs for brief periods and is caused mainly by on-street parking. The case officer admitted at the Inquiry that he had overlooked a request by the highway authority for a contribution towards highway works to address congestion in the village centre [71]. However I saw that measures are in hand to improve its management and it is not clear what additional works would justify a contribution. The parties agree that highway improvements necessary to create the proposed access can be the subject of a Grampian-style negative planning conditions. It would then be for the developer to agree with the highway authority how those works would be funded with the likelihood that the developer would pay. Some congestion also occurs on some of the narrow lanes in the surrounding area, particularly at peak hours and when larger vehicles such as buses or tractors are involved. However this is not a 'severe' effect in the terms of paragraph 32 of the Framework and would not warrant the dismissal of the appeal, particularly as the appeal proposal would represent only about a 10% addition to overall housing commitments in the village and thus would only be marginal in effect.

Education

232. The reasons why the education authority did not request a contribution towards additional school places are understood. They reflect a similar situation which arose at the Gladmans appeal in that alternative means had been identified to fund some additional secondary school places [69]. However there is some evidence that the pattern of demand for places at the local High School is being

affected by high demand for places because of its 'outstanding' status. This includes cross-border movements from other education authority areas [122, 154]. There is insufficient information now before me to determine whether spare capacity exists at other alternative schools or whether there would be a general shortage of capacity across the neighbouring areas, even after the expansion of places at the local school.

Health Services

233. In relation to health services it does not appear that the relevant authorities have been consulted about this development by CW&C Council [70]. There is some local evidence to suggest that additional capacity is needed, whether by expansion at the existing village health centre [165] or by constructing a new centre on a site negotiated as part of another development [154, 166]. However there is insufficient evidence before me to determine whether a contribution is necessary or justified before the development may proceed, and if it is, what the appropriate level of contribution would be. No contribution has been sought by CW&C and it would be unreasonable to dismiss the appeal on this ground if the proposal is otherwise acceptable [122-123].

Wildlife

234. A habitat survey and daytime bat inspection was submitted which identified that the on-site habitats were of low quality and common. It recommended that hedgerows should remain unaffected as far as possible and that vegetation clearance should avoid the bird breeding season. Those matters can be addressed by condition. There is a lack of evidence to substantiate claims of harm to protected species. Whereas swallows may perch on wires, my understanding is that swifts do not [161]. In any event the feeding habitat for these birds is over neighbouring land, not the appeal site. Moreover habitat retention and creation would be a consideration in the landscaping scheme which would be a matter for subsequent determination. The illustrative layout indicates that a further pond may be created on the appeal site.

Floodrisk

235. With a suitable sustainable drainage scheme there is no reason why development on the site should exacerbate existing off-site surface water drainage problems and there is no evidence to suggest on-site flood risk problems. The original floodrisk assessment indicated that surface water may be drained to an existing combined sewer but that would not be acceptable to the utility company. The likely requirement to pipe surface water from an on-site balancing pond or other storage to a suitable off-site water course should improve local surface water conditions as the present run-off of water to the adjoining roads would be much reduced or eliminated.

Archaeology

236. Whilst a submitted desktop assessment and the Council's archaeologist concluded that the site had low potential, an interested amateur archaeologist considers that there may be remains of Roman roads under the site and this has led to relevant provisions in the MONP. This can be addressed by a condition such that the new evidence would be made available as an updated assessment

and the Council's archaeologist could assess whether any further investigation is appropriate.

237. Neither these nor any other matter raised outweigh the main considerations.

Planning Balance and Conclusions

238. The provision of new homes including affordable housing would be an important social and economic benefit of the development but the weight to be accorded to that benefit is reduced given that there is currently a 5 year supply of housing and because extensive provision has already been made locally in Malpas. To be weighed against the residual benefits is the identified environmental harm which includes harm to the landscape character and appearance of the countryside and to the setting and heritage significance of the Grade II listed Broselake Farmhouse, and the associated conflict with relevant policies in the development plan and the emerging LP and MONP. Whereas some adopted development plan policies are absent in respect of housing supply LP Policy HO7 is not and it continues to merit weight, as do the other development plan and emerging policies with which conflict is identified. However whilst there is overall conflict with the development plan the adopted plan fails to make provision to meet housing needs as required by national policy. Unlike national policy, neither does the LP provide for the balancing of harm with any benefits such as the provision of housing.

239. Nevertheless the emerging plans do demonstrate how sufficient housing could be provided. More up to date national policy also requires that harm be weighed with benefits. These are important material considerations. Overall in the terms of Framework paragraphs 14 and 134 it is concluded that the identified adverse impacts would here significantly and demonstrably outweigh the benefits of additional housing provision such that this would not be a sustainable development and the national policy presumption in favour of development should therefore not apply here.

Recommendation

240. For the above reasons it is concluded and recommended that the appeal should be dismissed. In the event that the Secretary of State disagrees with me and allows the appeal, I recommend that the conditions annexed below be attached to the permission.

RPE Mellor

INSPECTOR

SCHEDULE OF CONDITIONS

1. No development shall commence until details of the appearance, landscaping, layout, scale and the means of pedestrian and cycle access (the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.
2. No application for approval of reserved matters shall be made until a parameters plan has been submitted to and approved in writing by the local planning authority to include:
 - a. A buffer area of open space to the Well Meadow to protect views from Well Meadow towards St Oswald's Church
 - b. The retention of existing hedgerows to each road frontage except where their removal is necessary for access and continuous access to both sides of the retained hedgerows for maintenance purposes
 - c. The avoidance of built development other than any fencing within all the open space that is within the appeal site but outside the hedgerow opposite Broselake Farmhouse, including the area described as the Pinfold

Application 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 or 2 years from the approval of the parameters plan, whichever is later.

3. The development hereby permitted shall begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development shall be carried out in accordance with the following approved plans:
 - a. Site Location Plan reference INCLA_N177_L03
 - b. Proposed Site Access Plan reference 14371-03a
5. No dwelling shall be more than 9 metres in height.
6. Notwithstanding the description of development, no more than 30 dwellings are hereby permitted to be constructed within the application site.
7. No development shall commence until an Affordable Housing Scheme has been submitted to and approved in writing by the Local Planning Authority. The amount of affordable housing shall be equal to 35% of the total number of dwellings and shall provide for a 75:25 tenure split between affordable rent units and intermediate affordable housing (respectively), unless otherwise agreed in writing by the local planning authority. The Affordable Housing Scheme shall include details of:
 - a. the numbers, type, tenure, and location on the site of the affordable housing provision to be made which shall consist of not less than 35% of housing units.
 - b. the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no Registered Social Landlord is involved);
 - c. the occupancy criteria to determine the identity of prospective and successive occupiers, including the identification of means to ensure such occupancy conditions are enforced;

- d. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- e. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing.

Play Area

8. No development shall commence until a scheme for the provision of a play area has been submitted to and approved in writing by the Local Planning Authority. No more than 17 dwellings may be occupied before the play area has been constructed and made available for use. Once provided it shall thereafter be retained.

Drainage

9. No development shall take place until a detailed scheme for the provision and future management and maintenance of foul and surface water drainage incorporating sustainable drainage principles, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be implemented in accordance with the approved details and timetable prior to the first occupation of the development.

Construction Method Statement

10. No development shall take place until a Construction Method Statement has been submitted to the Local Planning Authority for approval in writing. The approved Statement and any variations thereto which may be submitted to and agreed in writing by the Local Planning Authority shall be adhered to throughout the construction period. The Statement shall include details of:

- a. means of access for site preparation and construction vehicles including routes to and from the site;
- b. the parking of the vehicles of site operatives and visitors;
- c. loading and unloading of plant and materials;
- d. operating hours (including maintenance of plant and equipment) and delivery times;
- e. the storage of plant and materials used in construction of the development;
- f. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- g. wheel washing facilities where appropriate and the arrangements for their use;
- h. measures to control the emission of dust and dirt during construction;
- i. the recycling/disposing of waste resulting from demolition and construction works;
- j. the operation of plant and machinery (including silencing and sound attenuation) associated with engineering operations.
- k. site security;
- l. the storage of fuel, oil, and chemicals used in the construction phase of the development;
- m. measures to address any minor and major spillages of fuel, oil and chemicals;
- n. measures to dispose of surface water run off during the construction phase including any silt/soil contaminated run off.

Highways and Access

11. All highways, footways and cycleways within the approved development shall be designed and constructed in complete accordance with the Cheshire County Council Design Aid and Manual for Streets. No dwelling shall be occupied until that part of the highway or footway which provides access to it has been constructed in this way and up to binder-course level. The surface course shall then be completed within a timescale which has to be agreed in writing by the Local Planning Authority before any dwelling may be occupied

12. No development shall commence until detailed plans in respect of the works required within the highway (speed limit relocation, new access, new footway and street lighting) have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been carried out.

Landscaping

13. No development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:

- a. means of enclosure/boundary treatments;
- b. car parking layouts;
- c. other vehicle and pedestrian access and circulation areas;
- d. hard surfacing materials;
- e. planting plans; written planting specifications and plans with schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate;
- f. implementation programme;
- g. the trees and hedges to be retained
- h. an Arboricultural Method Statement
- i. a scheme for the protection of the retained hedges and trees during construction which shall accord with BS5837 (or its successor) to include root protection areas and protective fencing; nothing shall be stored or placed in any fenced area, nor fires lit and materials burned, nor shall the ground levels within those areas be altered without the prior written approval of the Local Planning Authority
- j. the future management of the common areas including the retained hedges and the height at which they are to be managed
- k. the installation of any underground utility services within the root protection areas of any retained trees or hedges

All works shall be undertaken in accordance with the approved details

14. Works to hedgerows and trees shall only take place outside of the bird nesting season (1st March to 31st August inclusive) unless a qualified ecologist has first confirmed that no nesting birds are present. If nesting birds are found, works shall not commence to those hedgerows or trees until birds have fledged (as confirmed in writing to the local planning authority by the ecologist).

Noise

15. No development shall commence until details, including the length, height and appearance, of an acoustic fence and the identification of which dwellings it is to protect have been submitted to and approved in writing by the Local Planning Authority. The fence shall only be carried out in strict conformity with the agreed details and no dwelling that it is intended to protect shall be occupied until the fence is in place and the fence shall thereafter be retained.

Archaeology

16. No development shall commence until a further desktop archaeological study to include consideration of any evidence of a Roman Road under the appeal site (as referred to in the Malpas and Overton Neighbourhood Plan), together with any programme of further archaeological investigation which that study may indicate to be necessary has been submitted to and approved in writing by the local planning authority. If the local planning authority concludes that any such investigation is necessary then the development shall not commence until it has been completed. If in the alternative the local planning authority agrees that no such investigation works are necessary then the developer shall afford access during the construction period at all reasonable times to any archaeologist nominated by the local planning authority and shall allow him or her to observe the excavations and to record items of interest and finds.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Sauvain	Of Queen's Counsel instructed by Ms Karen McIwaine, Acting Head of Governance, Cheshire West and Chester Council
He called	
Mr Paul Harrison BSc (Special Hons) DipLA MA CMLI	Landscape Witness. Director of Harrison Design Development Ltd, independent environmental consultancy specialising in landscape architecture and environmental planning.
Ms Helen Hutchinson BA BArch MA MIHBC	Heritage Witness. Senior Architect at Donald Insall Associates, Architects and Historic Building Consultants
Miss Beth Fletcher BSc(Hons) MSc	Senior Housing Officer, Cheshire West and Chester Council
Mr Nicholas Howard BSc(Hons) MRTPI	Senior Planning Officer, Cheshire West and Chester Council

FOR THE APPELLANT:

Mr Hugh Richards	Of Counsel, Instructed by Fisher German LLP
He called	
Ms Sara Howe BA(Hons) PGDipLA CLI	Landscape Witness. Director of Influence Environmental Ltd (Chartered Landscape Architects, Urban Designers and Environmental Planners)
Dr Michael Dawson BA BA(Hons) MPhil DPhil	Heritage Witness. Director of CgMs Ltd Planning and Heritage Consultancy
Mr Tom Collins BA(Hons) MSc MRTPI	Planning Consultant, Fisher German

INTERESTED PERSONS:

Mr John Webb	Chairman, Malpas Parish Council
Cllr Ann Wright	Ward Councillor, Cheshire West and Chester Council
Mrs Carol Broad	Member of Malpas and Overton Neighbourhood Plan Steering Group
Mrs Karen Meredith	Meredith's Coaches
Mr Justin Paul	Planning Consultant – Principal Director, J10 Planning – acting for Meredith's Coaches
Mr Miles Woolley MIOA	Acoustics Consultant, Environoise – for Meredith's Coaches
Mr John Lewis	Local Resident
Mr Adrian Waddelove	Local Resident
Ms Joan Meredith	Local Resident
Mr John Whiteley	Employee of Meredith's Coaches
Ms Fiona Dudley	Resident of Cross o' the Hill
Ms Lorraine Thornecroft	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Appellant's Opening Statement (App1)
2. Council's Opening Statement (LPA1)
3. Formal Application Drawings:
 - 3A Site Context Plan with red line (Ref INCLA_N177_L03)
 - 3B Access (Ref 14371-03a)
4. Signed Statement of Common Ground and Appendices (the Appendices are unchanged from draft SoCG)
5. Published proposed Main Modifications to the emerging Local Plan (LPA3)
6. Submitted Malpas and Overton Neighbourhood Plan (LPA5)
7. Latest comments from Environmental Health Officer 4 September 2014 (LPA2)
8. Policies ENV 2 and ENV 5 in emerging Local Plan
9. A3 version of Masterplan of adjacent Gladman's Development (App2)
10. Copy of consultation responses on duplicate planning application on Appeal site (LPA4)
11. Local Government Association '*Analysis of unimplemented planning permissions for residential dwellings 2013*' (App3)
12. Secretary of State planning decision – Hurstpierpoint, Mid Sussex Ref APP/D3830/V/14/2211499 (LPA6)
13. Castle Hill Motte schedule description (App4)
14. Malpas Parish Council comments on the duplicate planning application
15. Statement by John Webb
16. Letter from Dr Henney of Laurel Bank Surgery
17. Statement by John Lewis
18. Statement by Mr Waddelove on public transport
19. Statement by Mr Waddelove on Archaeology
20. Statement by Cllr Wright
21. Statement by Ms Fiona Dudley
22. Statement by Mr Whiteley
23. Statement by Mrs Broad
24. Application of Neighbourhood Plan Site Assessment Matrix to 5 sites including the appeal site (Mrs Broad)
25. Comparison between Site Assessment Matrix as applied by the Appellant and by the Steering Group (Mrs Broad)
26. Statement by Ms Joan Meredith
27. Statement by Ms Thornecroft

28. Amended Statement by Ms Thornecroft
29. Statement by Ms Redshaw (read out at the Inquiry by Ms Anne Sharrott)
30. Statement by Mr Paul
31. Coach Noise Impact Assessment (Woolley)
32. Statement by Mrs K Meredith
33. Secretary of State Appeal Decision, Park Road, Malmesbury, Wilts Ref APP/Y3940/A/13/2200503 (LPA7)
34. Strategic Housing Land Availability Assessment 2013 (SHLAA) (App5)
35. Emerging LP list of saved policies from Chester District LP (LPA8)
36. Additional planning conditions suggested by Mrs K Meredith
37. Additional planning conditions suggested by Mrs Broad
38. Closing submissions for the Council (LPA9)
39. Closing submissions for the Appellant (App6)
40. Listing description of St Oswald's Church



Department for Communities and Local Government

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.