



Department for
Communities and
Local Government

Martyn Twigg
Fox Strategic Land and Property Ltd
Gladman House
Alexandria Way
Congleton
Cheshire
CW12 1LB

Our Ref: APP/R0660/A/10/2141564
Your Ref:

17 October 2013

Dear Mr Twigg

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78
APPEAL BY FOX STRATEGIC LAND AND PROPERTY
LAND OFF ABBEY ROAD AND MIDDLEWICH ROAD, SANDBACH, CHESHIRE
(REF 10/3471C)**

1. I am directed by the Secretary of State to refer to the report of the Inspector, Ruth V MacKenzie BA (Hons) MRTPI who held a public local inquiry on 19, 20 and 27 April 2011 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Cheshire East Council (the Council) to refuse outline planning permission for up to 280 dwellings, landscaping, open space, highways and associated works (ref.10/3471C). The Inspector recommended that the appeal be dismissed. The Inspector's report accompanied the Secretary of State's letter of 7 February 2013, which indicated that he was, in principle, minded to disagree with the Inspector's recommendation and allow the appeal and grant planning permission, subject to the receipt of a satisfactory planning obligation to address the deficiencies related to affordable housing. He accordingly deferred his decision to enable the matter to be addressed.

Inspector's recommendation and summary of the decision

2. For the reasons set out in this letter the Secretary of State disagrees with the Inspector's recommendation to dismiss the appeal. He allows the appeal and grants planning permission for the proposed development. **This decision letter replaces the minded to letter of 7 February 2013.** A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

Recovery of the appeal

3. On 10 January 2011, 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. The appeal was recovered because it involves development of 150 or more dwellings on a site of over 5 hectares, which would significantly impact upon the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Decision letter dated 29 September 2011 and matters arising thereafter

4. The Secretary of State issued his decision in respect of this appeal in his letter dated 29 September 2011. That decision letter, which dismissed the appeal, was the subject of an application to the High Court and was subsequently quashed by order of the court dated 2 March 2012. The High Court's decision was upheld in the Court of Appeal on 20 July 2012. The appeal has therefore been re-determined by the Secretary of State. In re-determining the appeal, the Secretary of State has taken into account all of the evidence submitted prior to his earlier determination of the appeal, including the Inspector's report and all other representations received following the close of the Inquiry (listed at Annex A to this letter).

5. Following the quashing of his decision, the Secretary of State issued a letter dated 7 August 2012 under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his redetermination of the appeal. These matters were:

- a) the spatial vision and objectives for the area in the development plan;
- b) precedent and prematurity, in respect of the emerging Cheshire East Core Strategy;
- c) the relationship of the proposal to those policies in the development plan and the National Planning Policy Framework (the Framework) which the parties consider relevant to the Secretary of State's re-determination of the appeal; and
- d) the Secretary of State will also consider representations concerning any material change in circumstances, fact or policy, parties consider relevant to the Secretary of State's re-determination of the appeal.

6. Representations received by the Secretary of State in response to his letter of 7 August 2012 are listed in Annex A and were circulated to parties under cover of his letter dated 13 September 2012. Responses to that letter are also listed in Annex A. The Secretary of State concluded in his letter of 10 December 2012 that there were no substantive issues that required the inquiry to be re-opened.

Minded to allow letter dated 7 February 2013 and matters arising thereafter

7. The Secretary of State allowed 6 weeks for a response to his letter of 7 February 2013, indicating that he was minded to allow the appeal subject to the receipt of a satisfactory planning obligation to address the deficiencies related to affordable housing. He received a new planning obligation on 20 March 2013 from Gladman Legal Department. This was accompanied by copies of emails between the company and the Council which set out concerns that the Council had about the condition date mechanism in the planning obligation. A letter was sent to the Council on 22 March 2013, without prejudice to any decision the Secretary of State may make on the appeal, inviting it to address this concern by letter. Further correspondence from the Council relating to the signatories to the planning obligation resulted in the receipt of a revised planning obligation dated 8 April 2013 that responded to the Council's concerns. The Council confirmed its agreement by letter dated 11 April 2013 and also confirmed that should planning permission be granted it would not enforce the first unilateral undertaking.

8. On 11 February 2013 the Secretary of State received letters from the Leader of Cheshire East Council advising him of the progress on the Core Strategy and housing land supply position. On 1 March 2013 the Secretary of State received a letter from the Council, addressed to the Treasury Solicitor, informing him that it had that day published an updated Strategic Housing Land Availability Assessment (SHLAA), which showed a housing land supply of more than 5 years. The Secretary of State informed you of this by letter dated 6 March, which was also copied to the Council and other parties who asked to be informed of the decision on this appeal. He received responses from Kevin Waters at your company dated 11 March 2013 and 21 March 2013. In addition the Secretary of State received representations from other parties listed in Annex A.

9. On 24 April 2013 the Regional Strategy for the North West (Revocation) Order 2013 was laid before Parliament. The Order came into force on 20 May 2013 and in the circumstances of this case, the Secretary of State wrote to you and other interested parties on 30 April 2013 offering the opportunity to submit written representations on the following matters:

(a) whether the impending revocation of the Regional Strategy for the North West affects the case put to the inquiry, or subsequently to the Secretary of State, in respect of the above appeal; and

(b) the content of the Cheshire East Council SHLAA Update 2013.

10. Representations received by the Secretary of State in response to his letter of 30 April 2013 are listed in Annex A and were circulated to respondents under cover of his letter dated 24 May 2013. Responses to that letter are also listed under Annex A.

11. Having carefully considered all the representations in his redetermination of this case, including the Council's and the Middlewich Road Site Access Group's requests that the inquiry be reopened to allow all parties to present their evidence on housing supply afresh; the Secretary of State does not find that the representations raised matters that require the reopening of the inquiry. He advised the main parties that he did not intend to reopen the inquiry by letter dated 25 July 2013. In that letter he also gave parties one final

opportunity to submit any further representations. The responses received by the Secretary of State are listed in Annex A and were recirculated to respondents under cover of his letter dated 6 August 2013. Responses to that letter are also listed under Annex A. After carefully considering the final representations, the Secretary of State considers that he has sufficient information before him to redetermine this appeal without the need to reopen the inquiry. Copies of all the representations received are not attached to this letter, but can be made available upon written request. The Secretary of State deals with the issues of housing supply below in paragraphs 25-28 below.

12. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not been finalised, he has attributed it limited weight.

Policy considerations

13. In determining 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. As stated in paragraph 12 of the Framework, that document does not change the statutory status of the development plan as a starting point for decision making.

14. At the time of the inquiry and, as reflected in the IR, the development plan included the North West of England Plan - Regional Spatial Strategy to 2021 (RS) (2008); and the saved policies of the Congleton Borough Local Plan Review (LPR) (2005). The RS was revoked on 20 May 2013. In determining this appeal, the Secretary of State has paid no regard to references in the IR to the relevance of RS policies, unless specifically indicated in this letter. The Secretary of State considers that the saved LPR policies set out in IR14, are the relevant development plan policies for the area. Saved LPR Policy H1, which sets out the housing provision for the former Congleton Borough, is now the only development plan policy that indicates a housing requirement, but the Secretary of State notes that the main parties do not seek to rely on this Policy.

15. An emerging Core Strategy Issues and Options Paper (2010) was published before the inquiry was held. The Secretary of State is aware that since the inquiry the Council has continued to work up its proposals for a new Local Plan (LP) and that further consultation documents were published in January 2013. The LP will include the emerging Core Strategy and, for the avoidance of doubt, the emerging plan is referred to as the LP in this decision letter. As the emerging LP is still at an early stage the Secretary of State accords it limited weight in his decision making.

16. In March 2012 the Government published the National Planning Policy Framework, which replaced much of the former planning policy guidance notes and planning policy statements. As indicated in paragraph 5 above, the Secretary of State invited representations on the implications of the Framework. The Secretary of State has had regard to the policies in the Framework in determining this appeal and has paid no regard to references in the IR to former planning policy statements and guidance.

17. Other material considerations which the Secretary of State has taken into account include the *Technical Guidance to the National Planning Policy Framework* (March 2012);

The Planning System: General Principles (2005); Circular 11/1995: Use of Conditions in Planning Permission; the Community Infrastructure Levy (CIL) Regulations 2010, as amended; and his Written Ministerial Statement on Housing and Growth of 6 September 2012.

Main considerations

18. The Secretary of State agrees that the main considerations in this case are those set out by the Inspector in her conclusions at IR 82-108. However, with the passage of time, and matters arising from responses to his referrals back to parties, some of the considerations have been overtaken by events. He sets out below where he has considered updated information supplied by parties.

The planning policy context

19. The Secretary of State agrees that the emerging LP should be given only limited weight (IR86). He agrees with the Inspector for the reasons given at IR87 that the Interim Planning Policy on Release of Housing Land (IPP) should attract very little weight. The Secretary of State has also taken account of the Council's draft review of the IPP produced in May 2012, but although updated, this does not affect his conclusion on the weight to be attached to the document. The Secretary of State has considered conformity with the development plan, and then examined material considerations in reaching his determination of the appeal proposal.

Spatial vision and sustainable development

20. The Secretary of State notes that the Inspector considers that the implications of the proposed development on the spatial vision for Cheshire East and Sandbach is the main consideration in this appeal (IR82). He considers that this reflects the importance of the plan-led system, and national planning policy at the time. The Secretary of State has considered the implications of the revocation of the RS on the spatial vision for Cheshire East. The revocation of the RS removes from the development plan policies that set out a spatial vision or strategy for the location of development in Cheshire East, which the Inspector had regard to in reaching her conclusions (IR85). The saved policies of the LPR cover the period to 2011 and are now out of date in respect of the time period they were expected to cover.

21. The national planning policy context has changed since the date of the Inspector's report. The requirement to ensure that the development is in line with the spatial vision for the area derives from PPS3, as a consideration that should be taken into account in the release of land where there is not a 5 year land supply (IR89-90 and IR93). However, PPS3 has been replaced by the Framework, which identifies the purpose of the planning system is to contribute to the achievement of sustainable development (the Framework, paragraph 6). In summary, the presumption in favour of sustainable development requires decision makers to take a positive attitude to development proposals where a development plan is out of date (the Framework paragraph 14). Paragraph 215 of the Framework advises that decision makers may continue to give due weight to relevant policies in existing plans according to their degree of consistency with the Framework. The Secretary of State considers that the saved LPR policies for the supply of housing are not consistent with the Framework objective to boost significantly the supply of housing as they do not seek to look beyond 2011.

22. The Secretary of State has considered the appeal in the context of the presumption in favour of sustainable development and considered whether the appeal proposals represent sustainable development. In his decision on the Marriott Road appeal dated 6 December 2012 (APP/R0660/A/10/2140255 and 2143265), the Secretary of State found that Sandbach had a good range of shops and other key facilities, but it is not a town where significant economic growth is expected and many residents work elsewhere. This accords with the conclusions of the Inspector in this case, that the site is in a highly accessible location and would have sustainability benefits (IR89 and IR105). The Secretary of State has also carefully considered the representations submitted in response to his referral back to parties on this appeal, several of which addressed the issue of sustainable development.

23. The Framework identifies three dimensions to sustainable development. The Secretary of State considers that the appeal proposals would fulfill an economic role by ensuring that housing is provided to meet needs and support growth, including the provision of infrastructure to support the development under the planning obligation. He agrees with the Inspector that there is no evidence that development of this site would prejudice the development of brownfield sites elsewhere, although he accepts that development of a greenfield site will not bring with it regenerative benefits (IR105). He considers that it would fulfil an important social role, by providing affordable and market housing to help meet needs. He agrees with the Inspector that there is no reason to doubt that the housing would be anything other than high quality (IR89). In respect of the environmental dimension, the position is more finely balanced, as the development will result in the loss of open land and best and most versatile agricultural land, which weighs against the proposal (IR99). The Secretary of State accepts that development of this site will inevitably change the character of the site, but he agrees with the Inspector that the land would be used effectively and efficiently for the proposed development (IR89). With the exception of LPR general countryside protection policies, the site is not covered by any specific policy that indicates that development should be restricted. The Secretary of State also notes the continuing concerns expressed in post inquiry representations about impact on local services and traffic impacts of the proposed development, but he does not consider that these matters preclude development on the site. He therefore finds that the appeal proposals represent sustainable development.

The housing requirement

24. The Secretary of State has considered the implications of the revocation of the RS on the housing requirement for Cheshire East. The Appellant and the Council agree that the former RS housing requirement figure should continue to be used as a starting point in this case. Both parties draw attention to various other projections of housing need which indicate different requirements, both above and below the former RS average annual requirement. The Secretary of State is firmly of the view that the future housing requirement for Cheshire East should be determined through the development plan process. For the purposes of this appeal he considers it appropriate to continue to rely on the evidence base that underpins the former RS housing requirement. This is the only figure that has been tested through examination and, although slightly higher than the DCLG 2011 Interim Household Projections, the Council itself recognises that these projections take no account of policy or development aims (CEC Additional representations by Adrian Fisher paragraph 2.41). Although he places limited weight on the emerging LP, the Secretary of State notes that the Council's emerging housing requirement is higher than that of the former RS. He does not consider that the use of the

former RS housing figures in this case will undermine the Council's aspirations for growth in its emerging LP.

The supply of housing land in Cheshire East

25. Until the publication of the updated SHLAA 2013 the Appellant and the Council were in agreement that there was not a 5 year supply of deliverable housing sites in the Borough. The Inspector's conclusions and recommendations reflect this. As indicated in paragraphs 8-11 above, the Secretary of State has referred back to parties on the updated SHLAA 2013, which identifies a 7.15 year housing land supply, including a 5% buffer, for April 2013 – March 2018, against the housing requirement in the emerging LP. The Appellant disputes the findings in the updated SHLAA 2013 and considers that the land supply is 2.75 years at most. The Secretary of State has carefully considered the updated SHLAA 2013 together with the representations he has received on it and made his determination on housing land supply in light of the updated information, rather than the Inspector's conclusions on this matter at IR88 and IR105. Whilst the Secretary of State notes and encourages the Council's progress with the LP and the evidence base to underpin it, he is not persuaded, on the evidence before him, that the updated SHLAA provides a robust assessment of 5 year land supply.

26. The Secretary of State has the following concerns in relation to the updated SHLAA 2013 that undermine his confidence in its conclusions. On the requirement side, he considers the Appellant's approach to the accommodation of the shortfall in housing completions in the 5 year period, with an additional 20% buffer to reflect persistent under delivery over the last 5 years, accords more closely with the Framework requirement to boost significantly the supply of housing, than the Council's approach. On the Appellant's calculation the 5 year requirement, using the RS annual requirement as the starting point, would be 9,079 dwellings over the period 2013-2018 compared to the Council's requirement of 6,776 dwellings. The Council's estimated supply figure is 9,771 dwellings (subsequently reduced to 9,367 – August update).

27. The Secretary of State considers that the Council's calculation of 7,366 dwellings as the requirement, based on the accommodation of any shortfall in delivery against projections in the next 5 years, and the minimum 5% buffer (CEC Additional representations by Adrian Fisher table page 46), is a more realistic assessment of the minimum requirement than its original assessment. He therefore finds that there is no agreement on the requirement, and that the 5 year land supply should meet a requirement of between 7,366 to 9,079 dwellings.

28. On the supply side the Secretary of State considers that there is justifiable doubt about the assumed build rates on sites. The updates to individual site assessments of delivery submitted by the Council and the Appellant serve to highlight the vulnerability of the overall assessment to changes in build rate assumptions. This is compounded by the substantial reliance on strategic sites (43%) that form part of an emerging plan where, from the evidence available, some sites are subject to objection and can reasonably be expected to be subject to challenge during plan preparation; leading the Secretary of State to conclude that there is reasonable doubt that all sites will remain in the plan and deliver housing at the assumed rates. Sites identified as under construction or with planning permission, where there is likely to be more certainty on yields from sites, constitute only some 14% of the anticipated 5 year land supply. This further emphasises the substantial reliance on sites where changes to assumptions of yield and build rates

may significantly impact on the achievement of the projected land supply. The Secretary of State is also not persuaded by the evidence submitted to him that the Housing Market Partnership has endorsed the methodology and conclusions of the updated SHLAA. This further undermines his confidence in the updated SHLAA findings. Having considered these matters very carefully, the Secretary of State is of the view that the Council has not demonstrated a 5 year supply of deliverable housing sites against even the most favourable assessment of the 5 year housing requirement. The Secretary of State finds this a factor weighing in support of the proposed development.

Would the development of the greenfield appeal site discourage development of previously developed land (PDL) sites elsewhere?

29. For the reasons given at IR94-95 the Secretary of State agrees with the Inspector's conclusion that there is no clear evidence to substantiate the supposition that development of PDL sites could be delayed if this appeal were allowed on greenfield land.

Other relevant appeals and prematurity considerations

30. The Secretary of State has given careful consideration to the relevance of other appeals, including those drawn to his attention in the post inquiry representations. Although the issue of housing land supply is a common theme in the appeals cited by the Council, that have yet to be determined by Inspectors (correspondence attached to the Council's letter of 5 June), the Secretary of State is not persuaded that it is unfair or unlawful, as the Council claim, to determine this appeal without re-opening the inquiry. Interested parties have had the opportunity to contribute their views and he has carefully considered all the representations submitted to him.

31. The Secretary of State notes that Sandbach is a neighbourhood planning front-runner; that a Sandbach Town Strategy (STS) has been prepared by the community to inform the CS; and that it does not identify the appeal site for development. The Secretary of State considers that although a material consideration, it is an evidence base document and does not have the status of the development plan. It has been prepared in advance of the finalisation of future housing needs for Cheshire East. Although the Secretary of State considers that this is an innovative method of engaging the community in plan preparation, it should not prejudge the contribution that Sandbach may make to meeting Borough-wide housing needs. For these reasons he considers that it should be given little weight at this stage.

32. In his letter dated 7 August 2012 the Secretary of State invited representations on precedent and prematurity, in respect of the emerging Cheshire East Core Strategy (LP). The Secretary of State has carefully considered those representations, together with the guidance on weight to be accorded to emerging plans and prematurity in Annex 1 of the Framework and The Planning System: General Principles (2005). Taking account of this policy and guidance, the Secretary of State does not consider that the representations increase the weight that can be attached to the emerging LP as it has not progressed sufficiently far towards agreement on a strategy.

33. The preparation of the LP will enable potential sites to be assessed together but the Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development. Each case must be considered on its merits and in the light of current policies. The Secretary of State has carefully

considered representations on whether allowing this appeal would prejudice the plan making process. The Secretary of State disagrees with the Inspector and considers that the size of development proposed in this case is not so substantial, or the cumulative effect with the Richborough Estates site would be so significant, that granting planning permission would have significant and possibly serious repercussions on the plan-led delivery of housing (IR97). The Secretary of State notes the Inspector's concern that, if the appeal were allowed, it would send the wrong message to other developers who might also be tempted to "jump the gun" (IR92). The Secretary of State notes from the representations that other sites not yet the subject of planning applications may come forward, and that other sites are awaiting determination either as planning applications or appeals, but each case must be considered on its merits. As the Borough housing requirement has yet to be determined through the LP, he does not consider that there is a strong prematurity argument in this case. The Secretary of State does not consider that there is a case for refusing this appeal on the grounds of prematurity.

Affordable Housing

34. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR98 that the provision of 98 affordable homes is a material consideration to which substantial weight should be given. For the reasons given at IR77-81, the Secretary of State considered that the unilateral undertaking was ambiguous and deficient in relation to mortgagees' protection and responsibilities concerning the availability and affordability of housing in perpetuity. He agreed with the Inspector that this was a serious shortcoming (IR80). The Secretary of State advised you of his concerns in his letter dated 7 February 2013 and invited you to submit a revised planning obligation. He has carefully considered the revised planning obligation dated 8 April 2013 and accompanying correspondence from Gladman Legal Department and considers that it satisfactorily addresses his concerns.

Agricultural land quality

35. The Framework states that the economic and other benefits of best and most versatile (BMV) agricultural land should be taken into account in decision making and that poorer quality land should be used in preference to higher quality land. The Secretary of State notes that 96% of the appeal site is BMV land; that some of the other SHLAA sites around Sandbach are likely to have an equally high proportion of BMV land; and that land around Crewe is generally of lower agricultural quality. He agrees with the Inspector that it is a material consideration which weighs against the appeal proposal (IR99).

The importance of maintaining a green gap between Sandbach and Elworth

36. The Secretary of State notes that the open fields between Elworth and Sandbach are highly valued by local people. He considers that the proposed 3.4ha community park would ensure that a large swathe of land would remain open and, unlike at present, the park would allow public access and enjoyment. For this reason, the Secretary of State agrees that the loss of part of the green gap between Elworth and Sandbach weighs against the proposal (IR100), but he considers that it would not in itself be sufficiently harmful to make the appeal proposal unacceptable.

Wildlife, trees, flooding, subsidence and archaeology

37. The Secretary of State agrees with the Inspector that these matters have already been resolved, or can be resolved at the reserved matters stage or by the imposition of conditions (IR101).

Traffic generation

38. The Secretary of State notes that both residents and the Council considered that the Transport Assessment had shortcomings but the Council's Strategic Highway Manager did not recommend refusal of the planning application. The Secretary of State notes local residents' claims that at peak hours the roads and junctions in the vicinity of the site become congested and drivers are inconvenienced. However, for the reasons given at IR102 he considers that the additional traffic that would be generated by the development would not in itself be sufficiently harmful to make the appeal proposal unacceptable (IR103).

Albion Works

39. The Secretary of State notes the Appellant's argument that the decision by the Council to grant permission for a mixed-use development at the former Albion Works is inconsistent with the decision on the appeal proposal. However, the Secretary of State agrees with the Inspector that the differences between the two sites make it inappropriate to draw any meaningful conclusion about the consistency of the Council's decision-making (IR104). Similarly, the Secretary of State does not propose to comment on later decisions that have been drawn to his attention on the grounds of inconsistency with the Council's decision on this appeal.

Conditions

40. The Secretary of State has considered the proposed conditions at Annex 1 of the IR, the Inspector's assessment and conclusions on these at IR66-70 and the policy tests set out in Circular 11/95. He is satisfied that the proposed conditions are reasonable and necessary and would comply with the provisions of Circular 11/95. He has made a minor change to the wording of condition 13 to reflect the current national policy position, but does not consider that this materially alters the intent of the condition.

Planning obligation

41. The Secretary of State agrees with the Inspector's reasoning and conclusions on the unilateral undertaking submitted under Section 106 of the Town and Country Planning Act 1990 as set out at IR71-81. However, the concern over the affordable housing provision has now been satisfactorily resolved by the revised planning obligation dated 8 April 2013.

Overall Conclusions

42. In reviewing his interim conclusions on this appeal, as set out in his letter of 7 February 2013, and reaching his final conclusions, the Secretary of State has carefully considered all relevant material considerations, including the IR and the post inquiry representations. The Secretary of State disagrees with the Inspector's planning balance

at IR105-108. He agrees that the proposed development would be contrary to development plan Policies PS8 and H6 which seek to restrict development in the countryside, but in the overall balance in this case, he has attributed limited weight to this conflict with the development plan.

43. The Secretary of State has considered whether the proposals are sustainable development and considered whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits assessed against the policies in the Framework. For the reasons given in this letter, he considers that the proposals represent sustainable development. The Secretary of State finds that the evidence is inconclusive in demonstrating that the Council has identified a 5 year supply of deliverable sites in Cheshire East, despite the publication of the updated SHLAA. He considers that the LPR policies for the supply of housing should not be considered up-to-date and his findings on 5 year land supply engage the presumption in favour of sustainable development, which weighs in support of the proposed development.

44. The Inspector summarised the benefits to be weighed in favour of the development at IR105. The Secretary of State agrees with these, with the exception of her specific conclusion on the numerical shortfall in 5 year land supply. On the updated evidence that he has considered, he does not find that a 5 year land supply has been demonstrated. Furthermore, he has seen no evidence to suggest that the proposed development would not be capable of contributing to the land supply within 5 years. He is satisfied that the Inspector's concern about the deficiencies in the planning obligation relating to affordable housing (IR80) have been addressed by the revised planning obligation dated 8 April 2013.

45. The Inspector at IR106 recommended dismissal of the appeal, largely due to her conclusion that the proposed development would be contrary to the Government's localism agenda and that it had the potential to prejudice the fairness and effectiveness of the plan making process. The Secretary of State notes the Inspector's concerns about the implications of allowing this appeal for the principles of localism. The Localism Act 2011 gives communities the power to plan for their own areas, but with this power comes the responsibility to plan for and positively seek opportunities to meet the development needs of their areas. The Framework emphasises the desirability of having up-to-date plans in place to manage development. The Secretary of State acknowledges that the Council is making progress but, more than two years after the inquiry into this appeal was heard, the plan has yet to be published for consultation.

46. With regard to the Inspector's concern about prejudice to the plan making process, the Secretary of State has carefully considered the arguments about prejudice and prematurity. As the LP is still in the early stages of preparation he attributes it little weight and in accordance with national policy and guidance does not consider that there is a strong prematurity argument in this case. He acknowledges that there are other sites awaiting determination either as planning applications or appeals, together with potential sites that may arise during the plan making process. Until the LP is sufficiently far advanced to have more weight attached to it, development proposals must continue to be determined on their own merits. The Secretary of State does not find that this proposal is of such a scale as to prejudice the fair and effective preparation of the LP.

47. In conclusion, although the Secretary of State finds the appeal proposal contrary to the development plan, he considers that material considerations weigh in support of the

proposal. He finds that the proposal represents sustainable development and he does not consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits in this case. In reaching his decision he has taken into account the post inquiry representations, evidence submitted in response to his referrals back to parties, as well as earlier representations and the IR but he does not consider that they justify dismissing the appeal.

Formal Decision

48. Accordingly, for the reasons set out above the Secretary of State disagrees with the Inspector's recommendation and allows your appeal and grants outline planning permission for up to 280 dwellings, landscaping, open space, highways and associated works on land off Abbey Road and Middlewich Road, Sandbach, Cheshire (ref.10/3471C), subject to the conditions listed in Annex B of this letter.

49. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fails to give notice of its decision within the prescribed period.

50. This letter does not convey any approval or consent which may be required under an enactment, bye-law, order or regulation other than section 57 of the town and Country Planning Act 1990.

Right to Challenge the Decision

51. 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.

52. A copy of this letter has been sent to Cheshire East Council. A notification letter/ e-mail has been sent to all other parties who asked to be informed of the decision

Yours sincerely

Pamela Roberts

Authorised by Secretary of State to sign in that behalf

ANNEX A

Post Inquiry correspondence received before the original determination of the case on 29 September 2011

Name / Organisation	Date
Wardell Armstrong LLP	18/04/2011
Martyn Twigg on behalf of Fox Strategic Land and Property Ltd	08/07/2011
Brian Roberts	28/07/2011
W K Hulme	01/08/2011
Martyn Twigg on behalf of Fox Strategic Land and Property Ltd	04/08/2011
Cheshire East Council	08/08/2011
Isabel Roque	09/08/2011
Michael Jones on behalf of Richborough Estates	09/08/2011
Patricia Maguire and Steve Butterworth on behalf of Middlewich Road Site Access Action Group	10/08/2011
Fiona Bruce MP	12/08/2011
Patricia Maguire and Steve Butterworth on behalf of Middlewich Road Site Access Action Group	16/08/2011
Martyn Twigg on behalf of Fox Strategic Land and Property Ltd	31/08/2011
Brian Roberts	05/09/2011
Cheshire East Council	06/09/2011
Ian Cooper for and on behalf of The Friends of Abbeyfields	07/09/2011

Post Inquiry correspondence following the Secretary of State's Rule 19 letter dated 7 August 2012

Name / Organisation	Date
Doreen Hebden	21/08/2012
John Vincent	23/08/2012
John Minshull	30/08/2012
W.K. Hulme	02/09/2012
Ian Cooper	10/09/2012
Patricia Maguire on behalf of Middlewich Road Site Access	11/09/2012
Brian Roberts	11/09/2012
Nathaniel Lichfield and Partners On behalf of Taylor Wimpey UK Limited and Seddon Homes Limited	11/09/2012
David Bridgwood Wardell Armstrong On behalf of Messrs Ford, Tipping and the Bank of Ireland	11/09/2012
Richard House / Cheshire East Council	11/09/2012
Adele Snook Persimmon Homes	11/09/2012
Martyn Twigg On behalf of Fox Strategic Land and Property Ltd	11/09/2012

(2x letters)	
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Post Inquiry correspondence following the Secretary of State's letter dated 13 September 2012

Name / Organisation	Date
Richard House / Cheshire East Council	28/09/2012
Martyn Twigg On behalf of Fox Strategic Land and Property Ltd (2x letters)	28/09/2012
Patricia Maguire and Steve Butterworth on behalf of Middlewich Road Site Access	28/09/2012

Other post Inquiry correspondence – prior to 7 February 2013

Name / Organisation	Date
Fiona Bruce MP	22/03/2012
John Newton	14/05/2012
Fiona Bruce MP	01/08/2012
Mrs B.J and Mr W.T Winstanley	27/08/2012
Mike Beck	01/09/2012
Mike Beck	02/09/2012
Sandbach Town Council	03/09/2012
David Boar	07/09/2012
David Boar	21/09/2012
Robert Lewis	25/09/2012
David Boar	07/10/2012
David Boar	16/10/2012
Richard House / Cheshire East Council	13/12/2012
Patricia Maguire on behalf of Middlewich Road Site Access Action Group	18/12/2012
Fiona Bruce MP	21/12/2012
Fiona Bruce MP	04/01/2013

Correspondence received after the minded to allow letter dated 7 February 2013

Name / Organisation	Date
Councillor Michael Jones, Cheshire East Council (2 letters)	11/02/2013
Tom Russell	18/02/2013
Ian Knowlson	18/02/2013
Glynn Robinson	18/02/2013 22/03/2013
Sheila Dillon, Cheshire East Council	01/03/2013 04/04/2013 11/04/2013
Kevin Waters, Fox Strategic Land and Property	11/03/2103 21/03/2013
Nicola Baines, Gladman, on behalf of FSLP	20/03/2013
Mrs V Turnbull	20/03/2013

Patricia Maguire and Steve Butterworth on behalf of Middlewich Road Site Access Action Group	21/03/2013 24/03/2013 14/04/2013
John Minshull	25/03/2013
Mr and Mrs K Lever	26/03/2013
David Fisher	26/03/2013
W K Hulme	26/03/2013
Fiona Bruce MP	26/03/2013
B J and W T Winstanley	26/03/2013
Linda Beck	27/03/2013
Tania Brecker, Gladman, on behalf of FSLP	04/04/2013 08/04/2013
Ken Brown	06/04/2010

Correspondence received after the referral back letter dated 30 April 2013 and recirculation of representations by letter dated 24 May 2013

Name / Organisation	Date
Glynn Robinson	09/05/2013 10/05/2013 12/05/2013 19/05/2013 20/05/2013 09/07/2013 10/07/2013 21/07/2013 23/07/2013 24/07/2013
Victoria Turnbull	16/05/2013
Kevin Waters, Fox Strategic Land and Property	21/05/2013 03/06/2013 07/06/2013
Ian Cooper, Friends of Abbeyfields	21/05/2013
Adrian Fisher, Cheshire East Council	22/05/2013 05/06/2013
Patricia Maguire on behalf of Middlewich Road Site Access Action Group	22/05/2013 05/06/2013 07/07/2013
W K Hulme	19/05/2013 02/06/2013
Fiona Bruce MP	22/05/2013

Correspondence received after the Secretary of State's letter dated 25 July 2013

Name/Organisation	Date
Glynn Robinson	30/07/2013
D Baker, Cheshire East Council	01/08/2013 02/08/2013
W K Hulme	01/08/2013

Kevin Waters, Fox Strategic Land and Property	02/08/2013
Partricia Maguire on behalf of Middlewich Road Site Access Action Group	02/08/2013

Correspondence received after the Secretary of State's letter dated 6 August 2013

Name/Organisation	Date
Glynn Robinson	11/08/2013
K Brown	12/08/2013
W K Hulme	12/08/2013
Adrian Fisher, Cheshire East Council	16/08/2013
Kevin Waters, Fox Strategic Land and Property	16/08/2013
Partricia Maguire on behalf of Middlewich Road Site Access Action Group	16/08/2013

ANNEX B

Planning Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall follow the general parameters of the illustrative Development Framework (Drwg No 4333-P-02 Rev C), the Masterplan (Drwg No 4333-P-03), and the Design and Access Statement.
- 5) No development shall take place until a programme of phasing for the implementation of the whole development, including public open space and the provision of 35% affordable housing on each phase, has been submitted to and agreed in writing by the local planning authority. The phasing of the development shall be in accordance with the approved programme.
- 6) No development shall take place until a scheme of archaeological investigation, including a programme for its implementation, has been submitted to and approved in writing by the local planning authority. The investigation shall be implemented in accordance with the approved scheme.
- 7) No development shall take place until a scheme for surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be based on an assessment of the potential for disposing of surface water by means of a sustainable drainage system. Surface water drainage of the site shall be in accordance with the approved scheme.
- 8) No development shall take place until an ecological management plan has been submitted to and approved in writing by the local planning authority. The management plan shall be implemented as approved.
- 9) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority showing how at least 10% of the predicted energy requirements of the development will be secured from decentralised and renewable or low-carbon sources. The scheme shall be implemented as approved and retained thereafter.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors

- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- wheel washing facilities
- measures to control the emission of dust and dirt during construction
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

11) Construction hours, and associated deliveries to the site, shall be restricted to 08.00 to 18.00hrs Monday to Friday and 09.00 to 14.00hrs on Saturdays. There shall be no working on Sundays or Bank Holidays.

12) No development shall take place until a Travel Plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved from the date of the first occupation of the first dwelling.

13) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the Framework or any future guidance that replaces it. The scheme shall include:

- i) 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;
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii) 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;
- iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

14) At least 25% of the market housing dwellings shall have no more than two bedrooms.



Report to the Secretary of State for Communities and Local Government

by Ruth V MacKenzie BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 15 June 2011

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEAL BY FOX STRATEGIC LAND AND PROPERTY

**in connection with proposed residential development, landscaping, open
space, highways and associated works**

on

land off Abbey Road and Middlewich Road, Sandbach, Cheshire

Inquiry held on 19, 20 and 27 April 2011

File Ref: APP/R0660/A/10/2141564

File Ref: APP/R0660/A/10/2141564

Land off Abbey Road and Middlewich Road, Sandbach, Cheshire

- 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 Fox Strategic Land and Property against the decision of Cheshire East Council.
- The application (Ref No 10/3471C, dated 31 August 2010), was refused by notice dated 18 November 2010.
- The development proposed is residential development of up to 280 dwellings, landscaping, open space, highways and associated works.

Summary of Recommendation: The appeal be dismissed.

BACKGROUND INFORMATION

1. The appeal has been recovered by the Secretary of State. The stated reason for the recovery is *"it involves a proposal for residential development of more than 150 dwellings on a site of over 5ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities"*.
2. Prior to the Inquiry, last-minute discussions between the Council and the appellant culminated in Statements of Common Ground about planning, housing land supply, highways and ecology (Docs 3, 4, and 5). The Council's witnesses who were going to give evidence about ecology and trees at the Inquiry (Ian Dale and James Baggaley) were not called. The appellant's witnesses who were going to give evidence on ecology, agricultural land quality and the provision of affordable housing and low-cost market housing (Kate Hollins, Malcolm Reeve and George Venning) were also not called.
3. The application was submitted in outline, with all matters reserved for later determination. However, paragraph 3.15 of the Statement of Common Ground (Doc 3) confirms that vehicular access would be taken off Middlewich Road. A full planning application, still to be determined, has recently been made for that access. Accesses onto Abbey Road would be for emergency vehicles, pedestrians and cyclists only.
4. The Inquiry sat for 3 days. I did an accompanied visit to the site and its immediate surroundings on the final day of the Inquiry, 27 April 2011. I did unaccompanied visits to other sites in Sandbach and Crewe on 26 April 2011.
5. Lists of those who appeared at the Inquiry, the documents they submitted, plans and Core Documents can be found at the end of this Report. A schedule of suggested planning conditions is attached at Annex 1.

6. During the Inquiry, references were made to another recovered appeal that is currently with the Secretary of State (Ref No APP/R0660/A/10/2140255). The appeal was made by Richborough Estates for 269 dwellings on a greenfield site off Hind Heath Road, about 1km to the south of the appeal site. The Inquiry was held in February 2011, and the Secretary of State's decision is awaited. I will refer to it as the Richborough Estates appeal. For the avoidance of doubt, I can confirm that in my assessment of the current appeal, I have not taken account of the evidence that was submitted to the Inspector in the Richborough Estates appeal. Indeed, I have not seen any of the proofs or statements.

THE PROPOSAL

7. Outline planning permission is sought for up to 280 homes of which 35% would be affordable housing and 25% low-cost market housing. The illustrative Masterplan shows an irregular pattern of development blocks, a 3.4ha community park and 2 equipped play areas. Further details and supporting documents can be found in Core Documents CD1.1 to 1.20. They include a Design and Access Statement, and assessments on various matters such as transport, soil, ecology, trees, flood risk, landscape, air quality, noise and archaeology.

PLANNING HISTORY OF THE APPEAL SITE

8. Applications for residential development were refused in 1986 and 1991. The 1991 application included an 18-hole golf course.
9. The planning application that has led to the current appeal was refused on 18 November 2010. There were 6 reasons for refusal. Nos 1, 2 and 3 relate to housing supply and the lack of overriding reasons to release the site for housing bearing in mind that it is greenfield land and the majority of it is classified as best and most versatile (BMV) agricultural land. Reasons for refusal Nos 4, 5 and 6, relating to great crested newts, bats and trees, are no longer being pursued by the Council because recent investigations and discussions have resolved its concerns.

THE SITE AND ITS SURROUNDINGS

10. The 15.6ha appeal site is part of a larger area of agricultural land known locally as Abbeyfields. The land lies about 1km to the west of Sandbach town centre and to the south east of Elworth, a smaller settlement contiguous with Sandbach. Middlewich Road runs east/west connecting Sandbach and Elworth and, from that road, the distinction between the 2 settlements is not easy to see.
11. The site is relatively flat and is currently in arable use with large fields divided by hedges. It is generally secluded from the surrounding roads. The site's northern, western and eastern boundaries adjoin the rear gardens of houses fronting Middlewich Road, Abbey Road and Park Lane. The southern boundary adjoins arable land within which Abbeyfields, a Grade II listed building, is set in landscaped grounds. Further to the south west are some industrial buildings and an area that is currently being laid out as football pitches.

PLANNING POLICY

12. The Development Plan includes the *North West of England Plan Regional Spatial Strategy to 2021* (RSS) (CD5), and the *Congleton Borough Local Plan Review* (LP) adopted in 2005 (CD7.1).
13. The policies in the RSS that I consider to have the most relevance to this appeal are as follows:
 - DP 4 – development should accord with a sequential approach to make the best use of existing resources and infrastructure.
 - DP 5 – development should be located so as to reduce the need to travel, especially by car.
 - RDF 1 – development plans and strategies should accord with the 4 priorities of the Regional Spatial Framework. Crewe is listed as a third priority. Sandbach is not mentioned.
 - RDF 2 - development in rural areas should be concentrated in Key Service Centres (the Council considers Sandbach to be a Key Service Centre, see LDF background report paragraph 6.16, CD17).
 - L 4 – Table 7.1 lists the distribution of regional housing provision, and includes an indicative target proportion of housing on brownfield land (80% for the former Borough of Congleton, 60% for Crewe).
 - MCR 3 – relates to the southern part of the Manchester City Region in which Cheshire East lies. Plans and strategies should sustain and promote economic prosperity consistent with the environmental character of the area and the creation of attractive and sustainable communities by, amongst other things, allowing residential development to support local regeneration strategies and to meet identified local needs particularly for affordable housing in sustainable locations which are well served by public transport.
 - MCR 4 – plans and strategies should support sustainable economic growth in Crewe.
14. The saved policies in the LP that I consider to have the most relevance to this appeal are as follows:
 - PS8 – in open countryside (the appeal site is outside the settlement boundary) development will be permitted only if it is for certain specified purposes, none of which relates to the appeal proposal.
 - H6 – residential development in open countryside will not be permitted unless it falls into certain specified categories, none of which relates to the appeal proposal.
 - H2 – Sandbach should get 25% of new housing in the 5 sub-divisions of the former Congleton Borough.

15. Following local government reorganisation in 2009, Congleton Borough has been subsumed into Cheshire East. In its short life, the new Cheshire East Council (CEC) has published the following documents:
- *Strategic Housing Market Assessment 2010* (CD16.2). This provides an assessment of the housing market and housing needs.
 - *Strategic Housing Land Availability Assessment* (CD18.1 to 18.3). The appeal site is part of a 40.82ha area (Ref 2614) and described as "greenfield, suitable with policy change, available, achievable and developable".
 - *Interim Planning Policy (IPP): Release of Housing Land* (CD15). This was produced in order to plug the gap for an interim period pending progress on the Core Strategy.
 - *Core Strategy Issues and Options Consultation Paper* (CD19). This has been approved by elected Members as a suitable basis for consultation. The Core Strategy is unlikely to be adopted before the end of 2013.
16. The following Planning Policy Statements (PPSs) are also of particular relevance in this appeal: *PPS1 - Delivering Sustainable Development*; *PPS3 - Housing*; and *PPS7 - Sustainable Development in Rural Areas*.

THE CASE FOR THE COUNCIL

17. The starting point in this appeal is the fact that the proposed development is contrary to the Development Plan because it conflicts with LP policies PS8 and H6, both of which seek to restrict development in open countryside. Therefore the appeal should be dismissed unless material considerations indicate otherwise.

The supply of housing land

18. Despite the Government's stated intention to revoke the RSS, the Council is content to use the RSS's spatial vision. It is also content to use the RSS's housing requirement figure until such time as it is replaced by a new figure in the Local Development Framework (LDF). The 5-year requirement for net additions to the housing stock in Cheshire East is 5,750. This equates to 1,150 dwellings a year (Paragraph 5.2.2 Statement of Common Ground, Doc 3).
19. The Council accepts that it does not have a 5-year supply of land. Applying the robust data in the 2010 Strategic Housing Land Availability Assessment (SHLAA, CD 18.1) only 3.65 years' supply can be demonstrated. This is slightly more than the 2.75 years calculated by the appellant but, for the purposes of this appeal, the difference between 3.65 and 2.75 is not considered to be material.
20. PPS3 makes it clear that where local planning authorities cannot demonstrate an up-to-date 5-year supply of deliverable housing sites, as in this case, they should favourably consider planning applications for housing having regard to various considerations. The considerations are listed in paragraph 69 of PPS3. The final one is critically important to this appeal. It makes it clear that new housing should be in line with the spatial vision for the area. The spatial vision for Cheshire East, which can be found in the RSS, the emerging Core Strategy and the IPP, is to direct large-scale housing developments to Crewe.
21. The Government's White Paper *Local Growth: realising every place's potential* makes it plain that development should be on the right land in the right place (paragraph 3.3, CD21). The appeal site is not the right land in the right place. RSS policy DP 4 (which post-dates PPS3) gives preference to the use of previously-developed land (PDL). The appeal site is greenfield, not PDL, and it therefore falls within the policy's third and final level of preference for the location of new development.
22. Allowing the appeal would exacerbate the problem of over-supply of new housing in Sandbach relative to the other towns in the former Congleton Borough. Its share of new housing would increase from 31.8% to 36%, materially exceeding the 25% share indicated in LP policy H2.
23. In recent years, Sandbach has lost some large employers but, unlike Crewe, Sandbach is not identified in RSS policy MCR 4 as a place where sustainable economic growth should be supported.

24. There is a poor relationship between population and jobs. In effect, Sandbach is becoming a dormitory town and allowing the appeal would make matters worse.

Other relevant appeals

25. The same matters referred to above were rehearsed at the recent Richborough Estates appeal. If the Secretary of State decides to allow that appeal, thereby bringing 269 more dwellings to the town, it would add further weight to the Council's concerns about the current proposal.
26. The Secretary of State's decision on 23 March 2011 to refuse outline planning permission for up to 264 dwellings on a greenfield site at Wesham in Fylde Borough (APP/M2325/A/10/2127459, Doc 18) is also relevant. As in Cheshire East, Fylde Borough cannot demonstrate a 5-year supply of land. Nevertheless, the Secretary of State dismissed the appeal notwithstanding the fact that the Government's White Paper *Local Growth: realising every place's potential* (CD21) had already been published. One of the factors that tipped the scales was "In particular, he (the Secretary of State) considers that allowing the appeal in advance of establishing the appropriate level of future housing provision across the Borough would pre-empt decisions on revised settlement boundaries before current uncertainties with regard to population growth and distribution can be settled in a statutory planning context" (para 20, Doc 18). In common with Cheshire East, Fylde's Core Strategy is unlikely to be adopted before the end of 2013. There are important parallels between the Wesham appeal and the current appeal.

Would the development of the greenfield appeal site discourage development on PDL sites?

27. There are several PDL sites in Sandbach that have been earmarked for development. These include the Foden's factory site (full planning permission for 248 dwellings subject to the completion of a S106 Agreement), industrial land at Rookery Bridge (outline planning permission for 100 dwellings subject to the completion of a S106 agreement) and Albion chemical works (outline planning permission granted on 20 April 2011 for a mixed use development including 375 dwellings, some of which would be on greenfield land, subject to the completion of a S106 Agreement, Docs 16 and 17).
28. There is no evidence to indicate that the slow uptake of Sandbach's PDL sites is due to site-specific problems. The economic climate and the prevailing conditions in the housing market have been major factors. The housing market in Sandbach is modest. The development of the appeal site would compete with the PDL sites and prejudice their development

Affordable housing

29. According to paragraph H8 of the *Strategic Housing Market Assessment 2010* (SHMA, CD16.2), there is a net shortfall of 1,243 affordable dwellings each year in Cheshire East. The 35% affordable housing proposed for the appeal site exceeds the 30% threshold established in paragraph 3.1 of the Council's *Interim Planning Statement on Affordable Housing* (CD14). The 98

affordable homes would be a considerable benefit, and one to which weight should be attached. But the amount of weight should not be excessive and it does not overcome the harm that the proposal would cause to the spatial vision for Cheshire East, as set out in the RSS, LP policy H2, the emerging Core Strategy and the IPP.

Agricultural land quality

30. The majority of the appeal site is Grade 2 agricultural land, and much of the remainder is Grade 3a. As a result, 96% of the site is classified as BMV agricultural land. Paragraph 28 of PPS7 makes it clear that this is a material consideration to be taken into account alongside other sustainability considerations. It should be noted that the land around Crewe tends to be of lower agricultural quality than that around Sandbach; this is a reason to prefer Crewe over Sandbach.

The weight that should be given to the Council's Interim Planning Policy

31. Unless and until the IPP (CD15) is quashed by the Courts, it should be treated as a lawfully produced document. It seeks to address the acknowledged shortage of housing land in Cheshire East by releasing land for 600 dwellings on the edge of Crewe, and approximately 750 dwellings in town centre and regeneration areas in other towns in the Borough. This would result in a 4.85 years' supply (paragraph 5.8 of Mr House's proof, Doc A). As such, it accords with the RSS's spatial vision. The IPP does not usurp the function of the Development Plan, and it does not have the status of a Supplementary Planning Document. It was intended to plug a gap prior to the adoption of the Core Strategy. The Council's submissions on this appeal do not rely on the IPP but, nevertheless, it deserves some weight in the decision-making process.

The Government's Localism agenda

32. The Coalition Government attaches greater weight to public involvement in planning than has hitherto been the case. The strong weight of local objection to the appeal proposal should not be ignored.

Conclusion

33. The appeal proposal is contrary to the Development Plan because it is for residential development outside Sandbach's settlement boundary and therefore in open countryside where development is strictly controlled. The easing of the shortage of housing land and the provision of affordable housing are favourable material considerations. However, they are of insufficient weight to indicate that the appeal should be allowed.
34. The appeal proposal raises issues that need to be settled through the LDF process. In the meantime, it conflicts with the Council's and the Government's spatial vision and planning for housing objectives; the final consideration listed in paragraph 69 of PPS3.
35. For these reasons, the appeal should be dismissed.

THE CASE FOR THE APPELLANT

The suitability of the site for housing

36. There is no Development Plan policy which supports the Council's Crewe-centric approach. There is not enough PDL to provide a 5-year housing land supply. Adoption of the Core Strategy is nearly 2 years away. All of these circumstances favour the appeal proposal, indeed they should favour any housing development on plausible sites within or adjacent to the main towns in Cheshire East.
37. The appeal site has particular merits. It is in a highly sustainable location, half way between Sandbach's town centre and the railway station both of which are within walking distance. It would be a logical and comfortable extension to the town's built-up area. Although designated as countryside, it should properly be described as "urban fringe" because of its proximity to housing and other urban developments. Public views of the site and its houses would be limited, and the proposed community park would benefit the whole town. There are no technical impediments to the site's development.

The supply of housing land

38. The provision of housing is an essential part of the Government's growth agenda. Procrastination is simply not an option. There is a need to deliver beneficial development now. It is unreasonable to wait until the Core Strategy has been adopted.
39. There is an acute shortage of housing land in Cheshire East; a point conceded by the Council. The provisions of paragraph 71 of PPS3 are therefore triggered, and the Secretary of State should consider the appeal favourably having regard to the considerations listed in paragraph 69 of PPS3. The appeal proposal satisfies all of the considerations, including the final one about spatial vision.

Other relevant appeals

40. The Secretary of State's decision on 23 March 2011 to refuse outline planning permission for up to 264 dwellings on a greenfield site at Wesham in Fylde Borough (APP/M2325/A/10/2127459, Doc 18) mentions the subject of prematurity. However, prematurity was not a reason for refusal in the current appeal, and a dismissal on the grounds of prematurity would be gravely misconceived bearing in mind the provisions of paragraph 72 of PPS3.
41. In any case, it would be wrong to compare the Wesham appeal with this appeal. For example, whereas the RSS's housing figures are accepted by Cheshire East, there was evidence to show that the housing figures for Fylde were out of date. Furthermore, in Fylde there were good reasons why the settlement boundaries in the Borough would endure, whereas in Cheshire East there is an explicit acceptance of the need to release land outside the settlement boundaries in order to achieve a 5-year supply of housing land.

42. Turning to the Richborough Estates appeal, the appellant initially requested that it be linked with the current appeal and heard at a single Inquiry. The request was declined by the Planning Inspectorate. The appellant did not press the matter any further because, by that stage, the Secretary of State had indicated his intention to recover both appeals. He will therefore be able to consider the merits of both schemes before forming a view on either. For the avoidance of doubt, it is the appellant's view that the shortage of housing land is sufficiently grave that both appeals could be properly allowed. Furthermore, there is no reason why both appeals should fall or stand together; a different decision could be taken on each one.

Would the development of the greenfield appeal site discourage development on PDL sites?

43. Releasing the appeal site would not hamper the delivery of PDL sites in Sandbach. Indeed, the Council was unable to provide any substantiated evidence to the contrary. In particular, there have been no objections to the appeal scheme from promoters of PDL sites in Sandbach, and no evidence of any PDL site sitting on a knife-edge of viability. The examples quoted were not comparable. Furthermore, because of the distinct differences between the housing markets of Crewe and Sandbach, there is no evidence that development of the appeal site would have any effect on the delivery of PDL sites in Crewe.

Affordable housing

44. The SHMA has identified a need for 75 affordable houses to be built each year in Sandbach (page 170, CD 16.2). So far, pitifully few have been built. There is compelling evidence of the need for more affordable homes in Sandbach. The proposed delivery of 35% affordable houses (about 98 dwellings) on the appeal site exceeds the 30% expected by the Council. Substantial weight should be given to this.

Agricultural land quality

45. The fact that the majority of the site is BMV land is a factor to weigh in the planning balance. However, the same applies to most of the SHLAA sites which have been identified in and around Sandbach (map at CD18.2). In any event, the appeal site has limited agricultural value. It is separated from a viable unit and it suffers from serious urban fringe issues.

The planning policy context, including the Council's Interim Planning Policy

46. The Council still treats Sandbach as a Key Service Centre, to which an appropriate level of development ought to be directed in accordance with RSS policy RDF 2. However, it is not surprising that the RSS gives support to development in Crewe. It is a much bigger place than Sandbach and it is a higher order settlement. Nevertheless, policies directing development to Crewe do not automatically preclude development in Sandbach or anywhere else.

47. Policies in the emerging Core Strategy strongly favour development in Crewe, but they should be given very limited weight. The Core Strategy is at the earliest stage of preparation and is the subject of significant objection. In any case, granting permission for 280 dwellings on the appeal site could not possibly prejudice the outcome of the Core Strategy; 280 dwellings would be a tiny percentage of the overall requirement for the plan period. The Council's Crewe-centric ambitions would not have to be scrapped if this appeal were allowed.
48. The Council's IPP is neither a Development Plan Document nor a Supplementary Planning Document. It was adopted at a time when Members were being advised that there were 4.58 years' supply of housing land. However, shortly afterwards, the Council conceded that in fact it had only 3.25 years. It cannot be afforded more than the slightest weight, and it should not be a determinative factor in this appeal.
49. It therefore follows that there are no policies which can be afforded any significant weight that direct development to Crewe or anywhere else at the expense of development in other sustainable locations such as the appeal site.

The Government's Localism agenda

50. The release of the appeal site may not be popular with those in Sandbach who have made representations. But proposed housing sites in Crewe might be just as unpopular with those who live near to them. Localism may mean greater involvement of local people but that does not mean that one can pretend that objections to one site will not be mirrored elsewhere. The role of the planning system is to make an informed decision based on the land-use merits of each proposal, and not on a popularity contest between unknown competing sites.

Conclusion

51. It is accepted that, because of the site's position outside Sandbach's settlement boundary, the appeal proposal is contrary to LP policies PS8 and H6. However, Sandbach's settlement boundary and the LP are outdated.
52. In the appellant's view, there is overall compliance with the more up-to-date RSS policies of the Development Plan. Even if the Secretary of State were not to share that view, there are powerful material considerations that warrant the release of the appeal site; not least the serious shortfall of housing land. The proposed development would be a form of sustainable development encouraged by the Government, and for which there is a presumption in favour. For these reasons the appeal should be allowed.

THIRD PARTY VERBAL REPRESENTATIONS MADE TO THE INQUIRY

53. **Cllor Gillian Merry**, a Ward Councillor for Sandbach, described how the open countryside of the appeal site is valued as a green barrier between Sandbach and Elworth. The proposed development would spoil this. It could be harmful to wildlife, and it could also increase the risk of flooding. For the sake of future generations the site should be kept as open countryside. It is good agricultural land, which produces crops that are harvested, sold and used locally. The residents of the proposed houses would overload the town's infrastructure. Because of the shortage of jobs in Sandbach, residents would have to commute elsewhere. The proposed development would be contrary to policies H6 and PS8 of the Local Plan. For these reasons, the appeal should be dismissed.
54. **Cllor Barry Moran** spoke against the appeal proposal. He is a Borough Councillor for Cheshire East, Chairman of Cheshire East Planning Committee and a member of Sandbach Parish Council. In his view, the proposed development in open countryside, contrary to LP policies, is neither needed nor wanted. It would be a life-changing development for those who live nearby. The additional traffic is a particular concern. Decisions on the release of housing land should wait until site allocations have been established as part of the new Development Plan Framework.
55. **Brian Roberts** spoke on his own behalf as a local resident, and also on behalf of an organisation called Friends of Abbey Fields which actively opposes the proposed development. Local people know that increased traffic would be a very significant factor. During peak hours, there is serious congestion in Middlewich Road and at its junction with Abbey Road. The problem would get worse if 280 dwellings were built on the appeal site. Schools and other infrastructure would not be able to cope with the additional residents. There is a significant geological fault under the site, believed to be the result of brine subsidence. It would be an unnecessary risk to build houses above it. If the site is developed, the remaining fields to the south, between the appeal site and the football pitches would have little agricultural use but, instead, they could have development potential for a further 200 houses. This is worrying.
56. Sandbach has lost major employers such as Foden, ERF and Albion Chemicals. The town needs additional employment, not just additional housing. Sandbach residents would prefer to see derelict industrial land being redeveloped instead of greenfield sites.
57. The appeal proposal is opposed by the majority of Sandbach residents. If the Council's refusal of planning permission is reversed by the Secretary of State, the people of Sandbach would lose faith in their Council and the planning system. It would make localism look like a meaningless and cynical concept. (Mr Roberts' speaking notes can be found at Doc 10)
58. **David Boar**, a resident of Sandbach and an objector at the earlier Richborough Estates Inquiry, expressed his hope that both appeals would be dismissed by the Secretary of State. In his view, the appeals have arisen because opportunistic developers are exploiting the Council's temporary

vulnerability arising from the shortfall of housing land. It is not imperative that every housing proposal should be granted permission. It is still appropriate to dismiss them when, as in this case, the claimed gains are outweighed by the harm caused to the wider community and when the development would undermine the achievement of strategic regional and local plans.

59. The Richborough Estates appeal and this appeal are similar in scale and scope, and sited very close to each other. It therefore follows that both must be allowed or both dismissed. If both are allowed, there would be about 550 new dwellings, representing 50% of the annual housing needs for the whole of Cheshire East. The population of Sandbach would be increased by about 15%. No employment is proposed, and so large dormitory estates would be created with widespread commuting throughout Cheshire East and further afield. This would be unsustainable. Furthermore, if the appeals were allowed, it would significantly undermine the Council's intention to maximise the use of brownfield land and to direct new employment and housing to the principal townships of Crewe and Macclesfield.
60. Productive farmland should be released for housing only as a last resort. It is a finite resource. The weight of objection to the schemes is considerable. There have been no expressions of support. (A copy of Mr Boar's speaking notes, in the form of a letter to Rt Hon Eric Pickles MP, can be found at Doc 12)

THIRD PARTY WRITTEN REPRESENTATIONS

61. At the application stage, no letters of support were received, but there were about 710 letters of objection from local residents. The matters raised were largely the same as those that were raised by third parties who wrote letters at the appeal stage.
62. At the appeal stage, 42 letters of objection were submitted. The letters can be found in the red folder on the appeal file. Matters raised include:
 - it would be wrong to lose agricultural land and the wildlife that it supports
 - brownfield sites should be developed before greenfield sites are released
 - schools and medical facilities in Sandbach are at maximum capacity already
 - the appellant's Transport Assessment is unrealistic - the roads would become even more congested
 - the site is part of a green "lung" that separates Elworth and Sandbach
 - if developed, Elworth and Sandbach would merge and lose their individuality

- those whose homes adjoin the appeal site would suffer a loss of residential amenity
 - the residents of the new homes would have to commute out of Sandbach because employment opportunities in the town are limited
 - Sandbach is turning into a dormitory town and does not need any more housing
 - the development does not accord with current planning policy
 - the government is keen to promote "localism" in making planning decisions, and the vast majority of local residents do not want this development.
63. A letter from **Fiona Bruce MP** states that the proposed development "*had generated one of the greatest volume of objections which I have received regarding any matter since my election as the local Member of Parliament*". She lists the reasons for her objection, largely in line with those described above, and then finishes with her final point "*Finally, and this is in my view the most important point – residents do not want this development. If we are being truly genuine about our belief in localism then their views should, above all, be respected.*"
64. A letter from **Richard Lee BA(Hons) MRTPI** of Richard Lee Project Planning was submitted on behalf of W J and D F Holdcroft, landowners of 2 sites on the south western edge of Sandbach that are being promoted for development through the LDF process. The piecemeal approval of large-scale developments such as the appeal proposal is not the way forward. The development of the appeal site would be a clear departure from the Development Plan. It would result in the loss of an important area of open countryside which acts as a green gap between Sandbach and Elworth, and it would prejudice the proper consideration of alternative sites by local stakeholders in the emerging LDF. There are other, more sustainable and smaller sites in Sandbach that are available and deliverable. They are closer to the town centre, have less strategic significance, and could be developed quickly without significantly undermining the LDF process. At the present time, it is these sites that should be developed, not large-scale developments such as that which is currently being proposed by the appellant.
65. During the Inquiry, a letter was submitted by **David Bridgwood** who represents clients promoting 2 housing sites in Sandbach. His clients are greatly concerned about the possibility of the appeal site being brought forward preferentially over more sustainable sites, such as theirs, that are undergoing full consultation through the LDF process. The appellant is seeking to circumvent the formal LDF process with a proposal that may well not represent the most sustainable development option. It has not been properly assessed through the plan process. Better sites could be overlooked. It would be inappropriate for an inferior appeal site to be brought forward at the expense of better sites, simply as a result of timing. (Doc 11).

PLANNING CONDITIONS

66. The Council and the appellant prepared a list of suggested planning conditions (Doc 9), and these were discussed at the Inquiry. It was agreed that, in view of the fact that the application has been made in outline with all matters of detail reserved for later determination, many of the suggested conditions could safely be deleted because they could be imposed when and if approval was granted for the reserved matters (paragraph 45 of Circular 11/95 refers). The deleted conditions relate to ground levels, external lighting, facilities for refuse disposal and landscaping.
67. After further discussion, it was also agreed that some of the other suggested conditions could be deleted because they do not pass Circular 11/95's test of necessity. They include the conditions about ground contamination (the appellant's Site Investigation (CD1.13) concluded that the risk of potential contamination was low); and the condition about protecting trees along Abbey Road (it was agreed that they would not be threatened).
68. In the light of the above, the list of suggested conditions has become much shorter. In addition to the standard conditions for an outline planning permission, there is one to ensure that the development is along the lines of the illustrative Development Framework plan, Masterplan and Design and Access Statement. There is also a condition about the phasing of the development. The route of a Roman road crosses the site (Archaeology Report, CD 1.18) and an early scheme of investigation is therefore required. In order to give advance warning to potential developers, and to ensure a high quality development, there are conditions about surface water drainage, ecology, renewable energy, a Construction Method Statement, working hours, and a Travel Plan. The provision of affordable housing is addressed in the Unilateral Undertaking but, for the avoidance of doubt, there is a condition requiring a scheme to be submitted. To ensure a wide range of house-types, including low-cost market housing, there is also a condition requiring 25% of the market dwellings to have no more than 2 bedrooms.
69. The conditions described above are set out in Annex 1 of this Report. In the interests of clarity and brevity I have edited some of the suggested wording. I consider that they pass the 6 tests for conditions in Circular 11/95.
70. If the Secretary of State were to decide to grant outline planning permission, I recommend that they be imposed.

THE APPELLANT'S UNILATERAL UNDERTAKING

71. A Unilateral Undertaking (UU) signed by the appellant and various landowners was submitted during the Inquiry (Doc 6). The Undertaking relates to affordable housing, residential open space, children's play areas and the community park. It also undertakes to make financial contributions for highway works, education, the Wheelock Rail Trail, the Travel Plan and a tree to replace the one in the front garden of No 172 Middlewich Road which would have to be felled in order to construct the vehicular access to the site.

72. The appellant has usefully set out (in Doc 8) a summary of the various undertakings and a justification for each one including, where necessary, the way in which the financial contributions have been calculated.
73. There are 2 matters in the UU which cause the Council some concerns. These are described in a paper submitted by the Council (Doc 7). They relate to education contributions and affordable housing. Both matters were discussed at the Inquiry. I will consider each of them in turn:
74. **Education contributions.** The relevant paragraphs in the UU are 6.1 - 6.4 of Schedule 2. They set out the triggers for the payment of the 4 instalments of the total contribution of £513,773.11. Payments would be of equal amounts, and would be paid in advance. The first instalment of 25% would be paid before the first occupation of the first dwelling, the second 25% before the occupation of the 71st dwelling, the third 25% before the occupation of the 141st dwelling and the final 25% before the occupation of the 211th dwelling.
75. The Council would prefer a single up-front payment of all of the money because it is cheaper and less disruptive if the necessary extensions to nearby primary schools are undertaken as a single development instead of smaller separate developments.
76. I do not share the Council's view. Firstly, I consider it unreasonable to expect the first developer on the site to pay in excess of half a million pounds before a single dwelling is occupied. Secondly, it is highly likely that, during the life of the development of the appeal site, other developments yielding education contributions would also be taking place within the catchment areas of the 5 primary schools affected. Contributions from all the developments could then be pooled, thereby allowing school extensions to be funded in a timely and efficient way.
77. **Affordable housing.** The relevant paragraphs in the UU are 1.3 and 1.4 of Schedule 2 which relate to mortgagees' protection and responsibilities. In the Council's view, if a mortgage was taken out on the land and the mortgagee had to take possession upon default of payment, the mortgagee could sell the site to new owners or developers free from the affordable housing obligations. Furthermore, the reference to "Units" in paragraph 1.3 is ambiguous. It is not clear whether, as well as applying to a mortgagee of the developer and/or a mortgagee of a Social Landlord (SL), it is also meant to apply to mortgagees of any individual shared ownership dwellings. The safeguards in paragraphs 1.3.1 (b) and (c) (the mortgagee will use reasonable endeavours for 3 months to sell the affordable housing sites to a SL) offer little protection. Moreover, the clauses relating to the recycling of any subsidy also offer little protection. There are too many uncertainties and it would be possible for all 98 affordable houses to be lost if a developer's mortgagee repossessed.
78. In response, the appellant argued that there is only a remote chance of a mortgagee taking possession of the site upon default of payment.
79. I consider that the Council's concerns are valid. In accordance with Development Plan policies (such as RSS policy L 5), affordable housing

should remain affordable and available in perpetuity. As currently worded, the UU offers no absolute certainty that this would be the case.

80. I have assessed the UU against the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010. In nearly all respects I consider that the obligations in the UU are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. The one exception is the ambiguity and deficiency relating to affordable housing which I have described above. Affordable housing is essential to the acceptability of the proposed development. The wording of the UU does not provide certainty about its availability and affordability in perpetuity. To my mind, this is a serious shortcoming.
81. If the Secretary of State was minded to grant outline planning permission I recommend that a "minded to approve" letter be issued with an invitation to the appellant to amend the UU so that the retention of the affordable housing in perpetuity can be assured.

CONCLUSIONS

The numbers in square brackets [] refer to the paragraph numbers in the main body of the Report.

MAIN CONSIDERATION

82. I consider that the main consideration in this appeal is the implications of the proposed residential development on the spatial vision for Cheshire East and Sandbach.

THE PLANNING POLICY CONTEXT

83. LP policies PS8 and H6 (CD7.1), both of which are Development Plan policies, indicate that the proposed development should be refused because the site is in open countryside where development is severely restricted. I consider this to be fundamental to the planning policy context for this appeal [14, 17].
84. Equally fundamental is the housing requirement figure for the 3 former boroughs that now form Cheshire East, set out in policy L 4 of the RSS (CD5). In my view, the appellant and the Council are right to use this as the agreed starting point for their housing land supply calculations. It is based on robust and up-to-date data [13, 18].
85. RSS policies RDF 1, RDF 2 and MCR 4 all point to the fact that plans and strategies should favour the higher order settlement of Crewe, not Sandbach. To my mind, this is a material consideration, but not one that should be given substantial weight bearing in mind the Government's proposed abolition of RSSs and the progress of the Localism Bill [13, 46].
86. The emerging Core Strategy (CD19) also favours development in Crewe, but it is at an early stage, with adoption unlikely before the end of 2013. For that reason I consider that its Crewe-centric policies should be given only limited weight [15, 47].
87. By the Council's own admission, its Interim Planning Policy (CD15), which also favours development in Crewe, does not usurp the Development Plan, nor does it have the status of a Supplementary Planning Document. I therefore consider that it should attract very little weight. Indeed, I note that the Council does not rely on the IPP to support its case in this appeal [15, 31, 48].

The supply of housing land in Cheshire East

88. Cheshire East does not have 5 years' supply of housing land. Instead, it has somewhere between 3.65 years (the Council's figure) and 2.75 (the appellant's figure). The difference between 3.65 and 2.75 arises largely from uncertainties about availability and deliverability. However, I share the agreed view of the Council and the appellant that the difference is immaterial and that the indisputable fact is that the Council cannot demonstrate a 5 years' supply of housing land in Cheshire East, and the shortage is serious and significant [19, 36].

89. It therefore follows that the provisions of paragraph 71 of PPS3 are triggered [20, 39]. This makes it clear that the appeal should be favourably considered having regard to the considerations in paragraph 69. Paragraph 69 lists 5 considerations to which decision-makers should have regard. In my view, the first 4 would be met:

- although the proposal is in outline, there is no reason to doubt that the housing would be anything other than high quality
- there would be a good mix of houses, including 35% affordable homes and 25% low-cost market housing
- the site is suitable for housing, it is in a sustainable and accessible location (walking and cycling isochrones and bus catchment areas are shown in Figures 2, 3 and 4 of Doc F), and there are no technical constraints to its development that could not be overcome [37].
- the illustrative Masterplan indicates that the land would be used effectively and efficiently for a mixture of housing and open space, including a 3.4ha community park.

90. It is the fifth and final consideration of PPS3's paragraph 69 that is critical to this appeal. In a nutshell, it states that the proposed development should, amongst other things, reflect the spatial vision for the area, and should not undermine the wider policy objectives for housing. I set out my views on this aspect of the appeal in the next 3 paragraphs.

The spatial vision for Cheshire East and Sandbach

91. In view of the forthcoming abolition of the RSS, together with the fact that the Core Strategy is at a very early stage and the IPP can be afforded only very limited weight, the spatial vision for Cheshire East currently lacks clarity and longevity.

92. The emerging Core Strategy appears to take its lead from the RSS and favour Crewe for large-scale housing developments. But there can be no certainty that, when finally adopted in 2013, this would still be the case. The LDF process is at an early stage, and things could change [64, 65]. I do not share the appellant's argument that, whatever happens, 280 dwellings could not possibly prejudice the outcome of the Core Strategy [47]. The proposed 280 dwellings may be only a small percentage of the overall housing requirement but, if the appeal were allowed, it would send the wrong message to other developers who might also be tempted to "jump the gun".

93. Therefore, so far as the fifth and final consideration of PPS3's paragraph 69 is concerned, it is not possible to say with any certainty that the appeal proposal would reflect the spatial vision for the area. Moreover, at the current time, it is impossible to say whether or not the development of the site would undermine the wider policy objectives for housing. With this in mind, I consider that the encouragement in PPS3's paragraph 71, to favour housing proposals in areas where there is no 5-year supply of deliverable sites, should be tempered accordingly [39].

Would the development of the greenfield appeal site discourage development of PDL sites elsewhere?

94. This is a matter over which there can be no certainty. The evidence suggests that it is the current economic climate rather than any specific problem with the PDL sites themselves which has inhibited their redevelopment. Three PDL sites in Sandbach have planning permission for housing, subject to S106 agreements. When the economic climate improves, it is reasonable to suppose that house-building would start at the Fodens factory site, Rookery Bridge and the Albion chemical works, yielding 723 dwellings in total. This is a substantial number, bearing in mind that the housing requirement for the whole of Cheshire East is 1,150 dwellings a year [27, 43].
95. If 280 houses were to be built on the greenfield land of the appeal site, there is a possibility that prospective developers of the PDL sites might consider that Sandbach's modest housing market could not immediately absorb a further influx of houses. The development of PDL sites could therefore be delayed, denying Sandbach the associated regenerative and sustainability benefits that flow from the re-use of urban land. However, it has to be said that there is no clear evidence to substantiate this supposition [28, 56].

Other relevant appeals

96. The Secretary of State's recent decision (Doc 18) to dismiss the Wesham appeal post-dated the Government's White Paper *Local Growth: realising every place's potential* (CD21). No two sites are the same, but there is enough commonality between the circumstances surrounding the Wesham site and those surrounding the appeal site to make the Wesham decision a material consideration in the determination of this appeal. Paragraph 20 of the Secretary of State's decision, relating to the uncertainties surrounding housing distribution in the absence of a statutory planning context, has particular resonance with this appeal [26, 40, 41].
97. The Richborough Estates appeal is also a material consideration. There is no reason why the Secretary of State should come to the same decision on both appeals; it is a well-established principle that each proposal should be considered on its own merits. Nevertheless, the cumulative effect of simultaneously granting outline planning permission for 549 dwellings (280 on the appeal site and 269 on the Richborough Estate's site) on 2 greenfield sites outside the settlement boundary of Sandbach prior to the completion of the LDF process would, in my view, have significant and possibly serious repercussions on the plan-led delivery of housing [6, 25, 42, 58, 59].

Affordable housing

98. If the proposed development were to go ahead, 35% of the houses would be affordable homes. This is 5% more than the 30% sought by the Council in its *Interim Planning Statement on Affordable Housing* (CD14). The 98 affordable homes would give a considerable boost to the net shortfall of 1,243 affordable homes each year in Cheshire East. For that reason, I

consider that the provision of 98 affordable homes is a material consideration to which substantial weight should be given [29, 44].

Agricultural land quality

99. Paragraph 28 of PPS7 establishes that, when considering development proposals, the presence of Best and Most Versatile (BMV) agricultural land should be taken into account alongside other sustainability considerations. In this particular case, 96% of the appeal site is BMV land. I accept that some of the other SHLAA sites around Sandbach are likely to have an equally high proportion of BMV land, and that land around Crewe is generally of lower agricultural quality. However, this does not mean that the high agricultural land quality of the appeal site should be disregarded and, in my view, it is a material consideration which weighs against the appeal proposal [30, 45, 53, 60].

The importance of maintaining a green gap between Sandbach and Elworth

100. The presence of open fields between Elworth and Sandbach is highly valued by local people [53]. Clear views are difficult to obtain from public vantage points. The fields can be glimpsed between the houses in Middlewich Road, Abbey Road and Park Lane, but the best views are from rear gardens [10]. Public footpaths do not cross the appeal site, and the fields do not have any special landscape designation. The proposed 3.4ha community park would ensure that a large swathe of land would remain open and, unlike at present, the park would allow public access and enjoyment. I have therefore reached the view that the loss of part of the green gap between Elworth and Sandbach would not in itself be sufficiently harmful to make the appeal proposal unacceptable.

Wildlife, trees, flooding, subsidence and archaeology

101. I am satisfied that these matters have already been resolved, or can be resolved at the reserved matters stage or by the imposition of conditions [53, 68].

Traffic generation

102. Local residents have little faith in the appellant's Transport Assessment (CD1.9a). I do not dispute their claim that at peak hours the roads and junctions in the vicinity of the site become congested and drivers are inconvenienced. The additional traffic generated by the proposed houses would undoubtedly add to the congestion. But congestion in itself is not necessarily a bad thing; it can encourage people to use forms of transport other than the private car or to make other travel arrangements. I also note that the Council's Strategic Highways Manager did not recommend refusal of the planning application (CD3.14), although he felt that the Transport Assessment had some shortcomings.
103. Therefore, in the absence of any evidence to the contrary, I have reached the view that the additional traffic that would be generated by the

development would not in itself be sufficiently harmful to make the appeal proposal unacceptable [54, 55].

Albion Works

104. On 20 April 2011 the Council's Strategic Planning Board decided to grant permission for a mixed-use development at the former Albion Works (Docs 16 and 17). About 60% of the proposed 375 dwellings would be on greenfield land that is far less accessible to Sandbach's shops and services than the appeal site. The appellant argued that this recent decision is inconsistent with the decision on the appeal proposal. However, in my opinion, the differences between the 2 sites make it inappropriate to draw any meaningful conclusion about the consistency of the Council's decision-making.

THE PLANNING BALANCE

105. As with most other planning appeals, benefits have to be weighed against harms.

The benefits to be weighed in favour of the appellant's proposal are:

- The Council has between 3.65 and 2.75 years' supply of housing. There is therefore a serious and significant shortage which the proposed 280 dwellings would help to alleviate.
- The provision of 98 affordable homes would help to alleviate the serious and significant shortage of affordable housing.
- The site is on the urban fringe of Sandbach in a highly accessible location, and would therefore have sustainability benefits.
- There is no evidence that the development of the appeal site would prejudice the development of PDL sites elsewhere.
- The development would support the Government's Planning for Growth agenda, albeit without any accompanying economic development or regenerative benefits [23, 38].

The harms to be weighed against the proposal are:

- The development would "jump the gun" before the Core Strategy had been adopted, thereby prejudicing the fairness and effectiveness of the LDF process. Those who are promoting sites through the LDF process would be unfairly disadvantaged [64, 65].
- The Core Strategy is at a very early stage and the proposed development could prejudice the Council's emerging spatial vision for the area.
- Better and more sustainable sites could be overlooked.
- There would be a loss of 15.6ha of BMV agricultural land.

- The principles of Localism would be undermined, and local people would lose faith with the planning system. In the words of Fiona Bruce, Member of Parliament for the Congleton Constituency (which includes Sandbach) *"If we are being truly genuine about our belief in localism then their views (ie those of local people) should, above all, be respected"* [32, 50, 53 – 65].

106. On balance, I have reached the view that the harms outweigh the benefits and the appeal should be dismissed. This is largely because the development would be contrary to the Government's Localism agenda and, furthermore, it has the potential to prejudice the fairness and effectiveness of the LDF process.

107. I am also of the view that, overall, the proposed development would be contrary to the Development Plan. Non-conformity with LP policies PS8 and H6 is a particular concern.

108. In reaching my recommendation I have taken into account all other matters raised, but none outweighs my conclusion that there would be materially harmful implications for the spatial vision for Cheshire East and Sandbach if the proposed residential development were to be granted outline planning permission before the LDF process has been completed.

RECOMMENDATION

109. I recommend that the appeal be dismissed.

110. However, if the Secretary of State were to take a different view, I recommend that a "minded to approve" letter be sent to the main parties with a request that the obligations in the UU be reconsidered in order to address the deficiencies relating to affordable housing [71-81]. If the UU is subsequently amended so that it passes all the tests of Regulation 122 of the CIL Regulations, and the Secretary of State decides to grant outline planning permission, I recommend that the conditions listed in Annex 1 should be attached to the permission.

Ruth V MacKenzie

INSPECTOR

ANNEX 1

PLANNING CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall follow the general parameters of the illustrative Development Framework (Drwg No 4333-P-02 Rev C), the Masterplan (Drwg No 4333-P-03), and the Design and Access Statement.
- 5) No development shall take place until a programme of phasing for the implementation of the whole development, including public open space and the provision of 35% affordable housing on each phase, has been submitted to and agreed in writing by the local planning authority. The phasing of the development shall be in accordance with the approved programme.
- 6) No development shall take place until a scheme of archaeological investigation, including a programme for its implementation, has been submitted to and approved in writing by the local planning authority. The investigation shall be implemented in accordance with the approved scheme.
- 7) No development shall take place until a scheme for surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be based on an assessment of the potential for disposing of surface water by means of a sustainable drainage system. Surface water drainage of the site shall be in accordance with the approved scheme.
- 8) No development shall take place until an ecological management plan has been submitted to and approved in writing by the local planning authority. The management plan shall be implemented as approved.
- 9) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority showing how at least 10% of the predicted energy requirements of the development will be secured from decentralised and renewable or low-carbon sources. The scheme shall be implemented as approved and retained thereafter.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors

- loading and unloading of plant and materials
 - storage of plant and materials used in constructing the development
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - wheel washing facilities
 - measures to control the emission of dust and dirt during construction
 - a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 11) Construction hours, and associated deliveries to the site, shall be restricted to 08.00 to 18.00hrs Monday to Friday and 09.00 to 14.00hrs on Saturdays. There shall be no working on Sundays or Bank Holidays.
- 12) No development shall take place until a Travel Plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved from the date of the first occupation of the first dwelling.
- 13) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include:
- i) 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;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) 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;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 14) At least 25% of the market housing dwellings shall have no more than two bedrooms.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter, of Counsel Instructed by the Borough Solicitor
Cheshire East Council (CEC)

He called:

Simon Mackay BSc MRICS Partner, King Sturge LLP

Richard House BA(Hons) MRTPI Local Development Framework Manager, CEC

FOR THE APPELLANT:

Paul Tucker QC Instructed by Martyn Twigg
Project Director of Fox Land and Property

He called:

Martyn Twigg BA(Hons) MRTPI As above

Simon Helme BSc CMILT MIHT Director, Ashley Helme Consulting

Phil Rech BA BPhil LD CMLI Senior Partner, Faulks Perry Culley & Rech

INTERESTED PERSONS:

Cllor Merry Sandbach Ward Councillor
Cllor Moran CEC Borough Councillor and Sandbach Parish
Councillor

Brian Roberts Resident of Sandbach
David Boar Resident of Wheelock

APPLICATION PLANS

- A Drwg No 4333-P-01 Rev A Application boundary
- B Drwg No 4333-P-02 Rev C Development Framework
- C Drwg No 4333-P-03 Rev C Illustrative Masterplan
- D Drwg No 4333-P-04 Green Infrastructure
- E Drwg No 4333-P-05 Rev A Green Infrastructure – Community Park
- F Drwg No 4333-P-06 Green Infrastructure – The Avenue
- G Drwg No 4333-P-07 Green Infrastructure – Plan Area and Green Corridor

NON-APPLICATION PLANS

- H Drwg No 4333-P-01 Rev B Application boundary with amended blue line
- I Public Transport Accessibility, submitted by the appellant

PROOFS OF EVIDENCE

For the Council

- A Richard House's summary, proof and appendices
- B Simon Mackay's summary, proof and appendices
- C James Baggaley's proof and appendices - not presented verbally
- D Ian Dale's proof and appendices - not presented verbally

For the appellant

- E Martyn Twigg's proof and appendices
- F Simon Helme's proof and appendices
- G Phil Rech's summary, proof and appendices
- H George Venning's proof - not presented verbally
- I Malcolm Reeve's proof - not presented verbally
- J Kate Hollins' proof and appendices - not presented verbally

DOCUMENTS HANDED INTO THE INQUIRY

- 1 The appellant's opening submissions
- 2 The Council's opening submissions
- 3 Statement of Common Ground on planning and housing supply
- 4 Statement of Common Ground on Great Crested Newts
- 5 Statement of Common Ground on highway matters
- 6 The appellant's Unilateral Undertaking
- 7 The Council's concerns about the Unilateral Undertaking
- 8 The appellant's justification for matters in the Unilateral Undertaking, with reference to the CIL Regulations and Circular 05/2005
- 9 List of suggested planning conditions
- 10 Speaking notes of Brian Roberts
- 11 Letter from David Bridgwood, Associate Director of Wardell Armstrong
- 12 Speaking notes of David Boar
- 13 Aggregate figures for PDL, submitted by the Council
- 14 Housing land in former Congleton Borough for Years 1 to 5, with and without the appeal site, submitted by the Council
- 15 Information about Buckshaw village, submitted by the appellant
- 16 Committee Report about planning application in respect of Albion Works, Sandbach, submitted by the appellant
- 17 Email about the outcome of the Albion Works planning application, submitted by the Council
- 18 Secretary of State's decision of 23 March 2011 in respect of residential development at Mowbreck Lane, Wesham, submitted by the Council
- 19 The Council's closing submissions
- 20 The appellant's closing submissions.

CORE DOCUMENTS

The planning application and supporting documents

- CD1.1 Application Covering Letter, Application Form and Certificates
- CD1.2 Location Plan (including Application Red Line)
- CD1.3 Development Framework Plan
- CD1.4 Illustrative Master Plan & Green Infrastructure
- CD1.5 Planning Statement

- CD1.6 Report on Community Involvement
- CD1.7 Draft S106 Agreement
- CD1.8 Design & Access Statement
- CD1.9a Transport Assessment
- CD1.9b Travel Plan
- CD1.10 Soil Resources, Agricultural Land Use Report
- CD1.11 Ecological Assessment
- CD1.12 Arboricultural Assessment
- CD1.13 Phase 1 Site Investigation
- CD1.14 Flood Risk Assessment
- CD1.15 Landscape & Visual Assessment
- CD1.16 Air Quality Assessment
- CD1.17 Noise Assessment
- CD1.18 Archaeology Report
- CD1.19 Utilities Report
- CD1.20 Renewable Energy Statement

Correspondence with Local Planning Authority

- CDs 2.1A Decision notice
- CDs 2.1 Various emails and letters exchanged prior to the Council's decision to 2.48

Consultation Responses

- CD3.1 Natural England's initial response
- CD3.2 Natural England's final response, holding objection removed
- CD3.3 Cheshire Shared Services – Archaeology
- CD3.4 Cheshire East Conservation initial response
- CD3.5 Cheshire East Conservation final response
- CD3.6 Cheshire East Heritage and Design
- CD3.7 Cheshire East Archives – Hedgerows
- CD3.8 FPCR Ecology response - Great Crested Newts
- CD3.9 Environment Agency's initial formal comments
- CD3.10 Environment Agency's revised formal comments
- CD3.11 Sustrans
- CD3.12 Cheshire East Spatial Planning - Vicky Soames
- CD3.13 Cheshire East Spatial Planning - Steven Jones
- CD3.14 Cheshire East Highways
- CD3.15 Cheshire East Housing
- CD3.16 Cheshire East Environmental Health
- CD3.17 Cheshire East Education
- CD3.18 United Utilities' initial Response
- CD3.19 United Utilities' final response
- CD3.20 Sandbach Town Council
- CD3.21 Cheshire Brine Board

Committee Reports and Decision Notice

- CD4.1 Strategic Planning Board Agenda 17 November 2010
- CD4.2 Strategic Planning Board Update 17 November 2010
- CD4.3 Decision Notice 18th November 2010

Development Plan

- CD5 RSS - September 2008
- CD6 Adopted Development Plan for Cheshire East, July 2010
- CD7.1 Extracts of Adopted Congleton Borough Local Plan (January 2005)
- CD7.2 Secretary of State Saving Direction (January 2008)
- CD7.3 Schedule of Saved Policies
- CD7.4 Schedule of Deleted Policies

- CD7.5 Extract of CBC Local Plan 1st Review Map (Sandbach) 2005
- CD8 SPD No 4 - Sustainable Development (April 2005)
- CD9 SPD No 6 - Affordable Housing & Mixed Communities (April 2006)
- CD10 SPD No 7 - Rural Development (July 2008)
- CD11 SPD No 14 - Trees and Development (October 2006)
- CD12.1 SPG Public Open Space - October 2003

Other Council documents

- CD12.2 Interim Policy Note - Open Space
- CD13 CBC Housing Needs Survey (Final Report) 2004
- CD14 Interim Planning Statement on Affordable Housing (February 2011)
- CD15 Interim Planning Policy on Release of Housing Land (February 2011)
- CD16.1 Cheshire East Strategic Housing Market Assessment (2010)
- CD16.2 Full Report of the above
- CD17 LDF Background Report - Determining the Settlement Hierarchy

Strategic Housing Land Availability Assessment (2010)

- CD18.1 Full Report
- CD18.2 Extract of Appendix B - Sandbach Map
- CD18.3 Map Extract for Sites 2614 – 2615
- CD19 LDF Core Strategy - Issues & Options Paper (November 2010)

Annual Monitoring Reports

- CD20.1 Congleton Borough Council AMR (2008)
- CD20.2 Cheshire East AMR (December 2009)
- CD20.3 Cheshire East AMR (2010)

Miscellaneous documents

- CD21 Local Growth White Paper 2010
- CD22 Crewe's Strategic Framework for Economic growth (2010-2030)
- CD23 Local Development Scheme (2010-2014)
- CD24 Ambition for all – sustainable community strategy (2010-2025)
- CD25 Corporate Plan (2010-2013)
- CD26 Unleashing the Potential of Cheshire and Warrington – Draft sub-Regional Strategy (July 2010)
- CD27 Committee Report September 2009 in relation to football pitches on land off Hind Heath Road, Sandbach



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.