



Department for
Communities and
Local Government

Gladman Developments Ltd
Gladman House
Alexandra Way
Congleton
CW12 1LB

Our Ref: APP/R0660/A/14/2213505
Your Ref:

26 February 2015

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY GLADMAN DEVELOPMENTS LTD
LAND AT CHURCH LANE, WISTASTON, CREWE, CHESHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Chase MCD Dip Arch RIBA MRTPI, who held a public local inquiry on 5-8 and 27-29 August 2014 into your company's appeal against a decision of Cheshire East Council (the Council) to refuse outline planning permission for a residential development of up to 300 dwellings, highway works, public open space and associated works in accordance with application ref: 13/2649N, dated 25 June 2013.
2. On 2 May 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 150 units and on a site of over 5 hectares, 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.

Inspector's recommendation and summary of the decision

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

Procedural Matters

4. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (IR3). The Secretary of State is content that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the appeal proposals.
5. The Secretary of State notes the appeal Inspector's comments (IR5) with regard to the interim report of the Inspector of the Cheshire East Local Plan (CELP). The Secretary of State is aware of this report but, for the reasons given below, he has not deemed it necessary to seek further representations on it or on the correspondence received from your company on 21 January 2015 on it (which also included three other appeal decisions in Cheshire East). However, copies of that correspondence can be obtained on written request from the address at the foot of the first page of this letter.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies in the Borough of Crewe and Nantwich Replacement Local Plan 2011 (BCNRLP), adopted in 2005 with a saving direction in 2008. The Secretary of State agrees with the Inspector at IR9-12 that the policies most relevant to this appeal are NE2, NE4 and NE12.
7. The Secretary of State has also had regard to the emerging CELP, submitted for formal examination in May 2014; and he agrees with the appeal Inspector that the policies in the CELP most relevant to this appeal are those identified at IR14-15. Work on the CELP has been temporarily suspended while the Council undertake additional work to address the Local Plan Inspector's preliminary findings.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework, March 2012) and the associated planning practice guidance (the Guidance, March 2014); as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Main issues

9. The Secretary of State agrees that the main issues in this case are those set out by the Inspector at IR86-88.

Five Year Supply of Housing

10. The Secretary of State has carefully considered the Inspector's conclusions on the Council's full objectively assessed housing need (FOAN) at IR89-96, the level of buffer required at IR97-98 and housing supply at IR99-102. He agrees that there is sufficient doubt about the FOAN to indicate that it should not be treated as a sufficiently robust basis for assessing the five year position (IR96), that a buffer of

20% is justified (IR98) and that there would remain a significant shortfall in housing supply arising from the unduly short lead in times in the Council's estimates (IR102). Thus, having regard to the Council's assessment of supply (IR103), the Secretary of State agrees with the Inspector (IR104) that a FOAN of 1,180 dpa is an under-assessment, that the level of supply should be adjusted and a 20% buffer is justified. He therefore also agrees that paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up to date; and so has gone on to consider whether the presumption in favour of sustainable development applies in this case.

11. The Secretary of State has considered the Inspector's comments in IR105 in relation to policy NE2. He agrees that policy NE2 is a relevant policy for the supply of housing and, in light of the Council not being able to demonstrate a 5 year supply of deliverable housing sites, this policy is considered out of date in terms of paragraph 49 of the Framework. He has therefore gone on to consider whether the presumption in favour of sustainable development applies in this case.

The character and appearance of the countryside and its role in separating settlements

12. The Secretary of State takes the view that the recent judgment in *Cheshire East v Secretary of State for Communities and Local Government and Richborough Estates* makes the position clearer in respect of BCNRLP policy NE4 than the appeal Inspector had considered appropriate (IR106). The Secretary of State therefore takes the view that policy NE4 is outwith the terms of paragraph 49 of the Framework and he gives it significant weight in relation to the importance of avoiding erosion of the physical gaps between built-up areas and avoiding adverse impacts on the visual character of the landscape.
13. The Secretary of State agrees with the Inspector that the specific purposes of policy NE4 include maintaining separate named settlements (IR106), and he considers that this implies that the protection of the defined "Green Gap" areas around them should be regarded as a long term objective. The Secretary of State has carefully considered Inspector's arguments at IR107-115 and, while acknowledging (IR108) that there are aspects of the location of the appeal site which diminish its contribution to the purpose of the Green Gap of separating Wistaston and Nantwich, he takes the view that the release of any area designated under policy NE4 would need to take account of the aims of the emerging CELP proposals for an enlarged Green Belt to maintain and carry forward the policy of separation embodied in the Green Gap policy. Therefore, taking account of the terms of the Guidance, the Secretary of State takes the view that allowing this appeal in advance of the resolution of the Green Belt issue through the CELP would be unsustainable to the extent that it could undermine the plan-making process by pre-empting decisions which ought to be taken in that context in order to ensure that the most appropriate sites are released for housing.
14. While agreeing with the Inspector that the landscape is clearly valued locally (IR114), the Secretary of State also agrees with him that the evidence in this appeal falls short of proving that the appeal site has such visual landscape quality in its own right as to make its loss unacceptable on the grounds of that aspect of policy NE4 (IR110-113) and that any visual impact on the landscape would be limited to the site and its immediate environs (IR115). However, given that the site is within the area of search for designation as Green Belt in the CELP and taking account of

the reasons given at paragraph 13 above, the Secretary of State disagrees with the Inspector (IR116) with regard to his assessment of the prematurity of development on this land prior to the results of the examination and further work relating to the CELP Green Belt proposals. He takes the view that allowing this appeal in advance of the resolution of the Green Belt issue through the emerging CELP would undermine the plan-making process.

The Supply of Agricultural Land

15. For the reasons given at IR117-118, the Secretary of State agrees with the Inspector that the proposal is in conflict with the aims of BCNRLP Policy NE12 to restrict development on best and most versatile land (BMV), but that there is no clear indication that the loss would be significant in terms of the overall supply of agricultural land in the area.

Other matters

16. The Secretary of State has considered the Inspector's comments on local infrastructure, road safety, flooding and ecology at IR119-120. He agrees that neither these nor any other matter raised outweigh the main considerations.

Conditions and Obligations

17. The Secretary of State has considered the Inspector's comments at IR71-74 on the proposed planning conditions and the schedule of conditions he recommends at Annex 3 of his report (IR, page 36). The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.
18. The Secretary of State has also considered the Inspector's comments at IR75-82 on the Unilateral Undertaking and agrees with him at IR79 that the obligations in the Undertaking meet the tests in CIL regulation 122 and may be taken into account in assessing this appeal. However, the Secretary of State does not consider that the terms of the Undertaking would overcome his reasons for dismissing the appeal.

The planning balance

19. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development and in such circumstances permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The Secretary of State considers that the harm due to the erosion of the Green Gap separating Wistaston and Nantwich is contrary to the development plan. This weighs heavily against the proposals. This along with the lesser degree of landscape harm and the loss of BMV agricultural land add further moderate weight against the proposal. In addition, the Secretary of State considers that until such time as the Green Gap/Green Belt issue is resolved through the CELP process, it would be premature to undermine that process by releasing this site for housing. In terms of benefits, the Secretary of State concludes that the provision of new homes, including affordable housing, would be an important social and economic

benefit and in the context of a lack of 5 year supply of housing attracts significant weight in its favour.

Overall Conclusions

20. The Secretary of State considers that the lack of 5 year housing land supply and the contribution it would make to increasing supply weights significantly in favour of the appeal. However, the Secretary of State considers that the adverse impacts of the appeal proposal especially in terms of the conflict with policy NE4 and the permanent loss of this Green Gap in advance of the conclusion of the CELP would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Formal Decision

21. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a residential development of up to 300 dwellings, highway works, public open space and associated works in accordance with application 13/2649N, at land at Church Lane, Wistaston, Crewe, Cheshire.

Right to challenge the decision

22. 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.

23. A copy of this letter has been sent to Cheshire East Council. Notification has been sent to all other parties who asked to be informed.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by John Chase MCD Dip Arch RIBA MRTPI

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

Date: 27 November 2014

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEAL BY

GLADMAN DEVELOPMENTS LTD

Inquiry held on 5-8, 27-29 August 2014

Land at Church Lane, Wistaston, Crewe, Cheshire

File Ref: APP/R0660/A/14/2213505

File Ref: APP/R0660/A/14/2213505

Land at Church Lane, Wistaston, Crewe, 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 Gladman Developments Ltd against the decision of Cheshire East Council.
- The application Ref 13/2649N, dated 25 June 2013, was refused by notice dated 13 January 2014.
- The development proposed is for residential development of up to 300 dwellings, highway works, public open space and associated works.

Summary of Recommendation: That the Appeal be allowed subject to the conditions set out in the annex to this report

Procedural Matters

1. The Inquiry took place over seven days from 5-8 and 27-29 August 2014, with unaccompanied and accompanied visits on 4 and 28 August respectively.
2. The application was submitted in outline, with all matters reserved except access. It was accompanied by a site location plan and site access drawing, along with illustrative plans showing footpaths, landscape proposals, and a development framework (GDL 6). The submission included a range of reports and supporting documents which are included at GDL 1, and amendments arising during the application process are included at GDL 2.
3. The appellants submitted an Environmental Statement in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (GDL 1.2-1.4) and the Inspectorate's review of the Statement is contained at document B 2. The environmental implications of the development are considered within this appeal report.
4. A Unilateral Undertaking, in accordance with Section 106 of the Town and Country Planning Act 1990, is enclosed at A 25. It includes obligations for the provision and maintenance of open space on the site, and contributions towards highways infrastructure.
5. The Interim Views of the Inspector of the Cheshire East Local Plan were issued shortly before the completion of this report. Because of the late timescale, and because the parties would be in a position to comment to the Secretary of State before the appeal is determined, further representations have not been sought at this stage, and no account has been taken of the Local Plan Inspector's views in compiling this recommendation.
6. The appeal was recovered for determination by the Secretary of State because it involves proposals for residential development of over 150 units and on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.

Background

The Site and Surroundings

7. The appeal site is agricultural pasture land on the northern side of residential development in Church Lane, Wistaston, a suburb of Crewe. It has a site area of 13.88ha, and is a single, undivided, field. Wistaston Brook runs along the north eastern boundary, adjacent to 'Joey the Swan' public park, beyond which is residential development in the vicinity of Wistaston Green. The south western portion of the site abuts school playing fields and a bowling green and tennis club, whilst to the west and north is open countryside. There are few trees on the main part of the site, which has a gently domed profile before falling to the line of the stream, but the western boundary has a dense tree and hedge line, and there is mature vegetation alongside the Wistaston Brook. The northern part of the site is largely open, being separated from the adjoining countryside by a wire fence, and the southern boundary is bordered by the rear gardens of the houses in Church Lane. The extent of the appeal site is shown on the plan at GDL 1.7 and there are photographs of the site and its surroundings in Mr Ryder's appendices (POE 2, Appendix 2, Fig 06 1-7) and in the appellants' Landscape and Visual Impact Assessment (GDL 1.18, Figs 5-12).
8. The open countryside to the north and west of the site falls within the National Character Area 61, the Shropshire, Cheshire and Staffordshire Plain (GDL 1.18, page 11), described as gently rolling, with strong field patterns. In this respect, the site is unusual in being a relatively large, open area, whereas the adjoining fields are generally small and irregularly shaped, enclosed by hedges and trees. The wider setting is apparent from the map extract at GDL 1.18, Fig 1 and from the aerial photograph at POE 11, Appendix 2, Fig 1. The area is well served by public footpaths, two of which (FP1 and FP2) cross the appeal site, linking the countryside to the north with Church Lane.

Planning Policy

The Adopted Local Plan

9. The Replacement Local Plan 2011 (CD 10) was adopted by the former constituent authority, the Borough of Crewe and Nantwich, in 2005, with a saving direction in 2008 (CD 11). The policies with most relevance to this appeal are NE2, NE4 and NE12.
10. NE2 states that all land outside the settlement boundary will be treated as open countryside, within which only certain specified uses appropriate to a rural area will be allowed. The appeal site is not within the Local Plan settlement boundary, and the residential proposal would not fall within the permitted uses.
11. The site lies in the Wistaston/Nantwich Green Gap, as defined in Policy NE4 and shown on the Local Plan proposals map (extract at POE 3, Appendix 5). Approval will not be given for development which would erode the physical gaps between built up areas, or adversely affect the visual character of the landscape. Exceptions will be allowed only where it can be demonstrated that there are no suitable alternative locations available.
12. Policy NE12 resists the loss of the Best and Most Versatile (BMV) agricultural land unless the need for the development is supported in the Local Plan, or it can be shown that the use cannot be accommodated on land of a lower

agricultural value, or there are other sustainability considerations favouring the use of the land. The majority of the appeal site is BMV land.

The Emerging Local Plan (ELP)

13. Following a series of options papers from 2010, the draft Core Strategy received public consultation in autumn 2013, with the submission version being sent to the Secretary of State in May 2014 (CD 15). The Examination is expected to take place late in 2014. In the meantime, the draft site allocation proposals will be published for consultation in autumn 2014 with the Development Plan Document likely to be available in Summer 2015.
14. The Open Countryside policy, PG5, reiterates the provisions of Local Plan Policy NE2, and Policy PG3 will introduce a new area of Green Belt to maintain the gap between Crewe and Nantwich. Figure 8.2 identifies the area of search for this new Green Belt, which includes the appeal site. The case for the additional Green Belt is set out in the Cheshire East Green Belt and Strategic Open Gap Study (CD 91), which formed part of the evidence base for the ELP. The draft Crewe Town Strategy endorsed the need to maintain the separation of Crewe and Nantwich, but included the appeal land as part of a larger potential development location ('Site C', CD 89, pages 24 and 25), to which the public consultation produced strong opposition.
15. ELP Policy PG1 envisages that sufficient land will be provided to meet the full objectively assessed need of 27000 new dwellings between 2010 and 2030 (an average of 1350 dwellings per annum (dpa)), with a phased delivery ranging from 1200 dpa initially to 1500 dpa towards the end of the period. Crewe and Macclesfield are identified as the Principal Towns, in which significant development will be encouraged (Policy PG2).

National Policy

16. Reference has been made to the provisions of the National Planning Policy Framework (NPPF), including: Section 6 'Delivering a wide choice of high quality homes' and its impact on decision taking in para 14; the need to achieve sustainable development and the nature of its three roles in paras 6 and 7; Section 11 'Conserving and enhancing the natural environment', along with the need to identify land where development would be inappropriate because of environmental significance (para 157); the weight to be given to existing and emerging development plans in paras 215 and 216; the need to take account of the economic and other benefits of BMV land in para 112; and the core principles in para 17, including the requirement to objectively identify and deliver the necessary homes, and to recognise the intrinsic character and beauty of the countryside. The advice set out in the Planning Practice Guidance (PPG) has also been referred to, including within the sections entitled 'Housing and economic development needs assessments' and 'Housing and economic land availability assessment'.

The Proposals

17. It is intended to create a new road entrance from Church Lane, at the eastern end of the site, to serve an estate road system. The illustrative plans (GDL 6) indicate that the existing footpaths FP1 and FP2 would be retained, with the introduction of further footpaths, including on the western perimeter of the site.

The north eastern portion of the land, between Footpath FP2 and Wistaston brook, would be retained as an open area, and there would be a landscaped buffer zone around the northern and western edges, separating the development from the countryside on these sides. A landscaped strip on either side of footpath FP1 is indicated. It is envisaged that the site would accommodate up to 300 units, from 2 to 5 bedrooms, at a maximum of 'two and a half' storeys. 30% of the dwellings would be affordable homes.

The Council's Reasons for Refusal

18. The planning application was refused on three grounds, which are set out in the decision document at GDL 6. In summary, the Council acknowledged that they could not show a five year housing supply, but the benefits of the scheme would be significantly and demonstrably outweighed by the harm arising with respect to the erosion of the Green Gap (Local Plan Policy NE4), the loss of open countryside (Policy NE2), and the loss of the best and most versatile agricultural land (Policy NE12).
19. Following publication of the Council's 'Five Year Housing Land Supply Position Statement' (CD 23) in early 2014, the Council concluded that it could show a five year supply and this is now their position in respect of this appeal. The relevant proof of evidence (POE 1) indicated that the authority could meet this requirement against an Objectively Assessed Need for 1150 dwellings per annum, based on targets in the former Regional Strategy, but this was amended to a figure of 1180 dpa shortly before the Inquiry (POE 15) based on household projections, with an allowance for demographic change and jobs growth.
20. Whilst the Officers' Report (GDL 4) indicated that the landscape impact of the development would not be significant, this opinion was changed in early July 2014, following a further assessment and a resolution of the planning committee. The adverse effect on the visual character of the landscape, contrary to Policy NE4, was added to the reasons for refusal.

Other Agreed Facts

21. The Statement of Common Ground is contained at document C 1. Amongst the matters agreed, the site is sustainably located, meeting the desired distances for 11 of 15 amenities when assessed against the North West Development Agency toolkit, and failing the toolkit to any significant degree in only two cases. It is also indicated that the parties agree that the proposal constitutes sustainable development within the definition in the NPPF, although this appears to run counter to the argument made at the Inquiry, which is summarised in the 'Case for the Council', below. It is accepted that there is a need for 256 affordable dwellings per annum in the Crewe sub-area and that the provision on this site would be a material benefit. The supply of market housing is also an advantage of the scheme, to be assessed in the planning balance.
22. The highway proposals meet the guidance in 'Manual for Streets' and the impact of the development on the road system would be mitigated by the intended obligations. It is also agreed that it would be possible to provide adequate distances from existing properties to maintain residential amenity, and that an acceptable level of design could be negotiated at the reserved matters stage. The provision of open space would exceed minimum requirements, and the

development would not create an undue flood risk. There is sufficient capacity in the education system to meet the needs arising out of the new housing.

The Cases of the Parties

23. The principal points of the main parties' cases, and their respective positions about the legal framework on which the appeal should be determined, are set out in their closing statements, which are summarised below and may be viewed at documents A 24 and C 17. An outline of third party representations follows, with the text of oral submissions to the Inquiry at T 1-7.

The Case for the Council

24. The site is within the Wistaston-Nantwich Green Gap and, by virtue of Local Plan Policy NE4, is generally not to be built upon. Whether the proposals would breach this policy is in dispute, but there is agreement that they would be contrary to Policy NE2, which protects open countryside from development, and Policy NE12, which seeks to retain the Best and Most Versatile (BMV) agricultural land.
25. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act, 2004, the conflict with development plan policy requires the appeal to be dismissed unless material considerations indicate otherwise. For this reason the Council consider that the main issue should be along the lines of: "Whether material considerations, and in particular if it is concluded that the Council have not demonstrated a five year housing land supply, indicate that the appeal should be allowed despite the breach of development plan policy".
26. The appellants have relied on a large number of previous appeal decisions in presenting their case. However, the meaning of planning policy is a matter of law; many of the decisions are wrong in their interpretation of policy, especially where the decision offends established case law; and there is no legal principle which requires the Secretary of State to construe a policy in a legally incorrect manner because that is the way it has been construed in previous decisions.
27. There is a difference between the parties as to whether Local Plan Policy NE4 should be construed only as protecting gaps between the named settlements (in this case Nantwich and Wistaston) or whether, as the Council argue, the policy is intended to more generally preserve gaps between built up areas, as indicated in the supporting text. If the appellants were correct on this point, then much of their evidence concerning the width of the gaps would be irrelevant, as they describe the distance between Nantwich and Willaston, which is not a named gap. In any event, if 300 homes were developed on the site then it would cease to be outside the built up area and any review of the Local Plan would remove it from the Green Gap. As such, the gap would have become eroded, clearly contrary to Policy NE4. There is no doubt that the development would not accord with the development plan in this respect.
28. Nor would it comply with the alternative criterion, concerning the effect on the visual character of the landscape. However well designed, an estate of 300 houses could do nothing other than harm the present open, agricultural character of the site. In this respect, the Council's evidence, which focuses on the impact on walkers using the footpaths crossing the site and on visitors to the adjoining park, should be preferred to that of the appellants', which relies

on the assumption that Policy NE4 refers to the effect on the landscape of the Green Gap as a whole. This interpretation cannot be right: it is not what the policy says; it would be nearly impossible to prove; and it does not make sense. Nor would it be correct to devalue the quality of the landscape by terming it as unremarkable. It is clearly treasured by the local residents, as given in evidence to the Inquiry, and its proximity to a built up area increases rather than diminishes its value. The policy is concerned with protecting the visual quality of the landscape, not the design and layout of housing estates, and the scheme would be in breach of it. The loss of the open and unbuilt character of the site would represent permanent harm.

29. It is important to assess the extent of the inconsistency with the development plan when establishing the weight of other considerations necessary to overcome it¹. It is obvious that building 300 houses on open countryside in the Green Gap would be a major inconsistency with Policies NE2 and NE4, compounded by the breach of the BMV land policy, NE12, as well as harm to the visual character of the landscape referred to in the second part of Policy NE4. The statutory duty under Section 38(6) is not a simple weighing process of pluses and minuses, but whether "other material considerations were strong enough to outweigh the statutory presumption in favour of the plan – considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given it..." (Bloor Homes Judgement, POE 3, appendix 11, para 57).
30. Turning to the nature of the material considerations, if it is accepted that the Council are able to demonstrate a five year housing supply then no other considerations come close to indicating that the scheme should be allowed despite the breach of the development plan. The appellants' arguments to the contrary are rejected: the requirement of the NPPF to significantly boost the supply of housing would be satisfied under the explicit terms of para 47; and, as set out later, the relevant policies are consistent with the NPPF.
31. In showing that they can demonstrate a five year housing supply, the Council's Full Objectively Assessed Need (FOAN) is 1180 dwellings per annum (not the 1350 dpa in the emerging Local Plan, which is a 'policy on' figure). The difference between this and the appellants' estimate of 2050 dpa is 870 dpa. The appellants' witness gave three reasons for this difference: 1) 300 dpa is accounted for by the use of 2008 household formation rates, however this is contrary to the approach set out in PPG paras 3-030 and 2a-016; 2) A further 300 dpa arises out of assuming greater employment increases than the emerging Local Plan, but where to pitch jobs growth is a 'policy on' decision, and 3) approximately 200 dpa comes from different economic activity rate assumptions, and in particular older people working on, but the Council's projections are justified in the submission to the emerging Local Plan Examination. The FOAN then works through to give a backlog figure, which varies between 2119 on the Council's FOAN estimate, and 4300 on the appellants'.

¹ In accordance with principle established in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13

32. Whether the 5% or 20% buffer set out in NPPF para 47 applies turns on whether there has been a record of persistent under delivery. The past record is shown in Tables 1 and 2 of appendix 7 of Mr Stock's rebuttal proof (POE 15). PPG para 3-035 indicates that a longer term view is to be taken, embodying peaks and troughs, and the effect of any previous housing moratorium. In this instance, the housing moratorium, which was lifted in 2008, left relatively few planning permissions and this, along with the recession, resulted in a low rate of building thereafter. The appellants acknowledge (Nicol proof (POE 4) para 4.12) that a 20 year period covers a range of economic phases. On this basis, the Council consider that a 5% buffer should apply.
33. Taking these factors together, the competing positions are a 5 year requirement for 8420 dwellings on the Council's figures, and 17460 on the appellants'.
34. On the supply side, the Council's figure of land for 7167 dwellings compares with the appellants' 9652, a difference of 2035. The reasons for the disparity are argued on a site by site basis in document A 14, with lead-in times being the main source of the difference. Mr Stock's proof (POE 1) page 15 and paras 6.6-6.9 of his rebuttal (POE 15) set out the Council's case on lead in times.
35. It is therefore the Council's contention that they can presently demonstrate a supply of 5.73 years. Since the publication of its position statement in February 2014 (CD 23) the Council have argued at a succession of appeals that it has a 5 year housing supply. In each instance, the decisions received have found against the Council's case, but with no consistency of what base figure to use, what backlog, what buffer to use, what the overall requirement is, what the supply is, whether homes for students and the elderly should be included, and thus how many years supply can be demonstrated. The inconsistencies are illustrated in document A 18. The shortfall, where identified, has ranged from substantial to just short. This is important, as the larger the shortfall, the greater weight the point should carry as a material consideration.
36. The concern about inconsistency led the then Planning Minister (Mr Boles) to write to the Inspector of the most recent Inquiry (Gresty Road, Crewe) to give special attention to the subject and to report on his considered view on the matter. The Secretary of State will receive a number of reports from Inspectors on recent recovered appeals in Cheshire East and there is a risk that their conclusions will be inconsistent. The Council's case on this point is more fully set out in paras 29-32 of the Closing Submissions (C 17).
37. It is the appellants' contention that, if the Council cannot demonstrate a 5 year supply, then the provisions of para 14 of the NPPF apply and the appeal should be allowed unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This gives rise to several issues in law. The presumption in para 14 potentially applies where the development plan is absent or silent (see Bloor Homes case, paras 44-58) but neither are relevant here as Policies NE2, NE4 and NE12 are present by being 'saved' and are not silent on the matters relevant to this case. Policy NE2 is consistent with the core planning principle in para 17 of the NPPF concerning recognition of the intrinsic character and beauty of the countryside, and it would be a controversial decision if a policy seeking to protect the open countryside was found to be inconsistent with national policy. Local Plan Policy NE12, with respect to BMV land, is a close fit with NPPF para 112; even if there is a variation in wording,

the underlying purpose is the same. Nor does a policy have to contain a 'cost benefit' approach to be consistent with the NPPF (see Bloor Homes judgement, paras 181 and 186).

38. In the event of there not being a five year housing supply, then para 49 of the NPPF indicates that relevant policies for the supply of housing should be considered out of date. However, that does not mean that if one policy falls into this category then all other development plan policies are neutered. They continue to apply. In accordance with the case law established in Barwood (CD 58, paras 38-47) neither Policy NE4 nor NE12 are policies for the supply of housing and they are therefore unaffected by the presumption in NPPF para 14. To the extent that the Moorfields and Rope Lane decision letters (CD 108 and CD 78) sided with the appellants' view, they are clearly wrong in the context of this judgement. It is untenable to consider that every policy which might have the effect of inhibiting housing development (eg Green Belt) would be characterised as a housing supply policy.
39. The Council accept that open countryside Policy NE2, can be characterised as relevant to the supply of housing, because of its geographical extent, and therefore it would seem that its application would be moderated by the presumption in NPPF para 14. However, this conclusion is subject to the point established in the William Davis case (CD 86, para 37), where the presumption only applies to a scheme which has been found to be sustainable. The recent decision in the Dartford case (C 3, paras 54 and 55) does not disagree with this principle, indicating that the question of whether a scheme is sustainable needs to be answered at some point in the analysis, even if not necessarily at the outset. In this respect, the Council consider that the assessment of sustainability needs to be taken in an evenly balanced fashion, having regard to the 3 roles set out in NPPF para 7, rather than pre-tilted in favour of granting permission, as might be construed from the second part of NPPF para 14.
40. Building 300 homes in the Green Gap, in open countryside, and on BMV land is not sustainable and the benefits of a supply of new housing do not make it so. On the authority of the Bloor Homes Judgement (POE 3, appendix 11, paras 179-180), development which would damage the function of a green gap style of policy is not sustainable in terms of the NPPF.
41. With respect to the other material considerations, PPG para 21b-012 indicates that the New Homes Bonus is not a material consideration. As for the benefit of additional market and affordable housing, the degree of weight is proportionate to the contribution made to addressing the underlying issue. The amount of housing that would be likely to come forward from the site within 5 years would be about 0.6% of the appellants' estimate of the overall requirement, and the affordable housing only 0.4% the identified need. It is obvious that this would be an insignificant contribution which could not justify significant breaches of the development plan.
42. It is also the case that, regardless of how many or few planning permissions have been granted over the years, the market has shown itself incapable of providing the new houses said to be required, whether in good or bad economic times. It is a simplistic notion to suggest that granting ever more planning permissions will necessarily work through to lowering the price of new homes. As accepted by the appellants' witness, Mr Venning, it will take a change of

mind-set by the house-builders to unlock the problem and turn paper permissions into actual homes. This must moderate the significance of the benefit of permitting new homes here.

43. If it were concluded that a five year housing supply has not been demonstrated, and to a greater or lesser extent the presumption in favour of development in NPPF para 14 applies, then it is the Council's case that the harm arising out of the scheme would significantly and demonstrably outweigh the benefits. However, it is their primary case that, in applying the law to the circumstances of the appeal, this presumption does not arise, and it is simply a question of whether any shortfall in housing supply is a matter of sufficient weight to override the significant breach of development plan policies, in the context of the statutory priority given to deciding cases in accordance with the development plan. The Council say it is not.

The Case for the Appellants

Development Plan Policy

44. The Council's reasons for refusal are based on development plan policies which are out of date and not consistent with the NPPF. The Local Plan was adopted in 2005 with housing policies addressing the requirement to 2011, which in turn related to data gathered in the preparation of the Structure Plan, which was approved in 1999. The settlement boundaries were inextricably linked with this housing requirement, any review to accommodate post 2011 development needs would have necessitated incursions into open countryside. Even in 2003, when the Local Plan Inspector prepared his report, there was an expectation that there would be an immediate review following adoption (CD 9, para 71.2.4), which did not occur. Little weight should be given to policies which are time expired, consistent with the conclusions of the Honeybourne appeal decision (CD 34).
45. Policies NE2 and RES5 were prepared in the context of PPS7 that safeguarded countryside for its own sake. The current position, as set out in para 17 of the NPPF, requires that the planning system should recognise the intrinsic character and beauty of the countryside. There is a distinction between these objectives, with the NPPF seeking decisions based on qualitative and informed judgements rather than blanket designations. This is exemplified by the omission of open countryside from the list of examples where development should be restricted in footnote 9 of the NPPF. Whilst para 109 refers to the protection of valued landscapes, these are only capable of being identified on an objective and rational basis. Not every landscape can be valued in these terms, and it is clear that para 113 requires distinctions to be made in the hierarchy of designated sites and the protection afforded. The assertion that this advice relates only to ecological considerations is not consistent with the hierarchical approach of paras 114 (heritage coasts) and 115 (AONB). The appellants' position is in accordance with that taken by the Inspector in the recent Crewe Road, Haslington appeal (A 10, para 10), and in the decision for a site in Burbage, Leicestershire (CD 75, para 21).
46. In any event, para 49 of the NPPF makes clear that housing applications are subject to the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up to date if the Council are unable to show a five year supply of housing land as, in the

appellants' view, is the case here. The Council recognise that in these circumstances Local Plan Policies NE2 and RES5 would be out of date in terms of their geographical extent.

47. Policy NE12 creates a prohibition against the development of the Best and Most Versatile (BMV) agricultural land, which is not consistent with the wording of NPPF para 112, where the quality of the land is a matter to be taken into account in an overall judgement. If the Council are to meet their housing requirement then it is inevitable that BMV land will be needed for development, as is reflected by the Council's own allocation of strategic sites, five of which would lead to the loss of 130ha. It is also likely that the term 'significant' used in NPPF para 112 applies to larger sites, such as the 20ha threshold over which DEFRA must be consulted. Therefore, whilst the loss of BMV land must be taken into account in the planning balance, it carries little weight in the context of this proposal. This approach is consistent with that taken in a number of recent appeals in the area (CD 105, paras 57-58; CD 107, paras 99-100; A 10) and with the Council officers' own advice to their committee in this case (GDL 4, page 136).
48. The emerging Local Plan is subject to a considerable number of objections so that, in terms of NPPF para 216, it can be afforded little weight. A similar conclusion is reached in other recent appeal decisions (CD 105, para 20; CD 109, para 8). The implications of Local Plan Policy NE4 are dealt with below.

The Objectively Assessed Need for Housing Development

49. NPPF para 47 sets out the requirement to establish the Objectively Assessed Need (OAN) for housing in the area, which should take account of relevant market and economic indicators (paras 17 and 158). The case law set out in Hunston (CD 56, para 26) and Barwood (CD 58, paras 30-32) makes clear that, in the absence of an up to date Local Plan, the OAN cannot be based on figures constrained by the policies of a revoked Regional Strategy. Whilst the Council rely on the descriptions of household projections, full objectively assessed need, and housing requirement set out in para 37 of the recent Gallagher judgement (CD 87, paras 36-37), it is clear that these were explanations, not legal definitions, of the terms used in the case, and that it would be a mistake to equate household projections with the OAN.
50. The PPG recognises that household projections are only a starting point to establish housing need, and that they do not reflect future government policies, changing economic circumstances, and other factors affecting demographic behaviour. The Council's figure of 1180 dpa in the present case is a household projection, not an OAN. It is necessary to have regard to the consequences of the past under-delivery of housing and the degree to which household formation rates were constrained by supply. The PPG makes clear that employment trends must be taken into account, as should the need to make economic growth assumptions, and to have regard to market signals, including affordability. The OAN is not restricted to the outturn of household projections, and the Droitwich decision (A 11, para 8.45) makes clear that matters such as migration, economic considerations, second homes and vacancies should be taken into account. In the case of Cheshire East, Mr Nicol's proof (POE 4, tables 4.5 and 4.7) shows that there was a 0.7% pa average rate of employment

growth between 1991 and 2011, outperforming other areas in the NW and UK. The area has limited spare capacity to allow future employment growth.

51. There are four possible candidates for establishing the OAN in the current appeal: the previous RS requirement, the Council's figure of 1180 dpa, the emerging Local Plan requirement, and the appellants' assessment. Dealing with these in turn: the Council have abandoned its reliance on the RS figure of 1150 dpa, which has been found unsatisfactory in a number of recent appeals, and which is a clearly constrained figure in light of the RS Technical Appendix, which assesses a requirement in the range 1803-2286 dpa (POE 4, Table 5.1).
52. The Council's preferred OAN in this case, 1180 dpa, is limited to the household projections component of the requirement, and is recognised in their own Population Projections and Forecast (CD 24) as a starting point for assessing housing need. The figure of 1350 dpa, adopted in the emerging Local Plan, is expressed as a full OAN, taking account of demographic requirements and plausible economic growth, consistent with the PPG and unconstrained by any local delivery or environmental factors (CD 24, para 2.14). A number of recent appeal decisions (CD 105; CD 108; A 10) have deemed it unlikely that 1350 dpa would be too high a figure. Whilst the Council have given little weight to the emerging Local Plan in respect of this figure, they do seek to rely on strategic sites put forward in the same document for establishing a future supply, as set out below.
53. In any event, the appellants do not accept that 1350 dpa is a 'policy off' figure. It is clear that it takes account of constraints arising out of the capacity of the area to accommodate growth (CD 15, para 8.18/73). In preparing an alternative OAN, the appellants' approach is consistent with the advice of the NPPF and PPG by taking account of demographic requirements, future economic needs and employment growth, market signals, (particularly with respect to affordability), and housing need across the relevant housing market area. The resulting OAN of 2050 dpa uses the 2011 base projections of household formation rates to 2021, but assumes a 50% return to the more buoyant 2008 levels by 2030. Employment is anticipated to rise at the relatively conservative rate of 0.6% pa. This higher OAN is supported by market signals, including a poor affordability ratio and the 1400 dpa need for affordable homes identified in the 2013 Strategic Housing Market Assessment (SHMA).

Whether the Council can Demonstrate a 5 Year Supply

54. Since December 2013, and the issue of the Five Year Housing Land Supply Position Statement (CD 23), the Council have maintained that it can demonstrate a five year supply of deliverable sites, but all the appeals which have expressly addressed this point have reached the opposite conclusion. In only one recent case has the Inspector considered that a 5% buffer is appropriate (CD 103). The remainder, including the Secretary of State in the Middlewich Road, Sandbach appeal (CD 42, para 26), consider that a 20% buffer better reflects the NPPF objective to boost significantly the supply of housing.
55. It is the Council's contention that they can show the availability of land for 9652 dwellings, giving a supply of 5.73 years and 5.02 years with 5 and 20% buffers respectively. The appellants consider that the supply is 7617. A key difference between the parties is the application of lead-in times and build rates. The

appellants have provided robust estimates of lead-in times based on the 2013 Strategic Housing Land Availability Assessment and which, on the evidence of actual performance, tend to underestimate the time necessary to achieve completions. By comparison, the Council have 'cherry picked' those few instances where faster lead-in times have been achieved as a means of justifying shorter average timescales. A range of recent appeals have determined that the Council's rates are over optimistic, and their approach has not been endorsed by the Housing Market Partnership (CD 30). The difference over build rates is more modest, with the appellants adjusting the rates for three sites where there is not substantial evidence that a number of developers will be working the site.

56. About 18% of the proposed sites are strategic allocations set out in the emerging Local Plan and are subject to objections. 11 of these sites do not have planning permission, and the Council's lead-in times are unrealistic. The difference between the parties on this aspect amounts to nearly 1000 dwellings. In addition, a number of sites are awaiting completion of Section 106 undertakings and, again, the appellants take a different view from the Council on the speed at which these developments are likely to progress. Sites with historic planning permission, but which remain in active existing use, are not available now and have been excluded.
57. The appellants' estimate of the number of available sites exceeds the level assessed in some recent appeals, and would result in a 3.2 years (20% buffer) or 3.7 years (5% buffer) supply when assessed against the emerging Local Plan requirement of 1350 dpa, and 2.2 years (20% buffer) or 2.5 years (5% buffer) when set against the appellants' own calculation of OAN.

The Green Gap

58. The site falls in the Wistaston/Nantwich Green Gap designated in Local Plan Policy NE4, within which development that would erode the physical gaps between built up areas is not permitted unless it can be demonstrated that no suitable alternative locations are available. There is reason to consider that this policy is relevant to the supply of housing in terms of NPPF para 49, and therefore carries little weight in the absence of a five year supply. This position is supported by an appeal decision at Rope Lane, Shavington (CD 78, paras 10 and 20) and in the Council's own committee reports on proposals for two housing schemes in the Green Gap in Willaston (CD 94, page 25; CD 95, page 11). The appeal decision at Moorfields, Willaston (CD 108, paras 34 and 35) came to a similar conclusion, despite post-dating the court ruling in Barwood (CD 58), which did not amount to a general proposition that all green gap policies should fall outside the scope of NPPF para 49. In this case, Policies NE4 and NE2 are clearly associated, and relate to development needs up to 2011. The Local Plan Inspector in 2003 recognised that adjustment of the Green Gap boundaries might be necessary if it were not otherwise possible to meet housing needs (CD 9). It was also noted in an appeal in Cheshire West (CD 3.24, page 77 onwards) that the NPPF only refers to protection of gaps in the context of Green Belt policy.
59. The appellants do not accept the Council's argument that the object of policy NE4 is to protect gaps between built up areas generally. It is clear from its wording that it is intended to apply to the separation of Wistaston and

Nantwich. To conclude otherwise would be to require the maintenance of a gap between two parts of Wistaston, which is clearly not the intention. In any event, the wording of the policy is not an absolute prohibition on development, but refers to the need to avoid the erosion of the gap in the context of maintaining the separation of Crewe (of which Wistaston is a part) and Nantwich. In this case, the gap is at its widest, and there would be little change in the perception of the separation of the settlements.

Impact on Landscape

60. The reason for refusal relates to an alleged conflict with the requirement in Local Plan Policy NE4 that development in the Green Gap should not adversely affect the visual character of the landscape. This is contrary to the conclusion of the committee report (GDL 4, page 139), which summarised the views of the Council's Principal Landscape Officer (GDL 4, page 124), and to the members express rejection of a reason for refusal on landscape grounds (GDL 5, page 6). The Council's landscape witness agreed, in cross examination, that the site has never been subject to a policy designation recognising its landscape or visual value. It is not a protected landscape in terms of NPPF para 113, being a large, open field of unremarkable character.
61. Any assessment should take account of the context of the policy, and that it must be demonstrated that there is harm to the Green Gap, and not just the site itself. In this respect, the evidence shows that the site is not significantly visible from the surrounding countryside, and the development would lead to some benefits in terms of improved green infrastructure and connectivity to the adjoining park. The Council's evidence does not deal with the effect on the wider landscape, and overstates the impact on users of the footpaths and children in the neighbouring school. Therefore, whilst the appellants accept that there would be an initially adverse effect, as would apply to the development of any greenfield site, this would be of local extent and not for the Green Gap as a whole.

Consistency of Decision Making

62. The appellants do not accept the Council's allegation that recent appeal decisions have been inconsistent. The Council themselves have changed position, and Inspectors have been obliged to base their decisions on the evidence presented. There is consistency on the weight to be given to the Local Plan, policy compliance with the NPPF, lead-in times, and the absence of a demonstrable 5 year supply.

Benefits of the Proposal

63. NPPF para 14 defines what the presumption in favour of sustainable development means for decision taking, being the process described in the remainder of that paragraph, rather than a separate, prior test of sustainability as inferred by the William Davis case (CD 86). This is supported by the conclusions of the Secretary of State in the Droitwich appeals (POE 20, Appendix 7, para 12) and their reference to Dartford Borough Council v SOS which rejects the notion of a sequential approach, provided there is an eventual judgement on sustainability.

64. Although the Statement of Common Ground (para 6.2.16) confirms that the proposal constitutes a sustainable form of development within the definition in the NPPF, the Council also consider it to be unsustainable in terms of its impact on openness, open countryside, the Green Gap, and the loss of BMV land. If this is the case, then sites proposed for development within the emerging Local Plan would be equally unsustainable. The recent appeal at Crewe Road, Haslington (A 10, para 25) gave weight to the economic benefits of new residential development, reflecting a desperate need for good quality family housing. In the present case, the local economy would benefit from £35m building expenditure and 125 FTE construction jobs, increased household spending of £2.5m per annum supporting 30 jobs, at least 430 economically active new residents, and a New Homes Bonus (NHB) of £2.8m. In the latter case, the NHB falls to be taken into account as a material finance consideration in terms of Section 70(2)(b) of the Town and Country Planning Act, which cannot be outweighed by any contrary advice in the PPG. As in the Haslington case (A 10) there are adequate grounds to conclude that the economic and social benefits of the proposal create a balance in favour of treating it as sustainable development.
65. Even if a five year supply could be demonstrated, the increased supply of market and affordable dwellings would comply with the NPPF objective to boost significantly the supply of housing, and the other aspects of the decision process in NPPF para 14 would apply.
66. There is a pre-existing need for affordable housing, not that arising because of the development, and that need reflects a progressively worsening situation in the District, which the housing proposals in the emerging Local Plan would not be capable of overcoming. It is also the case that the Council have been consistently unable to achieve their 30% objective of affordable housing, so that significant weight should be given to the benefit of delivery of a full complement on this site. There is a housing crisis which requires to be recognised and addressed.

The Case for the Third Parties

Oral Representations at the Inquiry

67. The following parties spoke against the appeal: Ward Councillors Wetherill and Simon, Parish Councillor Bond, Mr Wainright on behalf of the 'Hands off Wistaston Group', and local residents Mr Roberts, Ms Brydon and Mr Alcock. The summary below identifies the principal points made, but the full text of the speeches is contained at T 1 to T 7.
68. In addition to the matters raised by the Council, the speakers emphasised the contribution of the appeal site to the separate identity and life of Wistaston; both physically, by maintaining the separation from other urban areas, and its role in the health and welfare of the local community by providing space for walking and recreation and by maintaining a connection with the countryside. Speakers noted that other open land in the area had been progressively lost to urban sprawl, so that this field represented one of the last green spaces remaining. There would be a permanent loss of views of a high quality landscape, including from the adjoining 'Joey the Swan' park, with harm to biodiversity and local wildlife. The development would not only lead to the loss of fertile land, but diminish the connection with the agricultural heritage of the

area. Overall, the land is highly valued by the residents of Wistaston, as is shown by the extent of objections to the planning application.

69. A number of parties drew attention to the potential loss of road safety arising out of additional traffic generated by the new housing, noting, amongst other matters, that the entrance would be very close to the dangerous and congested road narrowing over the bridges in Church Lane. This road is already heavily used, acting as a rat run, and vibration from vehicles endangers the structure of historic properties in the area. It is also the case that local infrastructure, including medical services and schools, would be unable to cope with the additional demand. There have been a large number of housing developments permitted in the locality, and more proposed, which combine to harm the environment and the quality of life for residents.

Written Representations

70. Letters of objection were received from Edward Timpson MP, Wistaston Parish Council, Wistaston Conservation Group, the HIMOR Group, the 'Hands off Wistaston' Group, and 1290 local residents, along with a petition signed by 1938 persons in response to the planning application, and about 165 letters sent to the Planning Inspectorate. In addition to the points set out above, the representations included the following concerns: there are a large number of houses already on the market in the area; brownfield sites should be used first; this proposal would set a precedent for similar development; the junction arrangements would remove a vital footpath; construction would cause noise and dust disturbance of residents and highway danger; traffic congestion would rise on other parts of the road system; there would be an increased risk of pollution of Wistaston Brook and the river Weaver; the development would lead to the loss of trees; the site would meet the criteria of local green space; there is a flooding risk; the area is poorly served by buses; and the sewerage and electricity infrastructure is insufficient for the new development.

Conditions and Obligations

Conditions

71. The draft conditions jointly recommended by the main parties, to apply if the appeal should be allowed, are included at document C 11, with additions at document C 16. They are assessed in relation to the advice contained in the Planning Practice Guidance, and the discussion at the Inquiry, and a proposed revised list is enclosed at Annex 3. The numbering below refers to the conditions on that list.
72. The permitted drawings are specified for the avoidance of doubt and in the interests of proper planning (4), and the reserved matters application should be in general conformity with the schematic drawings and details included with the application (5), which arose out of prior discussions with the Council, and which are intended to mitigate any harm arising out of the impact of the development on its surroundings. It is likely that a site of this size would be developed in phases, and therefore a phasing plan is needed (6) for the proper implementation of reserved matters applications. Details of ground levels (7) and surface water drainage (8) are necessary to avoid the risk of flooding, and a 'Phase II' contaminated land assessment (9) is recommended in the appellants'

ground investigation report. A construction method statement (10) is required to minimise any harmful effects on surrounding occupiers during development.

73. It is necessary to maintain an undeveloped buffer zone for the benefit of the appearance of the area and for ecological interests (11), and to carry out an updated ecological strategy (12), along with the introduction of bird nesting facilities (13), and limitations on construction during the bird breeding season (18), to mitigate the effects of the development on wildlife. In addition to the landscape reserved matter, an arboricultural method statement (14) will be needed to ensure the protection and enhancement of vegetation to be retained. Whilst access is not a reserved matter, the scheme drawing requires further design details (15) to ensure a satisfactory junction serving the estate. The provision of affordable housing (17) is required by Local Plan policy RES7. A Travel Plan (19), a scheme of footpaths and cycle routes (16), and electric charging infrastructure (20) are necessary for a sustainable form of development and to maximise opportunities for alternative means of transport.
74. In addition to amendments to the wording of the suggested conditions to better reflect the relevant advice, a number of conditions have not been included. The following numbering refers to those suggested conditions in the schedule at document C 11. Draft conditions 8 and 9 are replaced by a requirement to investigate the feasibility of a SUDs scheme, as referred to in the PPG. Foul drainage (10a and 10b) is adequately dealt with by other powers. There is legislation to ensure the protection of Great Crested Newts (18) without the need for a specific condition over and above the general ecological requirement. New and replacement hedges (21), the distribution of open space (23), and the submission of samples of materials (7) may be sought at the reserved matters stage, and the off-site highways works (27) and playground provision (23) form part of the Section 106 Undertaking obligations. The appellants' report at document GDL 1.13 indicates that the site has very limited archaeological potential and there are not substantial grounds to show the need for a condition requiring a further survey (24).

Obligations

75. The signed version of the Unilateral Undertaking, made in accordance with Section 106 of the town and Country Planning Act 1990, is enclosed at document A 25. It refers to the provision and maintenance of open space, including playground equipment, and specifies the following infrastructure contributions: improvement of the A530 corridor (£300,000); improvement of the Peacock roundabout junction of the A534 and A51 (£605,000); provision of bus shelters in the vicinity of the site (£25,000); traffic management measures (£20,000).
76. Documents C 10 and C 13 contain the Council's justification for the obligations. The need for open space is set out in Local Plan Policy RT3. Policy BE5 makes provision for contributions towards the infrastructure made necessary by the development, and the Council also refer to a range of transport policies (TRAN3, 4, 5 and 6), the Cheshire East Infrastructure Plan (C 10, appendix 3), the Local Plan Strategy Infrastructure Delivery Plan (appendix 4), and the Local Transport Plan 2011-26 (appendix 6).
77. It is necessary to be satisfied that the obligations comply with the Community Infrastructure Levy (CIL) Regulations, 2010, and clause 3.1 of the Undertaking

indicates that they will only have effect if found in this appeal to meet the tests in Regulation 122. In this respect, the open space allocation within the site is proportionate to the size of the estate, and is intended to address the Local Plan requirements. The new housing would create an additional demand for public transport and put greater pressure on the local road system, so that there are reasonable grounds to conclude that the bus shelter and traffic management contributions are necessary, in scale with the development, and directly related to it. Similarly, the appellants' Transport Assessment (Documents GDL 1.26 and 2.2) shows that the development would result in an increase in congestion at the A530/Wistaston Green Road junction in the A530 corridor of sufficient degree to create a need for a contribution towards highway improvements.

78. The need for a contribution for improvement of the Peacock roundabout is less well supported in the documentation. Whilst the appellants acknowledge in the updated Transport Assessment (GDL 2.2) that the effect of the development on queue lengths had been underestimated in the earlier report (GDL 1.26) they remained of the view that the effect of the development would be minimal, and the Highways Statement of Common Ground (B 1) confirms this opinion. This matter was taken up with the representative of the Highway Authority at the Inquiry, and it is clear that the details of the assessment indicate a more significant increase of queue lengths than might be implied by 'minimal' impact. In light of this, there is reason to consider that the contribution to the improvement of this junction would be made necessary by the development.
79. Overall, there are adequate grounds to consider that the obligations in the Undertaking meet the tests in CIL Regulation 122 and may be taken into account in assessing the appeal.
80. At the Inquiry a concern was raised about the inclusion of clause 3.4.2 in the Undertaking, which would have the effect of preventing the Council from pursuing the purchasers of the houses on the estate for payment of contributions, as successor land owners, if the developer should default. The arguments of the respective parties on this point are contained in document A 9. The appellants are reluctant to delete this clause because of the likelihood that prospective house purchasers would be discouraged by the risk of the potential liability, and it was confirmed at the Inquiry that any individual owner could be responsible for the full extent of any debt, not just a fair proportion. However, clause 7.3 of the Undertaking provides that, if this appeal should determine that the inclusion of clause 3.4.2 would prevent weight being attached to the obligations, then it should cease to have effect.
81. It is certainly true, as claimed by the Council, that exclusion of the clause would encourage a house builder to complete payment of obligations in order to sell the houses. However, this would only become effective after the sale of the 200th house, when the final highways payments would be due. It is also true that the developer might be able to insure the risk on behalf of the purchasers, but, presumably, at a cost to the development.
82. Whilst the nature of the concern is appreciated, in practice it seems likely that there would be difficulty in securing significant sums from individual house owners, and the Council acknowledged that such a procedure had never been adopted in the past. There would remain a third of the houses unoccupied by the time the final highways payments were due, which would provide time for

any unpaid debts to be pursued before completion of the scheme, and an incentive for the developer to remain in place. The inclusion of a clause to exclude the liability of house purchasers is not uncommon in obligations of this sort, and forms part of the Law Society model agreement. Overall, enforceability would not be reduced to such an extent as to significantly undermine the effectiveness of the Undertaking, and it is recommended that it is entitled to be accorded weight in this appeal with this clause in place.

Inspector's Assessment

83. The numbers in square brackets refer to other paragraphs in this document.

Consistency

84. Whilst recent appeals concerning housing development in Cheshire East have determined that a five year supply cannot be demonstrated, it is the Council's complaint that there has not been consistency in the reasons for reaching that conclusion. Documents A 12 and A 13 contain recent correspondence on this point between the Council and the Secretary of State. [35, 36, 62]

85. The recommendation in this appeal is, like its predecessors, based on the evidence presented to it. The Council acknowledge that different appellants offer different cases, and that the Council themselves have amended their approach in relation to altered circumstances, including within the presentation of evidence in the present appeal. Therefore, although consistency is desirable to ensure a fair and predictable planning system, and previous cases are taken into account, it would not be reasonable for this recommendation to rely on decisions which were made under different circumstances and on the basis of evidence specifically related to those circumstances. Nor could a determination in this case alter any alleged lack of consistency in previous appeals.

The Main Considerations

86. Taking account of the reasons for refusal of planning permission, and the evidence offered by the parties, the following main issue was suggested at the start of the Inquiry: "The effect of the development on the character and appearance of the countryside and its role in separating settlements, and on the supply of agricultural land, in relation to the need for housing land in the district". The Council's preference for an alternative wording to emphasise the primacy of the development plan is noted, but it is not accepted that the form set out above would prevent the proper application of the statutory duty². [25]

87. In establishing whether material considerations outweigh the provisions of the development plan, a significant aspect of this appeal is the application of NPPF paras 47 and 49. The planning authority is required to establish its full, objectively assessed need for market and affordable housing and to provide for a 5 year supply of land against that requirement. If the five year supply cannot be demonstrated then relevant policies for the supply of housing should not be considered up to date, in which case NPPF para 14 indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Whether or not the Council can show a five year supply is therefore of importance and is dealt with first.

² Section 38(6) of the Planning and Compulsory Purchase Act 2004

88. Regard is also had to the need to establish whether the proposal is a sustainable form of development, which, as indicated in the William Davis case (CD 86), is a prerequisite of the application of the decision procedure set out in NPPF para 14. A preliminary assessment of sustainability in accordance with NPPF para 7 would include much the same subject matter as that used in establishing any adverse impacts and benefits of the development, and, as a practical measure, the question of sustainability and the assessment of the main issues are dealt with together in the conclusions of this report. This procedure would appear to be in accordance with the Dartford judgement (C 3, para 54). [39, 63]

Five Year Supply of Housing

Full Objectively Assessed Need

89. It is the Council's view that the Full Objectively Assessed Need (FOAN) for housing is 1180 dpa, and the appellants' that it lies in the range 1760 to 2050. Both parties have produced detailed material in support of their respective positions, most of which forms the subject matter of their representations to the Examination into the Local Plan. It is not appropriate for this report to make a detailed critique of this material, which would duplicate the role of the Local Plan Inspector. Nonetheless, there is a need to establish the robustness of the Council's current assessment for the purposes of this appeal.
90. At the time of preparation of proofs of evidence, the Council's estimate of FOAN was based on the figures in the former Regional Strategy (1150 dpa), but this was later substituted by a more up to date assessment based on research carried out in preparation of the Local Plan, entitled Population Projections and Forecasts, dated September 2013 (CD 22) and March 2014 (CD 24) respectively. These papers contain a good many scenarios based on different demographic and economic assumptions, but two are of particular relevance, described in the 2014 report as 1a and 3c. Scenario 1a estimates a need for 1180 dpa between 2010 and 2030, based on 2011 interim sub-national projections for population published by the Office for National Statistics (ONS) and households by the Department for Communities and Local Government, and assumes an annual jobs growth of 0.4% pa. Scenario 3c produces a need for 1350 dpa, indicated as reflecting the Council's growth objectives, and is the preferred figure for inclusion in the emerging Local Plan. [31, 51]
91. Scenario 3c is described as the Objectively Assessed Need throughout the background paper, but it is now the Council's view, following the definitions at para 37 of the Gallagher Homes judgement (CD 87), that this is a 'policy on' figure, reflecting the Council's planning aspirations, rather than an objective assessment of need. In this appeal, therefore, it is the figure of 1180 dpa produced by Scenario 1a that is preferred as the FOAN. [31, 49]
92. However, a number of aspects create doubt about whether the FOAN is as low as 1180 dpa. Employment growth in the area has, historically, been much higher than 0.4%, being variously described as 1.3% pa between 1995 and 2008 (CD 24, para 4.26) and 0.7% pa between 1991 and 2011, including periods of recession (POE 4, para 4.12); and the number of actual housing completions fell below 1180 on only one occasion between 1996 and 2007 (POE 15, Appendix 7). The 2011 ONS projection, and the more recent 2012 figures, were based on data acquired during an economic downturn, and there is a risk that they do not reflect the growth in demand during more buoyant times,

especially if household formation has been suppressed by restricted wages and availability of credit. In this respect, whilst the Council's decision to extrapolate the 2011-21 projection to 2030 is supported in the evidence to the Local Plan Examination (POE 15, Appendix 6), this is clearly a controversial point which is subject to detailed criticism by objectors. [50, 52]

93. There is also a question about the affordability of the existing housing stock, which provides an indication as to whether the need is being adequately served. Table 3.1 of the 2013 Strategic Housing Market Assessment (SHMA) (CD 21, page 15) shows that the ratio of house prices to average incomes in Cheshire East in 2012 was one of the highest in the North West, and significantly above the regional average. Similarly, there is a need to boost the supply of affordable housing to meet a need estimated in the SHMA as 1401 dpa (CD 21, table 4.14). Whilst management of the existing stock may make a contribution to satisfying this requirement, there remains a lack of a clear indication that the Council's FOAN has sufficient 'headroom' to deliver the necessary new affordable homes, and address the issue of affordability. [53]
94. Other matters raised include a concern about undue reliance on rising activity rates in the over 60s; that the Housing Market Partnership do not endorse the Council's current position; and that the FOAN of 1180 dpa is only marginally above the Regional Strategy figure of 1150 dpa, whereas there is evidence that this was a constrained level against an actual demand in the order of 1800 dpa (the RSS Technical Appendix quoted in POE 4, table 5.1). In addition, whilst Scenario 3c is depicted as a higher assessment to take account of policy objectives, it is based on the same rate of employment increase as the 1180 dpa figure in Scenario 1a, with the main difference between the estimates being the use of varying fertility, mortality and migration rates (CD24, para 4.23). The extent of any growth arising out of the 1350 dpa objective is restricted by the capacity of the area to accommodate it (CD15, para 8.18). [31, 52, 53]
95. Whilst the PPG establishes that the starting point in the assessment should be based on the household projections published by DCLG, there is a need for adjustment to reflect the particular circumstances arising, including the effect of a previous under-supply of housing, the need for affordable housing, historic employment trends, and market signals such as low levels of affordability. There is reason to consider that these influences have been understated in the Council's assessment, and that a figure of 1180 dpa does not fully encompass the likely level of housing need.
96. Therefore, whilst the extent of the Council's evidence in support of their position is recognised, as is the endorsement by Professor Simpson in his peer review (POE 15, Appendix 6, Annex 1), there remain a significant number of valid criticisms of the methodology and the conclusions reached, which create sufficient doubt about the Council's estimate of FOAN to indicate that it should not be treated as a sufficiently robust basis for assessing the five year position.

The Level of Buffer

97. In requiring a five year supply of sites to meet the identified need, NPPF para 47 seeks the inclusion of a 5% buffer to ensure choice and competition in the market for land, but increased to 20% where there has been a record of persistent under delivery. Recent appeals in Cheshire East have been split on which buffer should apply, but with a majority in favour of 20%, on the basis

that the Council have failed to meet their target in each year since 2008. However, a recent appeal at Dunnocksfold Road, Alsager (CD 103), referring to the advice in para 3-035 of the Planning Practice Guidance, noted that there was a legitimate case to consider performance over a longer period, to reflect the market cycle, and that the recession and housing moratorium of 2007 and 2008 were relevant factors in explaining the under-performance, establishing that the level should be 5%. [32, 54]

98. The conclusions of this appeal, and those others supporting a 5% level, are taken into account. However, it is also the case that the shortfall in the six years since 2008 has been significant, with deliveries in this period achieving only about 54% of the Regional Strategy target then applying. Despite a strong performance in earlier years, there remained an overall shortfall of 2,250 dwellings in the decade between 2003/04 and 2013/2014 (POE 15, Appendix 7, Table 1), a longer timescale which better reflects the market cycle. It is certainly the case that, if the statistics are taken further back, to 1996, as illustrated in Table GCS/R/1.2 of Appendix 7, then there is a cumulative surplus, but performance at this distance has diminishing relevance, and there is questionable value in offsetting a current shortfall with surpluses achieved against different, lower targets in the past. The depressive effects of the recession, and of the 2007-8 moratorium, are taken into account as contributory reasons for the shortfall, but over the last six years it has been of sufficient extent to justify the description of persistent under delivery. Having regard to the NPPF objective to boost significantly the supply of housing, a buffer of 20% is justified. [32, 54]

Housing Supply

99. It is the Council's view that a supply of 9,652 dwellings can be demonstrated, (POE 1, Section 8). The appellants dispute this estimate, preferring a figure of 7,617 dwellings, the main points of contention being the assumptions made on likely lead-in times before the sites deliver houses, whether some strategic sites should be included at all, and estimates of likely build rates. Document A 14 is a joint statement which identifies the elements of supply and summarises the arguments of the parties. [34, 55]
100. With respect to lead-in times, Appendix 8 of Mr Mackenzie's proof (POE 9) sets out the periods used for calculating the yield from different sizes of development contained in the SHLAA of 2012 and 2013, and in the Five Year Housing Land Supply Position Statement, 2014. This shows that estimates of lead-in times have progressively reduced over time. The Council's current assessment is based on the 2014 periods which, in the appellants' view, under-estimates realistic average timescales.
101. The Council's position is based on empirical evidence from recent developments, reflecting the greater sense of urgency and activity arising with improved economic conditions. It is appreciated that, after a period of recession and restraint, especially if there is a backlog of demand, there would be pressure in the market to bring forward developments at a faster rate. However, this is likely to be a short term effect, with the expectation that levels would return to the long term average in due course. In this respect, the analysis of lead-in times for sites with full planning permission over the years 2003 to 2013 (POE 9, Appendix 6 (updated at POE 3, Appendix 23) and analysis at POE 8, paras

7.6.6-7.6.11) provides a credible argument that the Council's lead-in time estimates are too optimistic to be considered as a realistic standard. [55]

102. With respect to the sites where the principle of inclusion is in dispute, the matters mainly relate to whether there is sufficient certainty of future delivery as to comply with the criteria set out in Footnote 11 of the NPPF. On the information available, a number appear to be marginal in this respect. However, even if all such cases, and those other instances where the appellants are in dispute on matters about the rate of delivery, were found in the Council's favour, there would remain a significant shortfall arising out of the use of unduly short lead-in times, which is the most significant component of the difference between the parties (C 17, para 26). [34, 55, 56]

Whether there is a Five Year Housing Supply

103. The Council's most recent assessment is contained in Table 36 of the Joint Statement at document A 14. Based on a FOAN of 1,180 dpa, along with the backlog of previous years, it is estimated that 9652 units would produce a supply of 5.73 years with a 5% buffer and 5.02 years with a 20% buffer. [35, 55, 57]
104. For the reasons set out above, there are grounds to consider that 1,180 dpa is an under-estimate of the objectively assessed need, that the level of supply should be adjusted to reflect more conservative lead-in times, and that a 20% buffer is justified. In these circumstances, it is clear that the supply would fall below the 5 year level, and by a sufficient margin to suggest that there would be a more than nominal shortfall. In these circumstances, para 49 of the NPPF indicates that relevant policies for the supply of housing should not be considered up to date.

The character and appearance of the countryside and its role in separating settlements

105. The proposal is clearly contrary to Local Plan Policy NE2, which treats all land outside settlement boundaries as open countryside, where only limited, rural based development is allowed. The justification refers to the need, expressed in the former advice in Planning Policy Statement 7, to safeguard the countryside for its own sake, and in this respect it is an environmental rather than housing policy. However, the extent of the geographic coverage is such that it would have a significant effect on the location of development by preventing the use of any land outside settlement boundaries and, in that respect, it is a policy relevant to the supply of housing. This is a position accepted by the Council (POE 3, para 5.61), and would appear to reflect the judgement in the Cotswold case (CD 55). In light of the Council being unable to demonstrate a five year housing supply, this policy is considered out of date in terms of NPPF para 49 and the decision process set out in para 14. [24, 39, 45, 46]
106. The situation is less clear cut in respect of Policy NE4. It is certainly true that the policy applies to an extensive area of land to the west and south of Crewe, and that the Local Plan Inspector, in 2003, implied that the boundaries of the green gap might need adjustment to meet future housing need (POE 3, Appendix 4, para 14.2.5). However, it is also the case that the green gap has a specific purpose, to separate named settlements, and that it does not have so extensive a coverage as to wholly exclude development in countryside

surrounding settlements. The Barwood judgement (CD 58) notes at paras 47 and 48 that policies intended to protect specific areas, such as gaps between settlements, may be contrasted with more general, widely defined policies, and whether a policy is relevant to the supply of housing is a matter of planning judgement. In this case, there are adequate grounds to suggest that it is not such a policy, and that therefore it does not become out of date in terms of NPPF para 49. Whilst the Local Plan had an end date of 2011, the policy has been saved pending replacement by the emerging Local Plan, and the need to prevent the coalescence of settlements is a long term objective. The NPPF does not directly address strategic gaps of this sort, but the maintenance of a green gap is not so inconsistent with the principles on which its policies are based as to receive diminished weight under para 215. [38, 44, 58]

107. The development would be contrary to Policy NE4 if it resulted in the erosion of the physical separation of built up areas, or had an adverse effect on the visual character of the landscape. On the first point, it may be, as suggested by the Council, that any development in the green gap would amount to an erosion, and therefore all new building of any substance would be contrary to the policy. However, even if this is the case, it is necessary to establish the level of harm which would arise from contravention of the policy, and the degree to which the erosion would interfere with its intentions. In this respect, the purpose of the gap is described in the accompanying text as maintaining the definition and separation of existing communities, with the long term objective of preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. [27]
108. The site falls within the area described as the Wistaston/Nantwich gap. In its role of separating these two communities there are aspects of the location that diminish its contribution. It lies in an eastward extension of the gap, away from Nantwich, from which it is approximately 2.2 km distant, where other parts of the gap are significantly narrower, and the orientation of the site is more towards the countryside in the north west than the developed area of Nantwich further south. Nor, as set out further below, is it especially visible from Nantwich or other parts of the gap, as illustrated in the zones of theoretical visibility in Mr Ryder's proof (POE 2, Appendix 1).
109. The reference to the Wistaston/Nantwich gap in the policy may be intended for identification only, and its function not limited to the separation of those settlements alone. However, the part of the gap filled by the development lies between two parts of Wistaston, which are otherwise a contiguous urban area, and not the separate settlements referred to in the explanatory text. [27, 59]
110. Turning to the second criterion in Policy NE4, both parties have carried out landscape assessments, and most of the viewpoints were seen during the site visits. Because of the relatively flat terrain, and the large number of hedges and trees surrounding the field system, there is limited visibility of the site from other parts of the green gap, with the main impact of any development being on the surrounding residents and users of the school, sporting facilities, park and footpaths. [61]
111. It was the initial view of the Council, recorded in the Officers' Committee Report (GDL 4), that there was broad agreement with the appellants' Landscape and Visual Impact Assessment (GDL 1.18), which concluded that the housing could

be successfully assimilated into the local landscape without unacceptable landscape or visual effect. The Council's Landscape Architect considered that the significance of the visual effect would be greater than stated, but not substantially so. The success of the proposed mitigation and enhancement would largely depend on adherence to the illustrative scheme plans. [60]

112. Subsequently, the Council have taken a different view, and Mr Ryder's proof (POE 2) includes a comparative assessment of the impact on local residents and visitors to the area, concluding that the appellants have substantially understated both the degree of the effect of the development and the sensitivity of those experiencing it, whilst over-estimating the mitigating effect of future planting and enhancement. Those most affected by the loss of the field would include walkers on the footpaths which cross it, the residents of adjoining property, the users of 'Joey the Swan' park on the north eastern boundary, and the staff and pupils of the neighbouring primary school. [28]
113. The Council's concerns are noted, and it is certainly the case that the westward movement of the outer boundary of the urban area would have a significant effect on views presently available from the land surrounding the site, and within and approaching the footpaths crossing it. Whilst enhancement planting would help to mitigate the effect over time, there would, nonetheless, be a change of character. However, the evidence falls short of proving that the land has such visual landscape quality in its own right as to make its loss unacceptable on this ground, nor that the sensitivity of the users, and the adversity of the effect, would be so great as to prevent residents and visitors to the area from achieving normally acceptable levels of amenity. There would remain accessibility to the countryside through the existing footpaths, albeit at a greater distance than at present.
114. It was also apparent, especially in the presentations of third parties, that the land is viewed as a recreational resource, and as a form of public open space, with the formation of informal footpaths across and around it. However, there is no indication that this is a permitted use of the land, nor that it is designated as Local Green Space in any Local or Neighbourhood Plan, as referred to in paras 76 to 77 of the NPPF. Whilst the land is clearly valued by the local community, this would apply to many similar situations where farmland adjoins an urban area. With the proviso that the site contributes to the openness of the green gap, there are not other indications that it has a particular landscape value in terms of NPPF para 109, and the existing park provides alternative recreational opportunities in the area. [28, 45, 61, 68, 70]
115. The reference in Policy NE4 to the need to avoid adversely affecting the visual character of the landscape is in the context of the objective to avoid the agglomeration of settlements. It is not unreasonable, therefore, to assess the impact of the development in this light, and to establish the effect that it would have on the green gap as a whole in carrying out this role. In this respect, the land is not especially visible from the remainder of the green gap, and would not become so unless the buildings exceeded the scale set out in the Design and Access Statement (GDL 1.14). Any impact on the landscape would be limited to the site and its immediate environs. [28, 61]

116. The site is within the area of search for designation as Green Belt in Policy PG3 of the Emerging Local Plan. Whilst the Plan has proceeded to Examination, the Inquiry was advised that there are a number of objections, which restricts the weight that may be applied to this aspect in terms of para 216 of the NPPF, and there is no indication that the adverse effects on the progress of the emerging plan would be so great as to justify refusal on the grounds of prematurity, in the terms described in the Planning Practice Guidance. [14, 48]

The Supply of Agricultural Land

117. Local Plan Policy NE12 seeks to retain the Best and Most Versatile (BMV) agricultural land. Whilst it could potentially restrict the supply of residential sites, it applies, like Policy NE4, to a limited area of countryside, and for a purpose which is not related to the distribution of housing. There are grounds to consider that it is not a relevant policy for the supply of housing in terms of NPPF para 49 and should therefore apply. [24]
118. 78% of the site falls into the category of BMV land, and there is not a substantial case that the proposal would meet the exceptions allowed under this policy. It is recognised that the wording of para 112 of the NPPF is set in rather less restrictive terms than Policy NE12, and there is no clear indication that the loss would be significant in terms of the overall supply of agricultural land in the area. Nonetheless, the proposal conflicts with Local Plan policy, and the economic and other benefits of BMV land must be taken into account in assessing the impact of the development. [29, 47]

Other Matters

119. Amongst the other matters raised is a concern about the impact of the development on local infrastructure. However, there is no substantial evidence that facilities and services would not be capable of meeting the increased demand, and the appellants' Unilateral Undertaking makes provision for mitigating the effect of additional traffic on the wider road system. With respect to the immediate impact on road safety, the proposal includes a new road junction, designed to comply with the standards in Manual for Streets and, whilst it would be close to the river bridge, there is no objection by the Highways Authority to a junction in this location, nor any technical evidence to contest this decision. In terms of the potential for flooding, the majority of the site lies in Flood Zone 1, of lowest risk, and the Flood Risk Assessment makes provision for the restriction of flows into Wistaston Brook. A sustainable drainage scheme may be sought by planning condition. [22, 68, 69]
120. The appellants' ecology survey (CD 2.1) did not find direct evidence of bats, badgers or reptiles within the site, but there would be a need for a precautionary approach to the development, and the planting scheme on the outer boundaries, along with retention of the existing ponds and watercourse, would provide opportunities for habitat and foraging areas. Surveys of 2012 and 2013 indicated a low population of Great Crested Newts in the wider area, and a mitigation strategy is recommended. There is no indication that a European Protected Species Licence would not be obtainable. Overall, there is no reason to conclude that there would be ecological grounds to prevent the development of the site.

Sustainability

121. When assessed against the criteria of sustainability in NPPF para 7, the development would help to meet the economic and social roles by providing market and affordable housing to satisfy an identified need in a location accessible to services and sources of employment. There would be some environmental harm arising out of the erosion of the green gap and the loss of countryside, along with the economic cost of the use of agricultural land, and the extent of this harm, and the degree to which it would be balanced by the positive contributions to sustainability, is considered below. It is not accepted that the Bloor Homes judgement (POE 3, Appendix 11, para 179) would require that a scheme involving the loss of part of a green gap should be found unsustainable as a matter of principle, regardless of the degree of harm arising. [39, 40, 64]

Conclusions

122. The development would be contrary to Local Plan Policies NE2, NE4 and NE12, and determination of the appeal should be in accordance with those policies unless material considerations indicate otherwise. In this respect, the provisions of the NPPF are a material consideration, and, for the reasons set out above, Policy NE2 is considered to be out of date to the extent that its geographic coverage would preclude development outside settlements. Whilst the need to recognise the intrinsic beauty and character of the countryside applies, there would be the presumption in favour of granting permission in the terms set out in NPPF para 14. However, NE4 and NE12 remain as up to date policies, and the question arises whether the potential benefits of the proposal would justify proceeding in conflict with them.
123. It is part of the core planning principles in the NPPF to allocate sufficient land to provide the homes that are needed, and there is no indication that the currently adopted Local Plan is capable of satisfying that objective. In the absence of a demonstrable five year supply, the provision of up to 210 market and 90 affordable houses would help to satisfy a need for market and affordable housing. This would be the main benefit of the proposal, but there would be the associated economic advantages for the construction industry, and from the demand for local goods and services in the longer term. Even though the number of dwellings might represent a small proportion of the overall housing need in the area, there are no grounds to conclude that it would not make a valuable contribution. Nor is there reason to consider that the availability of suitable land is not an essential pre-requisite for the supply of new homes, whatever the allegations about under-performance of the housing industry.
124. Set against this is the loss of part of the green gap, which has been established for the specific purpose of separating settlements in order to retain their identity, and which relies on the maintenance of an adequate distance. As set out by the Local Plan Inspector in 2003 (POE 3, Appendix 4, para 14.2.5), it would be too easy for the edges to be nibbled away and, through a cumulative process of erosion, negate its purpose. However, it is also the case that any proposal to develop within the gap should be assessed on its own merits, and that some parts of the gap make a greater contribution to the separation than others. In this instance, for the reasons set out above, the location of the site diminishes the extent of that contribution.

125. It is certainly the case that those living around the site or using the local facilities and footpaths would experience a significant change of character. However, this does not imply that the site has special landscape quality, nor that the detailed planting proposals would not be capable of mitigating the long term effect of that change. The lack of intervisibility diminishes the role that the site plays in the landscape quality of the green gap as a whole.
126. With respect to the loss of the best and most versatile agricultural land, the Council's Committee Report (GDL 4, page 136) acknowledges that it would be difficult to sustain a reason for refusal on this ground. It is a detrimental feature of the scheme, but there is no clear indication that 10.4ha would amount to the significant loss referred to in NPPF para 112, in the context of the overall supply of BMV land in the area.
127. The proposed supply of market and affordable housing is a significant positive aspect of the scheme, which would help to achieve the economic and social roles of sustainability. The development would result in some level of environmental harm arising out of erosion of the green gap, and economic harm by loss of BMV land. However, the extent of that harm would be limited, and not of determining importance. Taken as a whole, the proposal amounts to the sustainable form of development sought by the NPPF, and, in terms of the main considerations in this appeal, the benefit of meeting the need for housing land in the district outweighs any harm to the character and appearance of the countryside and its role in separating settlements, and to the supply of agricultural land.

Recommendation

128. For the reasons given above, it is recommended that the appeal be allowed, subject to the conditions in Annex 3 of this report.

John Chase

INSPECTOR

ANNEX 1

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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He called

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Mr S Ryder BA, Dip LA,
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FOR THE APPELLANTS:

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He called

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INTERESTED PERSONS SPEAKING AT THE INQUIRY:

Cllr J Wetherill

Ward Councillor, Cheshire East Council

Cllr M Simon

Ward Councillor, Cheshire East Council

Cllr J Bond

Parish Councillor, Wistaston Parish Council

Mr P Wainright

On behalf of 'Hands off Wistaston'

Mr G Roberts

Local Resident

Ms A Brydon

Local Resident

Mr P Alcock

Local Resident

ANNEX 2

DOCUMENTS

Application and Decision Documents

GDL 1.1	Application Statement Covering Letter
GDL 1.2	ES Contents and Summary
GDL 1.3	ES Volume 1 Chapters
GDL 1.4	ES Volume 2 Appendices
GDL 1.5	OPAD 01.1 Application Forms and Certificates
GDL 1.6	OPAD 01.2 Notices
GDL 1.7	OPAD 01.3 Location Plan
GDL 1.8	OPAD 01.4 Parameters Plan
GDL 1.9	OPAD 01.5 Access Drawing
GDL 1.10	OPAD 01.6 Draft S106 HOT's
GDL 1.11	OPAD 02 Affordable Housing Assessment
GDL 1.12	OPAD 03 Arboricultural Assessment
GDL 1.13	OPAD 04 Archaeological DBA
GDL 1.14	OPAD 05 Design and Access Statement
GDL 1.15	OPAD 06 Ecology Appraisal
GDL 1.16	OPAD 07 FRA
GDL 1.17	OPAD 08 Historic Hedgerow Report
GDL 1.18	OPAD 09 Landscape and Visual Impact Assessment
GDL 1.19	OPAD 10 Planning Statement
GDL 1.20	OPAD 11 Energy Statement
GDL 1.21	OPAD 12 Phase 1 Site Investigation Report
GDL 1.22	OPAD 13 Socio-Economic Impact Assessment
GDL 1.23	OPAD 14 Agricultural Land Quality Assessment
GDL 1.24	OPAD 15 Statement of Community Involvement
GDL 1.25	OPAD Sustainability Assessment
GDL 1.26	OPAD 17 Transport Assessment and Travel Plan
GDL 1.27	OPAD 18 Education Impact Assessment
GDL 1.28	OPAD 19 Utilities and Infrastructure Assessment
GDL 2.1	Revised Ecology Report
GDL 2.2	Revised Ta issued via email on 23/09/13- Revised TA
GDL 2.3	Additional Drawings
GDL 2.4	Biodiversity Information
GDL 2.5	Biodiversity Off-setting Method
GDL 2.6	Revised Development Framework Plan, Revision E
GDL 4	Planning Officers' Committee Report
GDL 5	Transcript of Strategic Planning Board
GDL 6	Planning Decision Notice and Relevant Plans
GDL 7	Regeneris Cheshire East Objectively Assessed Housing Requirement

Development Plan and Background Papers

CD 9	Borough of Crewe and Nantwich Local Plan Inspectors Report (2003) (extract)
CD 10	Borough of Crewe and Nantwich Local Plan (2005)
CD 11	SOS Saving Direction and Schedule of Saved Policies
CD 12	Core Strategy Issues and Options Paper (Nov 2010)

CD 13	Shaping Our Future: A development Strategy for Job and Sustainable Communities (December 2012)
CD 14	Pre-Submission Core Strategy (December 2013) (extract)
CD 15	Local Plan Strategy Submission Version (March 2014)
CD 16	LDF Background Report: Determining the Settlement Hierarchy (November 2010)
CD 17	Cheshire East Strategic Housing Market Assessment (September 2010)
CD 18	Economic Viability of Affordable Housing Requirements (September 2010)
CD 19	Cheshire East Strategic Housing Land Availability Assessment (SHLAA) (2012) (extract)
CD 21	Cheshire East Strategic Housing Market Assessment Update (September 2013)
CD 22	Background Paper: Population Projections and Forecasts (September 2013)
CD 23	Five Year Housing Land Supply Position Statement (31st December 2013)
CD 24	Background Paper: Population Projections and Forecasts (March 2014)
CD 25	Local Plan Strategy Housing Background Paper (March 2014)
CD 26	Local Plan Strategy Sites Justification Paper (March 2014) (extract)
CD 27	Local Plan Strategy Non-Preferred Sites Justification Paper (March 2014) (extract)
CD 28	Cheshire East Council: SHLAA Housing Market Partnership - Workshop Letter and Agenda (04-12-13)
CD 29	Cheshire East Council: SHLAA Housing Market Partnership - Workshop Minutes (19-12-13)
CD 30	Cheshire East Council: SHLAA - Methodology Representations
CD 31	Cheshire East Council: Local Plan - Representations

Appeal Decisions

CD 32	Land east of Egerton Arms, Pinfold Lane, Little Budworth, Tarporley, Cheshire, CW6 9BS (APP/A0665/A/12/2167830) (11-07-12)
CD 33	Loachbrook Farm, Sandbach Road, Congleton, Cheshire, CW12 4TE (APP/R0660/A/11/2158727)
CD 34	Land between Station Road and Dudley Road, Honeybourne, Worcestershire (APP/H1840/A/12/2171339)
CD 35	Land west of Shottery, south of Alcester Road and north of Evesham Road, Stratford-upon-Avon CV37 9RX (APP/J3720/A/11/2163206)
CD 36	Land east of Butts Road, Higher Ridgeway, Ottery St. Mary, Devon, EX11 1EP (APP/U1105/A/12/2180060)
CD 37	Land off Warmingham Lane, Middlewich, Cheshire, CW10 0HN (APP/R0660/A/12/2179343)
CD 38	Land at Top Farm, Kemble, Cirencester, Gloucestershire, GL7 6AB (APP/F160/A/12/2173097)

- CD 39 Highfield Farm, Tetbury, Gloucestershire, GL8 8SD
(APP/F1610/A/11/2165778)
- CD 40 Land south of Moira Road, Ashby-de-la-Zouch LE65 2NJ
(APP/G2435/A/13/2192131)
- CD 41 Land off Queens Drive, Nantwich, Cheshire
(APP/R0660/A/12/2187264)
- CD 42 Land off Abbey Road and Middlewich Road, Sandbach,
Cheshire
- CD 43 Land north of Congleton Road, Sandbach, Cheshire, CW11
1DN (APP/R0660/A/13/2189733)
- CD 44 Land off Sandbach Road North, Alsager, Stoke-on-Trent,
ST7 2EH (APP/R0660/A/13/2195201)
- CD 45 Hassall Road, Alsager, Stoke-on-Trent, ST7 2SL
(APP/R0660/A/12/2188001)
- CD 46 Chester Road and Well Street, Malpas, Cheshire
(APP/A0665/A/132193956)
- CD 47 Land off Scaur Lane, Lazonby, Penrith, Cumbria
(APP/H0928/A/13/2202978)
- CD 48 Land adjacent to no.4 Audlem Road, Hankelow, CW3 0JA
(APP/R0660/A/13/2190651)
- CD 49 Land between Leasowes Road and Laurels Road,
Offenham, Worcestershire. WR11 8RE
(APP/H1840/A/13/2203924)
- CD 50 Land opposite Rose Cottages, Holmes Chapel Road,
Brereton Heath, Cheshire, CW12 4SP
(APP/R0660/A/13/2192192)
- CD 51 Land to the north of Alfrey Close, Southbourne, West
Sussex, PO10 8ET (APP/L3815/A/2198103)

Court of Appeal and High Court Judgments

- CD 52 Cheshire East Borough Council v SoS & N Dale & M Dale
(2013 EWHC 892) Judgment of Mr Justice Hickinbottom
- CD 53 Wainhomes (South West) Holdings Limited v SoS &
Wiltshire Council & C Cornell & S Cornell (2013 EWHC 597)
Judgment of Mr Justice Stuart-Smith
- CD 54 Hunston Properties Ltd v SoS v St Albans City and District
Council (2013 EWHC 2678) Judgment of Judge Pelling QC
- CD 55 Cotswold District Council v SoS & Fay and Son Limited &
Hannick Homes and Development Limited (2013 EWHC
3719) Judgment of Mr Justice Lewis
- CD 56 City and District Council of St Albans v The Queen (on the
application of) Hunston Properties Ltd & SoS (2013 EWCA
Civ 1610) Judgment of Lord Justice Maurice Kay, Lord
Justice Ryder & Sir David Keene
- CD 57 South Northamptonshire v SoS & Barwood Homes Limited
(2014 EWHC 570) Judgment of Mr Justice Ouseley
- CD 58 South Northamptonshire v SoS & Barwood Land and
Estates Limited (2014 EWHC 573) Judgment of Mr Justice
Ouseley

Local Plan Examination and Other Documents

- CD 60 Lichfield District Council Local Plan - Examination in Public - Inspectors Interim Conclusions
- CD 61 West Lancashire Borough Council Local Plan - Examination in Public - Inspectors Report
- CD 62 South Worcestershire Council Local Plan - Examination in Public - Inspectors Interim Conclusions
- CD 68 Hansard- Westminster Hall. Planning and Housing Supply (24-10-13) (extract)
- CD 69 East Cheshire: Engine of the North (2013)
- CD 70 New Estimates of Housing Demand and Need in England 2011 to 2031, Town & Country Planning - Tomorrow Series Paper 16, Alan Holmans (2013)
- CD 71 Planning for Houses in England: Understanding recent changes in household formation rates and their implications for planning for housing in England, RTPI (2014)
- CD 73 Land west of Marriott Road/Anvil Close/Forge Fields and south of Hind Heath Road, Sandbach, Cheshire AND Land south of Hind Heath Road between Wheelock and Ettiley Heath, Sandbach, Cheshire (APP/R0660/A/10/2140255 AND APP/R0660/A/10/2143265)
- CD 74 Stratford on Avon District Council v SoS & J S Bloor Limited & Hallam Land Limited & RASE (2013 EWHC 2074) Judgment of Mr Justice Hickinbottom
- CD 75 Land east of Wolvey Road, Three Pots, Burbage (APP/K2420/A/13/2202261)
- CD 76 New East Devon Local Plan - Examination in Public - Inspectors Letter
- CD 77 13/2649N Statutory Consultees Planning Application Responses

Appeal Decisions and High Court Judgements

- CD 78 APP/R0660/A/12/2173294- Land at Rope Land, Shavington, Crewe, Cheshire
- CD 79 AA/Y2810/A/12/2178421 - Northampton Lane North, Moulton, Northamptonshire, NN3 7QW.
- CD 80 APP/A0665/A/13/2198931 - Barnside Way, Moulton, Cheshire, CW9 8PT
- CD 81 APP/Y2810/A/13/2202009 - Boughton Road, Moulton, Northamptonshire, NN11 5AP
- CD 82 APP/R0660/A/13/2196044 - Elworth Hall Farm, Dean Close, Sandbach, Cheshire, CW11 1YG
- CD 83 App/D0840/A/13/2209757 - Upper Chapel, Launceston, PL15 7DW
- CD 84 APP/D0840/A/13/2209757 Upper Chapel, Launceston. PL15 7DW Cost Decision Letter
- CD 85 Cheshire East Borough Council v SoS for Communities and Local Government and Others (2013 EWHC 1022) Judgement of Judge Pelling QC
- CD 86 William Davies etc v SoS for Communities and Local Government and Others (2013 EWHC 3058 (Admin)).

- CD 87 Judgement of Mrs Justice Lang DBE
Gallagher Homes etc v Solihull Metropolitan Borough
Council (2014 EWHC 1283(Admin)). Judgement of Mr
Justice Hickinbottom

Other Documents

- CD 88 RS for the North West of England - Technical Appendix
dated January 2006
- CD 89 Draft Crewe Town Strategy
- CD 90 EU 2012 Ageing Report - economic and budgetary
projections for the 27 EU Member States
- CD 91 New Greenbelt and Strategic Open Gap Study – Sept 2013
- CD 92 CEC's 2013 Economic Projections: Cheshire East Paper.
Published March 2014
- CD 93 Sydney Road, Crewe CW1 5NF. 13/2055N. Officers Report
- CD 94 Eastern Road, Willaston, CW5 7HT. 13/4462N. Officers
Report
- CD 95 Cheerbrook Road, Willaston, Nantwich, Cheshire CW5 7EN.
13 3762N. Officers Report
- CD 96 Cheshire East Council Report to Strategic Planning Board
- CD 97 Cheshire East Council Tax Leaflet
- CD 98 Examination of the Stroud District Local Plan. Inspector
Stephen J Pratt letter
- CD 99 RICS Financial Viability In Planning, guidance note
- CD 100 Tewkesbury Borough Council v SoSCLG (EWHC
286(Admin)) Judgement of Mr Justice
Males
- CD 101 Colman Judgement (EWHC 1138(Admin)) Judgement of Mr
Justice Kenneth Parker
- CD 102 Ryder Landscape Consultants LVIA School Lane, Mickle,
Trafford

Appeal Decisions

- CD 103 APP/R0660/A/13/2198461 - Land off Dunnocksfold Road,
Alsager
- CD 104 APP/R0660/A/13/2201056 - Rectory Farm, Old Knutsford
Road, Church Lawton, Cheshire ST7 3EQ
- CD 105 APP/R0660/A/13/2204971 - Land to the rear of 144
Audlem Road, Nantwich Cheshire Cw5 7EB
- CD 106 APP/R0660/A/13/2203883 - Land to the rear of Hunters
Lodge Hotel, Sydney Road, CW1 5LU
- CD 107 APP/R0660/A/13/2203282 - Land to the West of Close
Lane and North of Crewe Road, Alsager, Cheshire ST2 2TJ
- CD 108 APP/R0660/A/14/2211721 - Land north of Moorfields,
Willaston, Cheshire
- CD 109 APP/R0660/A/14/2212992 - Land off Hind Heath Road,
Sandbach, Cw11 3WA

Proofs of Evidence

POE 1	Proof of Evidence of Mr G Stock with Appendices
POE 2	Proof of Evidence of Mr S Ryder with Appendices
POE 3	Proof of Evidence of Mr B Haywood with Appendices
POE 4	Proof of Evidence of Mr S Nicol
POE 5	Appendices to Proof of Evidence of Mr S Nicol
POE 6	Proof of Evidence of Mr G Venning
POE 7	Appendices to Proof of Evidence of Mr G Venning
POE 8	Proof of Evidence of Mr J Mackenzie
POE 9	Appendices to Proof of Evidence of Mr J Mackenzie
POE 10	Proof of Evidence of Mr P Rech
POE 11	Appendices to Proof of Evidence of Mr P Rech
POE 12	Proof of Evidence of Mr K Waters
POE 13	Appendices to Proof of Evidence of Mr K Waters
POE 14	Figures to Proof of Evidence of Mr K Waters
POE 15	Rebuttal Proof of Mr G Stock with Appendices
POE 16	Rebuttal Proof of Mr B Haywood
POE 17	Update and Rebuttal Proof of Mr J Mackenzie
POE 18	Rebuttal Proof of Mr B Coles
POE 19	Update and Rebuttal Proof of Mr K Waters
POE 20	Appendices to Update and Rebuttal Proof of Mr K Waters
POE 21	Proof of Evidence of Mr J Reeve

Council's Documents submitted at Inquiry

C 1	Statement of Common Ground
C 2	Opening Submissions
C 3	Dartford Borough Council v SoS for Communities and Local Government and Others (2014 EWHC 2636 (Admin)). Judgement of Mrs Justice Patterson
C 4	Schedule of Planning Permissions Granted Per Year
C 5	Planning Permissions/Resolutions to Grant Update
C 6	Public Notification of Inquiry
C 7	Extract for the Planning Practice Guidance
C 8	Update on strategic sites and schedule of elements taken into account in assessing FOAN – Mr G Stock with Crewe Green Link Road Programme
C 9	Agreed Draft List of Conditions
C 10	Community Infrastructure Levy Compliance
C 11	Revised Agreed Draft List of Conditions
C 12	Schedule of Sites with Planning Permission
C 13	Additional CIL Compliance Evidence
C 14	Plan showing Parish Boundaries
C 15	References Justifying Non-allocation of Appeal Site and Allocation of Sydney Road Site enclosing CEC 'Shaping Our Future', LP Strategy Site Justification Paper, LP Strategy Non-Preferred Sites Justification Paper
C 16	Matters arising from Conditions Inquiry Discussion
C 17	Closing Submissions
C 18	Observations on Droitwich Spa Decision

Appellants' Documents submitted at Inquiry

- A 1 Appearances on behalf of Appellants
- A 2 Appellants' Openings
- A 3 PPG Extract
- A 4 Cabinet report – Crewe Link Road
- A 5 Affordable Housing Data
- A 6 Draft Section 106 Undertaking with tracked changes
- A 7 Clean copy of Section 106 Undertaking
- A 8 Figure 5 – Photo Viewpoint Locations
- A 9 Statements regarding Clause 3.4.2 of Undertaking
- A 10 Land off Crewe Rd, Haslington Decision
APP/R0660/A/14/2213304
- A 11 Land at Pulley Lane, Newland Road, Droitwich Decision
APP/H1840/A/13/2199085
- A 12 Correspondence concerning Council's request for a number
of appeals to be recovered

- A 13 Correspondence concerning the timing of recovered appeal
decisions
- A 14 Housing Land Supply – Additional Tables
- A 15 Appellants' response to document C 8, table at Matter 4
- A 16 Additional data to accompany document C 4
- A 17 Analysis of sites included in C 5, Table 3
- A 18 Summary of CEC Recent Appeals
- A 19 Land at Burgess Farm, Hilton Lane, Worsley Decision
APP/U4230/A/11/2157433
- A 20 Forest Road, Branston, Burton on Trent Decision
APP/B3410/A/13/2193657
- A 21 Drawing Number 2012-038-500-10
- A 22 Wistaston Parish Map
- A 23 'Hands off Wistaston' Notice
- A 24 Closings on behalf of the Appellants
- A 25 Completed Section 106 Undertaking
- A 26 Land at Pulley Lane, Newland Road, Droitwich Decision
APP/H1840/A/13/2199085 – signed version
- A 27 Observations on Droitwich Spa Decision Letter

Third Party Submissions

- T 1 Cllr J Wetherill
- T 2 Cllr M Simon
- T 3 Cllr J Bond
- T 4 Mr P Wainright
- T 5 Mr G Roberts
- T 6 Ms A Brydon
- T 7 Mr P Alcock

Other Appeal Documents

- B 1 Highways Statement of Common Ground
- B 2 Planning Inspectorate EIA Part 3 Environmental Statement
Review

ANNEX 3

CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development 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 drawings to which this permission relates are the Site Location Plan 5481-L-005 and the Site Access General Arrangement Plan No 03651-F01C.
- 5) The application(s) for approval of reserved matters shall be substantially in accordance with the Development Framework plan, drawing No 5481-L-002E and the Landscape Proposals 5481-L-07A. Building height and scale shall be substantially in accordance with the principles of the Design and Access Statement (June 2013, Ref 5481).
- 6) No development shall take place until a plan showing the phasing of development has been submitted to and approved in writing by the local planning authority, and the use of the term 'phase' in these conditions refers to the phases of development shown on the approved phasing plan. Thereafter, development shall be carried out in accordance with the approved phasing plan.
- 7) No phase of development shall commence until details of existing ground levels, proposed ground levels, and levels of proposed ground floor slabs in that phase have been submitted to and approved in writing by the local planning authority. Development of that phase shall proceed in accordance with the approved scheme of levels. There shall be no alteration of existing ground levels within the 1 in 100 flood outline.
- 8) No development shall take place until a scheme of surface water drainage works has been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the Planning Practice Guidance, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. No dwelling in any phase of development

- shall be occupied until the surface water drainage works applying to that phase have been completed in accordance with the approved scheme.
- 9) No development shall take place until a 'Phase II' contaminated land investigation has been carried out (in accordance with the procedures set out in the British Standard 10175 (2011) Investigation of Potentially Contaminated Sites – Code of Practice) and the results submitted to and approved in writing by the local planning authority and, if the Phase II investigations indicate that remediation is necessary, then a Remediation Statement has been submitted to and approved in writing by the local planning authority, and the remediation carried out in accordance with the approved Remediation Statement. If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the development hereby approved.
 - 10) No phase of development shall commence until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period of that phase. The Statement shall provide for: i) the hours of construction work and deliveries, ii) the parking of vehicles of site operatives and visitors, iii) loading and unloading of plant and materials, iv) storage of plant and materials used in constructing the development, v) wheel washing facilities, vi) details of a responsible person to be contacted in the event of complaint, vii) Mitigation measures in respect of noise and disturbance of the occupants/users of adjoining property including piling techniques, vibration and noise limits, monitoring methodology, screening, detailed specification of plant and equipment to be used, and proposed routes for construction traffic, viii) waste management, with no burning on site, ix) a scheme to minimise dust emissions, including details of all dust suppression measures and methods to monitor emissions of dust arising from the development.
 - 11) The application(s) for reserved matters shall include an undeveloped buffer zone alongside and including the ponds, wetlands and Wistaston Brook, substantially in accordance with the scheme shown on drawing 5481-L-07A. No development shall take place until details of how the buffer zone will be protected during the course of development and managed and maintained thereafter have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the buffer zone has been established in accordance with the approved scheme, and the management and maintenance shall thereafter be carried out in accordance with the approved details.
 - 12) No phase of development shall be carried out until an updated Ecological Mitigation Strategy in relation to the land occupied by that phase, prepared in accordance with the recommendations of the Environmental Statement submitted with the planning application, has been submitted to and approved in writing by the local planning authority. Development of the phase shall proceed in accordance with the approved Ecological Mitigation Strategy.
 - 13) No phase of development shall commence until detailed proposals for the incorporation of bird boxes into that phase suitable for use by breeding

birds has been submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved details and retained thereafter.

- 14) No development of any phase shall take place until a detailed Arboricultural Method Statement in respect of that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include i) details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site, ii) implementation, supervision and monitoring of the scheme of protection, iii) a detailed treework specification and details of its implementation, supervision and monitoring, iv) implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage, parking, and deposit of spoil or liquids, and iv) the timing of arboricultural works in relation to the approved phase of development. The development shall proceed in accordance with the approved Arboricultural Method Statement and the scheme of protection shall be retained throughout the period of construction of the phase.
- 15) No development shall take place until details of the highway works in accordance with the scheme shown on drawing No 03651-F01C have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before first occupation of any part of the development hereby permitted.
- 16) No development shall commence until a scheme of pedestrian and cycle provision and signage has been submitted to and approved in writing by the local planning authority. The scheme shall include shared routes for pedestrians and cyclists through the site substantially in accordance with the plan No 5481-L-06A and a timetable for implementation. The approved scheme of pedestrian and cycle provision and signage shall be carried out in accordance with the approved timetable.
- 17) 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 2 of the NPPF or any future guidance that replaces it. The scheme shall include: i) the numbers, type and location on the site of the affordable housing provision which shall consists of not less than 30% of the dwellings; ii) the tenure shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be distributed ('pepper potted') across the site and across each phase of development; iii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing, with no more than 80% of the open market dwellings in any individual phase being occupied before the affordable housing is completed and available for occupation in that phase; iv) the arrangements for the transfer of the affordable housing to a Registered Provider or for the management of any affordable housing if no Registered Provider is involved; v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements where appropriate for the subsidy to be recycled for alternative affordable housing provision; vi) the occupancy criteria to be

used for determining the identity of occupiers of the affordable housing and the means by which such a occupancy criteria shall be enforced; vii) the affordable homes to be built to the standards by the HCA at the time of development.

- 18) No construction works in any phase shall take place between 1 March and 31 August in any year until a detailed survey of nesting birds has been submitted to the local planning authority, and a 4m exclusion zone established around any nest found. No development of that phase shall take place within the exclusion zone until a report confirming the completion of nesting has been submitted to and approved in writing by the local planning authority.
- 19) No phase of development shall be occupied until a Travel Plan for that phase has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include a timetable for implementation and provision for monitoring and review. No part of that phase shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.
- 20) No dwelling shall be occupied until electric vehicle charging infrastructure to serve that dwelling has been installed in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority, and thereafter the infrastructure shall be retained in operational condition.



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.