



Department for  
Communities and  
Local Government

Our Ref: APP/R0660/W/15/3100555

Gladman Developments Ltd  
Gladman House  
Alexandria Way  
CONGLETON  
Cheshire  
CW12 1LB

31 October 2016

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENTS LIMITED  
LAND OFF LONDON ROAD, HOLMES CHAPEL, CHESHIRE  
APPLICATION REF: 14/5921C**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Phillip J G Ware BSc(Hons) DipTP MRTPI, who held a public local inquiry on 5 – 7 April 2016 into your client's appeal against the decision of Cheshire East Council ("the Council") to refuse planning permission for your client's application for a mixed use development including residential and commercial at land off London Road, Holmes Chapel, Cheshire, in accordance with application ref: 14/5921C, dated 23 December 2014.
2. On 17 August 2015, this 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 it involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a Neighbourhood Plan proposal to the local authority, or where a Neighbourhood Plan has been made.

**Inspector's recommendation and summary of the decision**

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

**Policy and statutory considerations**

4. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

determined in accordance with the development plan unless material considerations indicate otherwise.

5. In this case the development plan consists of the Congleton Borough Local Plan First Review (LP) (adopted 2005) and the Brereton Neighbourhood Plan (NP), made April 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR88.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy Regulations 2010 as amended.

### *Emerging plan*

7. The emerging plan comprises the Cheshire East Local Plan Strategy (CELPS) which is currently at examination stage. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State recognises that a number of significant issues remain unresolved in CELPS at this stage, and so agrees with the Inspector and the main parties (IR12 and IR99) that its policies can only be afforded limited weight.

### **Main issues**

8. The Secretary of State agrees with the Inspector that, given the number of agreed issues set out at IR86, the main outstanding issues to be considered are those set out at IR87.

### *Effect on the settlement pattern in the area, in the light of adopted and emerging policy*

9. The Secretary of State has carefully considered the Inspector's arguments at IR88-IR103. He agrees (IR89) that the appeal site is situated outside the Settlement Zone Line (SZL) for Holmes Chapel as defined in LP policy PS5 (IR88) and, as none of the exceptional circumstances apply (LP policies PS8 and H6 and NP policy HOU01), the proposal is contrary to the development plan. The Secretary of State therefore also agrees that, in accordance with s.38(6) of the Planning and Compensation Act 2004, it is necessary to consider whether material considerations indicate that there are good reasons to determine this appeal other than in accordance with the development plan. In that respect, as it is agreed by the parties that there is no five year housing land supply in the local authority area (IR90), paragraph 49 of the Framework is engaged and the Secretary of State agrees with the Inspector that the policies relevant to the supply of housing in both the LP and the NP should be regarded as being out of date and, while not being ignored, should be accorded appropriate weight (IR91-96).
10. In coming to this conclusion, the Secretary of State has had regard to the Inspector's comments about the NP at IR97-98 but, while sharing his appreciation of the frustration which the Brereton community will feel if this appeal is allowed, the Secretary of State agrees that, in the context of the significant national housing shortage, if the LP were delivering what national policy requires, the planning balance would have been different.
11. Thus, overall, in considering all relevant policies for housing supply, the Secretary of State agrees with the Inspector (IR103) that, although the proposal is contrary to the LP

and NP policies, in the absence of a 5 year housing land supply, paragraph 49 of the Framework should apply and the conflict with those policies should only be accorded limited weight.

*The effect of the proposal on the character and appearance of the area.*

12. For the reasons given at IR104-115, the Secretary of State agrees with the Inspector that the appeal site is not within an area of valued landscape within the meaning of paragraph 109 of the framework (IR105); and that both the effect of the proposal on the landscape and its visual impact would be limited to no more than the site, London Road and a limited part of the of the footpath network. Therefore, although the proposal would cause some limited harm to the character and appearance of the area and would conflict with LP policies PS8, H6, GR1 and GR5, the Secretary of State also agrees with the Inspector that, overall, there would be limited landscape and visual harm from the appeal scheme.

*Other matters*

13. The Secretary of State has carefully considered the matters referred to by the Inspector at IR116-121. He agrees with the Inspector (IR121) that, as there is no significant dispute between the main parties on these issues (the need for market housing, the provision of affordable dwellings and the provision of commercial floorspace), all three matters should be given significant weight in the overall balance in favour of the proposal.

### **Planning conditions**

14. The Secretary of State has given consideration to the Inspector's recommended conditions as set out at the end of the IR and referred to at IR82, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and has therefore incorporated them in his decision as set out at Annex A to this letter.

### **Planning obligations**

15. Having had regard to the Inspector's analysis at IR130-135, the Unilateral Planning Obligation dated 20 April 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion (IR135) that the Obligation complies with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.

### **Planning balance and overall conclusion**

16. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies PS8, H6, GR1 and GR5 of the LP and policy HOU01 of the NP, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
17. Given that the relevant policies for the supply of housing are agreed to be out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would

significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole. The Secretary of State agrees with the Inspector's assessment and conclusion at IR136-143 and considers that, in terms of the sustainability credentials of the proposal, there would be economic, social and environmental benefits. Economic benefits would arise from the provision of employment floorspace and through the creation of jobs during the construction of the scheme. The construction of homes would also result in direct and indirect economic benefits and a significant increase in local spending power; while social benefits would arise through helping to alleviate the pressing need for housing, including affordable housing, in the area. Finally, in environmental terms, although there would be limited landscape and visual harm, this would be offset by the generous provision of open space and the fact that there would be no loss of high grade agricultural land.

18. Thus, overall, the Secretary of State concludes that the sustainability of the appeal scheme along with the fact that the relevant policies for the supply of housing land in Cheshire East are out of date outweigh the fact that the NP has only relatively recently been made and the limited landscape and visual harm, and that the adverse impacts of the scheme do not significantly and demonstrably outweigh its benefits when assessed against the policies of the Framework taken as a whole.

### **Formal decision**

19. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for up to 190 dwellings (including 30 % affordable homes), 350sq.m of employment use, highway works, open space, recreation facilities and landscaping, in accordance with application ref: 14/5921C, dated 23 December 2014, subject to the conditions at Annex A to this letter.
20. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
21. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
23. A copy of this letter has been sent to Cheshire East Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

## Conditions

1. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
  - Drawing No. 2014-008-001 Location Plan
  - Drawing No. C14052 001 P3 Access Plan

and shall be substantially in accordance with the Framework Plan and the Design and Access Statement.
2. Details of 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.
3. Application for approval of all the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. 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 both the phases of commercial and residential development shown on the approved phasing plan. The 'residential development' refers to the development of up to 190 dwellings. The 'commercial development' refers to 350 sq.m. of B1 commercial space. Thereafter, development shall be carried out in accordance with the approved phasing plan.
5. No dwelling on any phase of the residential development shall be occupied and no commercial development shall be occupied until the accesses for the proposed phase of development, as shown on drawing no. C14052 001 P3 have been constructed in accordance with construction details that have been agreed in writing by the local planning authority.
6. The residential development shall not begin 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 set out in the Glossary to the National Planning Policy Framework. The scheme shall include:
  - The numbers, type, and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings
  - The tenure of the affordable housing shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be 'pepper-potted' across the site.
  - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the open market dwellings shall be occupied before the affordable housing is completed and available for occupation, provided that there shall be a high level of pepper-potting of the affordable units.
  - 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.

- 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.
  - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
  - The affordable homes to be built to the standards adopted by the HCA at the time of development.
7. 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:
- Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, the measures taken to prevent pollution of the receiving groundwater and/or surface water, the discharge of surface water to mimic the mean annual runoff from the existing site, the results of percolation tests and flood water exceedance routes both on and off site.
  - 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 the residential development and no commercial development shall be occupied until the surface water drainage works applying to that phase have been completed in accordance with the approved scheme.
8. No phase of residential or commercial 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 after 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.
9. No phase of residential or commercial development shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
- The hours of construction work and deliveries;
  - The parking of vehicles of site operatives and visitors;
  - Loading and unloading of plant and materials;
  - Storage of plant and materials used in constructing the development;
  - Wheel washing facilities;
  - Details of any piling required including, method (using best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
  - Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;

- Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
- There shall be no burning of materials on site during demolition / construction;
- A scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.

The approved Environmental Management Plan shall be implemented and in force throughout the construction phase of the development.

10. Prior to the development commencing:

- A Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority;
- If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the LPA. The remediation scheme in the approved Remediation Statement shall then be carried out;
- 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 LPA prior to the first use or occupation of any part of the development hereby approved.

11. In the event that unexpected contamination is found after the development of any phase of residential or commercial development has commenced, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme, including timescales, must be prepared which would be subject to approval in writing of the local planning authority.

12. No phase of residential or commercial development shall commence until a Habitat and Landscape Management Plan (HLMP), including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of habitat and landscaping other than those within the curtilages of individual dwellings for residential phases, shall be submitted to and approved in writing by the local planning authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved HLMP.

13. No development of any phase of residential or commercial development 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:

- Details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site;
- Implementation, supervision and monitoring of the scheme of protection;
- A detailed tree work specification and details of its implementation, supervision and monitoring;
- Implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage parking, and deposit of spoil or liquids;
- 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.

14. No construction works in any phase of residential or commercial development shall take place between 1st March and 31st 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.
15. No phase of residential or commercial 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.
16. No phase of residential or commercial development shall commence until a low emission strategy including a timetable for implementation has been submitted to and approved in writing by the local planning authority. The approved strategy shall thereafter be implemented in full and in accordance with the approved timetable.
17. Prior to commencement of development on any phase, details of electric vehicle infrastructure to be installed on the commercial unit/residential properties shall be submitted to and approved in writing by the local planning authority. No property/commercial unit shall be occupied until the approved infrastructure relating to that phase has been fully installed and operational. The approved infrastructure shall thereafter be retained unless otherwise agreed in writing by the local planning authority.



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# **Report to the Secretary of State for Communities and Local Government**

**by Phillip J G Ware BSc(Hons) DipTP MRTPI**

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

**Date: 26 July 2016**

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## **TOWN AND COUNTRY PLANNING ACT 1990**

### **CHESHIRE EAST COUNCIL**

#### **LAND OFF LONDON ROAD, HOLMES CHAPEL, CHESHIRE**

#### **APPEAL BY GLADMAN DEVELOPMENTS LIMITED**

Inquiry held on 5 – 7 April 2016

Land off London Road, Holmes Chapel, Cheshire

File Ref: APP/R0660/W/15/3100555

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**File Ref: APP/R0660/W/15/3100555**

**Land off London Road, Holmes Chapel, 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 14/5921C, dated 23 December 2014, was refused by notice dated 23 April 2015.
- The development proposed is a mixed use development including residential and commercial.

**Summary of Recommendation: The appeal be allowed.**

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**Procedural matters**

1. The appeal was recovered for decision by the Secretary of State on 17 August 2015. The reason was that the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a Neighbourhood Plan proposal to the local planning authority, or where a Neighbourhood Plan has been made.
2. The application was made in outline, with all matters reserved save for the access onto/off the site.
3. By a Direction dated 1 March 2016, the Secretary of State confirmed that the proposal is not Environmental Impact Assessment development<sup>1</sup>.
4. A Unilateral Planning Obligation has been submitted, and is discussed later in this report. This was not the subject of any objection by the Council, without prejudice to the position of the authority in relation to the appeal proposal.

**The site and surroundings**

5. The site is an area of around 16 hectares to the west of London Road, on the southern edge of Holmes Chapel. It comprises a number of fields, including two ponds, with hedges marking many of the boundaries. There are public rights of way running close to the southern and western boundaries of the site (partly within the site).
6. Immediately to the north is a site with planning permission for 20 dwellings, which are under construction, beyond which is the settlement of Holmes Chapel. To the northeast of the site, on the opposite side of London Road, is an existing industrial unit and a site with planning permission for a supermarket<sup>2</sup>.
7. The eastern boundary of the site runs along London Road (the A50). This road joins the A54 further to the north, at a junction whose current performance is substandard.
8. The site is within the parish of Brereton, although it is some distance from the village and physically relates more to Holmes Chapel, the centre of which is

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<sup>1</sup> CD 14.1

<sup>2</sup> Shown at Ms Fitzgerald's Appendix 2

around 1km away<sup>3</sup>. However it is outside the defined Settlement Zone Line (SZL) of the settlement.

### **Planning policy**

9. The development plan includes two elements: the saved policies of the Congleton Borough Local Plan First Review (LP) (2005) (covering the period to 2011)<sup>4</sup> and the Brereton Neighbourhood Plan (NP)<sup>5</sup>. The NP was the subject of a referendum in March 2016, and was duly made on 4 April 2016<sup>6</sup>.
10. In respect of the LP there are a range of policies which the main parties agree are relevant to the appeal<sup>7</sup>. Most particularly they agree that the proposal conflicts with LP policies PS8 and H6, which deal with development in the open countryside.
11. The NP includes a number of policies which the main parties agree are relevant to the appeal<sup>8</sup>. The only conflict is agreed to arise in relation to policy HOU01, which deals with the settlement boundary – the appeal site is outside any settlement boundary<sup>9</sup>.
12. The draft Cheshire East Local Plan Strategy (CELPS) was submitted for examination in 2014. Some Examination Hearings were held in 2014 and 2015, which were followed by the Inspector's 'Further interim Views' later in 2015. A revised version of the CELPS was published and has been the subject of consultation, with further Examination Hearings anticipated later in 2016. The main parties are agreed that limited weight can be given to the CELPS and that, with regard to paragraph 216 of the National Planning Policy Framework (the Framework), the appeal scheme is not premature in relation to the CELPS.

### **The proposal**

13. The proposal is in outline, aside from the main site accesses - one serving the residential element and one serving the employment element. The illustrative material submitted with the proposal shows up to 190 dwellings (including 30% affordable homes), 350 sq.m. of employment use, highway works, open space, recreational facilities and landscaping.
14. The application was refused by the Council for 6 reasons<sup>10</sup>. Two of these reasons (nos. 3 & 4), related to accessibility and highways, have been withdrawn by the Council, following discussions on accessibility and a revised highway solution.
15. With the adoption of the NP immediately before the Inquiry opened, the fifth reason for refusal, which had referred to prematurity in relation to the NP, was amended to refer to conflict with the settlement policies of the NP.
16. The extant reasons for refusal relate to the principle of development in the open countryside (including conflict with the NP and the CELPS) and landscape issues.

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<sup>3</sup> All these features can be seen on Mr Taylor's Appendix 8

<sup>4</sup> CD 7.1

<sup>5</sup> CD 11.9

<sup>6</sup> A slightly earlier date was given by the Parish Council, but nothing turns on that

<sup>7</sup> Planning Statement of Common Ground Paragraph 2.4.3

<sup>8</sup> Planning Statement of Common Ground Paragraph 2.4.12

<sup>9</sup> Planning Statement of Common Ground Paragraph 2.4.12

<sup>10</sup> CD 5.2

## **Agreed matters**

17. There are a number of agreed matters:

- The Council cannot demonstrate a five year housing land supply, therefore paragraphs 14 and 49 of the Framework are engaged. There is agreed to be a substantial shortfall in delivery. The appellant's position is that there is a 3.29 year supply<sup>11</sup>. The Council's position is that it is unable to demonstrate a five year supply.
- LP policies PS5, PS8 and H6 and NP policy HOU01 relate to the supply of housing. Under paragraph 49 of the Framework, these cannot be considered up to date. However the Council considers that weight should be given to the countryside protection elements of policies PS8 and H6.
- The delivery of market and affordable housing (at a policy-compliant 30% level) is a significant social benefit. The provision of employment floorspace is an economic benefit. The provision of publically accessible open space (along with a playing field, play area, amenity green space and a nature reserve and retained woodland) would be an environmental benefit<sup>12</sup>. The Council agrees that these open space areas significantly exceed the policy requirement<sup>13</sup>.
- The site is in an accessible location in relation to Holmes Chapel, which is defined as a Local Service Centre<sup>14</sup>.
- A range of highway matters are agreed between the main parties, including trip generation rates, traffic distribution and modelling.
- The operational performance of the A50/A54 junction is poor, in both the base and committed scenarios. The proposed roundabout scheme at this junction, funded through the Planning Obligation, would provide a significant degree of betterment, and the detailed design would be the subject of a S278 Agreement.
- A number of matters are not the subject of objection by the Council and can be addressed (where relevant) at the detailed stage. These include: residential amenity, air quality, contaminated land, trees and hedgerows, design and layout, ecological matters, flood risk, agricultural land quality, access and visibility splays<sup>15</sup>.

## **The case for the Appellant<sup>16</sup>**

18. The proposal conflicts with LP policies PS8, H6 and NP policy HOU01 and is outside the settlement boundary (LP policy PS5). It therefore conflicts with the development plan. It is agreed<sup>17</sup> that the real issue is whether there are material considerations which outweigh conflict with the development plan.

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<sup>11</sup> Ms Fitzgerald's paragraph 9.6.7 and Appendix 9.

<sup>12</sup> Areas as set out on illustrative Masterplan at Ms Fitzgerald's paragraph 3.4.1/2

<sup>13</sup> Set out at Mr Taylor's paragraph 3.26

<sup>14</sup> Illustrated at Planning Statement of Common Ground appendix 1, and Highways Statement of Common Ground paragraph 4.2.1

<sup>15</sup> Planning Statement of Common Ground paragraphs 2.5.23 - 2.9.6

<sup>16</sup> Based on the Opening and Closing submissions and the evidence at the Inquiry

<sup>17</sup> Council's Opening Paragraph 10

### *The Local Plan*

19. The policies in the LP (prepared in conformity with the Cheshire Structure Plan<sup>18</sup>) ran to 2011, and it is agreed that the LP only seeks to meet housing needs to that date.
20. A housing figure based on revoked plans (in this case the Structure Plan and the Regional Strategy<sup>19</sup>) cannot be used as the full objectively assessed need for market and affordable housing. This is partly because of the age of the data (much of it 20 years old) and partly because of the radical policy change in respect of housing provision introduced by the Framework. The Structure Plan sought to restrain total house building in Cheshire, rather than boost significantly the supply of housing.
21. The LP was intended to be replaced before 2011, and a review of LP policies PS8 and H6 is therefore overdue by at least 5 years. These policies of restraint were part of a (now revoked) spatial distribution which did not plan for housing growth. These policies were not simply related to countryside protection. The LP Saving Direction was made over 8 years ago, and does not mean that the LP is up to date - it simply means that the LP remains part of the development plan. It does not change the LP evidence base.
22. The Settlement Zone Line for Holmes Chapel serves two purposes – defining an area where housing is acceptable to meet (then) identified needs and to define an area of open countryside where restrictive policies apply. The two purposes are the logical obverse of each other.
23. Importantly the Council accepts that:
  - LP policies PS8 and H6 are policies for the supply of housing, are time expired and are based on out of date demographic evidence.
  - The housing requirement in the LP (and the revoked Structure Plan) cannot be used as a proxy for compliance with the Framework.
  - The LP policies do not seek to boost significantly the supply of housing and are the opposite of Framework policy, as they seek to constrain housing. They were produced in a radically different national policy context.
  - As policies PS8 and H6 are out of date and time-expired, the weight to be attached to them is substantially reduced and is limited.

### *The Brereton Neighbourhood Plan*

24. The Council relies on conflict with NP policy HOU01, which is also agreed to be a policy relevant to the supply of housing.
25. The proposal is technically contrary to NP policy HOU01 because the appeal site lies outside the SZL of Brereton Green and Brereton Heath. However, that Line is derived from the LP (taking account of development since 2005). It is out of

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<sup>18</sup> CD 14.6

<sup>19</sup> CD 14.7

date for the same reasons as the LP policies and the weight to be attached to NP policy HOU01 is therefore significantly reduced. The Council accepted at the Inquiry that LP policy HOU01 added nothing to LP policies PS8 and H6.

26. The background is that the emerging NP included a policy ('old' HOU01) proposing a cap on development in the NP area. 'Old' policy HOU02 referred to settlement boundaries. The Examiner concluded that policy HOU01 should be deleted as it was overly restrictive and that setting a cap on development did not comply with the Framework. Accordingly, 'old' HOU02 became policy HOU01 in the adopted version. The Examiner's report stated that the LP "...does not provide an up to date context for decision making"<sup>20</sup>.
27. The Council suggest that the NP is in general conformity with the emerging CELPS, but this has not progressed sufficiently to allow any assessment of general conformity. In the Local Plan Examiner's Further Interim Views<sup>21</sup> he gave a limited, caveated endorsement to the Council's position but stated that "... At present, it is not known where, when and how much new housing development will be identified and allocated in the amended plan, and how much might be left for the subsequent Site Allocations Local Plan and Neighbourhood Plans". The objectively assessed need and the distribution of development are yet to be resolved in the emerging CELPS.
28. There is a suggestion that the NP is sufficiently flexible to allow for any changes brought about by the emerging CELPS. However it cannot be reasonably expected that a small NP could accommodate wider strategic requirements.
29. In summary:
- The NP Examiner's report could not and did not examine compliance with the emerging CELPS.
  - Strategic requirements were to be addressed in the future by the emerging CELPS, and the NP cannot be expected to address strategic requirements in advance of the adoption of the CELPS.
  - NP policies do not show the flexibility required to accommodate changes to the emerging CELPS - as that could not reasonably be expected of the NP.
  - At adoption of the CELPS paragraph 184 of the Framework would apply and the NP would need to be amended to reflect the policies of the up to date local plan.
30. Paragraph 198 of the Framework suggests that a proposal should not "normally" be allowed where there is conflict with a neighbourhood plan. "Normally" allows for exceptions and this is not a normal situation, for a number of reasons. Normally a Neighbourhood Plan would be made after the adoption of a Local Plan. The NP relies on out of date SZL derived from a revoked Structure Plan. The Framework requires a Council to normally to demonstrate a 5 year housing land supply, but this cannot be done in this case.

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<sup>20</sup> CD 11.7

<sup>21</sup> CD 10.5

31. There are many decisions where planning permission has been granted in conflict with a neighbourhood plan<sup>22</sup>. In this case the scheme is in conflict with a NP to which very limited weight can be attached.

*Weight to be attached to development plan policies*

32. Very limited weight can be attached to LP policies PS8, H6 and NP policy HOU01. This is for the following reasons:

- LP policies PS8 and H6 (and by implication NP policy HOU01) are time expired.
- The three policies are out of date as they are premised on Settlement Zone Lines derived from the LP (and the revoked Structure Plan).
- Seeking to constrain housing development is contrary to the Framework.
- It is common ground that the three policies are (in any event) policies relevant to the supply of housing. The Council does not have a 5 year supply of housing sites and therefore Framework paragraph 49 is engaged. The policies are out of date and paragraph 14 of the Framework is engaged.

33. The Council accepted at the Inquiry that the absence of a 5 year supply reduces the weight to be attached to such policies. It is common ground that the housing shortfall is substantial, and it therefore follows that the reduction in weight is also significant.

*'Dual purpose policies'*

34. Nevertheless the Council considers that weight can be attached to LP policies PS8 and H6, as part of their purpose is to protect the intrinsic value of the countryside. That approach is incorrect for the following main reasons:

- It is not possible to disaggregate the two purposes of the policies. The principles are interrelated and the extent to which the policies advance one principle above another cannot be disentangled. The Council accepted at the Inquiry that the two purposes of the SZL and policies were the logical obverse of each other.
- The Council's approach is directly contrary to the decision in the Barwood Land case<sup>23</sup>, in which it was held that "...this would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide full and appropriate distribution and location of development". The Council accepted at the Inquiry that the authority was attempting to give weight to LP policies PS8 and H6 by applying the counterpart provision (albeit in the same policy) which protects the countryside.

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<sup>22</sup> Ms Fitzgerald's evidence. Paragraph 5.10

<sup>23</sup> CD 13.15

- The Council also accepted at the Inquiry that the effect of the countryside 'part' of the policies would be to influence the supply of housing land by restricting the locations where new housing may be developed. On this basis, the disaggregated 'countryside part' of the policies would be relevant for the supply of housing – and this would fall within paragraph 49 of the Framework and should be given limited weight.

*The emerging local plan (CELPS)*

35. The stage reached by the emerging CELPS is agreed<sup>24</sup>. It is common ground that the emerging policies can only be afforded limited weight.
36. There is a criticism in the sixth reason for refusal that the proposal does not reflect the function and character of Brereton in the light of the emerging plan. But the site is adjacent to Holmes Chapel and will function as a sustainable urban extension to that settlement. There is no evidence of any impact on the function of Brereton.

*Sustainable development – social role*

37. It is common ground that paragraph 14 of the Framework is engaged. Planning permission should therefore be granted unless any adverse impacts significantly and demonstrably outweigh the benefits.
38. In terms of the need for market housing the Council put forward an Objectively Assessed Need (OAN) of 1180 d/pa at the emerging CELPS Examination in Public (2014), which was not endorsed by the Inspector in his Interim Findings. The Council's more recent position is that the OAN is 1800 d/pa. This was contested by the appellant at the EiP, who contends the OAN is 2271 d/pa.
39. It is agreed that there has been persistent under-delivery of housing, such that a 20% buffer is required. The existing shortfall is agreed to be substantial<sup>25</sup> at 5089 and this shortfall alone is now worth 2.8 years' supply.
40. Whichever annualised requirement figure is applied<sup>26</sup>, it is clear that a dramatic step change in housing delivery is required. There needs to be a fourfold increase in delivery. The scale of any shortfall is material and the greater the shortfall the greater the weight should be attached to the need for housing. The appellant's position is that there is only a 3.29 year supply.
41. In terms of affordable housing, the evidence in the Strategic Housing Market Assessment Update (2013) was that net affordable housing need was 1401 d/pa<sup>27</sup>. A different figure (355 d/pa) was contained in the Housing Development Study (2015)<sup>28</sup>. This disparity has not been satisfactorily explained. In any event, either figure is significantly greater than the 200 d/pa which has been delivered. The Council accepted at the Inquiry that a step change in the delivery of affordable housing is therefore required. But this is dependent on market

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<sup>24</sup> Ms Fitzgerald 5.8 onwards

<sup>25</sup> Planning Statement of Common Ground Paragraph 2.5.6

<sup>26</sup> Summarised in the appellant's closing Paragraphs 72 - 74

<sup>27</sup> CD 9.2 Table 4.14

<sup>28</sup> CD 9.4 Paragraph 19 Summary



housing schemes also delivering affordable homes, and the fact that the appeal scheme can deliver a policy compliant 30% is a significant factor.

42. Given the significant housing need, the Council is heavily dependent on greenfield sites, sites outside existing Settlement Zone Lines, sites in the Green Belt, and sites comprising Best and Most Versatile agricultural land. The fact that the appeal site is accessible to a Local Service Centre which is a sustainable settlement for future growth weighs heavily in favour of the proposal. The site is highly accessible to non-car modes of transport<sup>29</sup>.
43. There is no objection related to adverse impact in terms of highway safety or amenity. The appeal scheme is agreed to result in a significant highway betterment<sup>30</sup> and there is a robust costing<sup>31</sup> and sufficient money provided in the Obligation for the highway improvement at the junction of the A50 and the A54<sup>32</sup>. This will address an existing problem which the Highway Authority wish to resolve, and which would be exacerbated by the development if not mitigated. There is no alternative means of funding the highway improvement, which comply with paragraph 32 of the Framework, and are a significant benefit in the planning balance.

*Sustainable development – economic role*

44. There are a range of socio-economic benefits arising from the development<sup>33</sup>. In particular there would be very significant spending on construction, with 193 full time equivalent jobs p.a. for 6.5 years along with 210 indirect jobs being created. There would be direct, indirect and catalytic economic benefits as a result of the investment and employment and an increase of £4.4m annual local spend.
45. These economic benefits are an important material consideration in support of the proposal in line with Framework paragraphs 18, 19, 28 and 55.

*Sustainable development – environmental role*

46. There is no claimed adverse impact on heritage assets or residential amenity and the site lies within Flood Zone 1. Ecological mitigation and enhancement is secured through the Planning Obligation and conditions. The provision of recreational open space is considerable and exceeds the policy requirements<sup>34</sup>. The site is not Best and Most Versatile agricultural land (being subgrade 3b), and the Council accepted at the Inquiry that this was an advantage.
47. The Council accept that the sole adverse land use planning effect concerns landscape and visual impact.
48. There is no substantive landscape and visual impact evidence from the Council. The appellant's detailed description of the site and its landscape context has not been challenged<sup>35</sup>. The conclusions of the appellant's Landscape and Visual Impact Assessment are agreed, and the Council is therefore in the unusual

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<sup>29</sup> Ms Fitzgerald's Paragraph 4.2 onwards

<sup>30</sup> Highway Statement of Common Ground Paragraph 5.5.2

<sup>31</sup> Mr McKenzie's Section 5.7

<sup>32</sup> Scheme at Mr McKenzie Appendix K

<sup>33</sup> See CD 1.7, summarised at appellant's closing at Paragraph 88

<sup>34</sup> Summarised at Appellant's closing submissions Paragraph 99

<sup>35</sup> Summarised at Mr Taylor's Section 4, including Appendices 12, 13, 14 and 16

position of relying on the appellant's own evidence - which demonstrates that the landscape and visual impact is acceptable – but seeking to draw different conclusions.

49. The Framework requires the protection to be afforded to a site to be commensurate with its status. This site does not form part of an internationally, nationally or locally designated landscape. The LP (and the revoked SP) identifies areas of County Value, but did not include this area. Accordingly the level of protection afforded to the site is at the lowest end of the spectrum. It is not a valued landscape and is not protected by paragraph 109 of the Framework.
50. The Council asserts that the landscape is nonetheless protected by paragraph 17 of the Framework, but this is not consistent with the wording of the Framework. Paragraph 17 "recognises" the intrinsic character and beauty of the countryside (as a core planning principle) but it is valued landscapes which are "protected" (paragraph 109). The appellant accepts that there could be some minor level of protection in the Framework to sites which are not valued landscapes, but such protection is limited and is certainly not adequate to justify refusal.
51. LP policies GR 1 and GR 5 are therefore inconsistent with the Framework as they protect all countryside for its own sake. Any development on a greenfield site and all strategic allocations would therefore be contrary to policy, which would be illogical. For this reason, the policies are actually relevant to the supply of housing and are out of date. The policies should be afforded limited weight.
52. The landscape evidence<sup>36</sup> concludes that the impact on the site is Moderate – Substantial (Year 1) to Moderate (Year 15). A moderate impact is not notable and/or significant (applying the appellant's methodology). This is consistent with the Screening Direction, which indicates that there would not be any significant effects. It is only because the Council defines "the area" as being "the site and its immediate surroundings" that the authority can seek to show a conflict with policy. Any housing development on a greenfield site will have a moderate impact on the site and immediate surroundings. Such inevitable impact cannot justify refusal.
53. Support for the appellant's landscape analysis is to be found in the report by URS for Brereton Parish Council<sup>37</sup>. This concluded that the landscape in the area had a "low sensitivity" to housing development, due to the proximity of the railway line, and the housing/employment development in the backdrop of some views.
54. Overall, the landscape impact has been minimised and is very localised. Any impact must be afforded only limited weight in the balance.
55. The visual impact is limited to no more than the site, the access and London Road, and some parts of the adjacent footpath network. The recreational experience to users of such footpaths will not change materially. The visual impact will be significantly mitigated by existing hedges and hedgerow trees, existing woodland, substantial planting strips and significant areas of open space. The residual impact is no more than the inevitable impact of any housing development.

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<sup>36</sup> Mr Taylor

<sup>37</sup> Mr Taylor's Appendix 16

*Conclusion for the appellant*

56. The adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits. Rather, the benefits significantly and demonstrably outweigh the limited landscape and visual impact.

**The case for the Council<sup>38</sup>**

57. It is common ground that the appeal proposal breaches LP policies PS5, PS8 and H6, and NP policy HOU01. These are 'in principle' policies rather than policies addressing points of detail, and the proposal is therefore a significant breach of the development plan. In order to allow the appeal material considerations must be sufficiently weighty to justify not according the development plan the weight accorded to it by statute.
58. This is particularly important as the NP was very recently made, and the proposal is in conflict with NP policy HOU01. This states that outside settlement boundaries development will not be permitted otherwise than in accordance with other development plan policies.
59. It is accepted that the Council cannot demonstrate a five year housing land supply, and that the shortfall is substantial – this is a significant material consideration. It was agreed that in the light of this position, there was no need to take up Inquiry time discussing the detailed housing land supply differences between the parties.

*LP policies PS8 and H6*

60. The main material considerations to set against the conflict with the development plan arise from the provisions of the Framework. LP policies PS8 and H6 are relevant policies for the supply of housing. In view of the housing land supply position, the Council accepts that these LP policies are out of date in terms of their geographical extent – i.e. how much land is protected on the basis of it being countryside.
61. However these policies (and NP policy HOU01) are consistent with the Framework, which recognises the intrinsic character and beauty of the countryside. This has nothing to do with special landscape designations – whilst it is clear that some parts of the countryside are more characterful than others, all countryside is recognised as intrinsically beautiful and characterful.
62. Inquiry time was taken up on the question of whether the dual purposes of these policies could be disentangled. It is clear that weight should be given to the policies because of their countryside protection purpose. The approach of the Framework does not mean that 'out of date' policies for the supply of housing are irrelevant in the determination of the appeal. Nor does the Framework determine how much weight should be given to such policies.
63. Most of the appeal decisions submitted to the Inquiry show that even where Inspectors have allowed appeals, they have concluded that the countryside protection purpose of the policies is consistent with the Framework. They have

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<sup>38</sup> Based on the Opening and Closing submissions and the evidence at the Inquiry

accorded weight to these policies<sup>39</sup>. The appellant conceded in cross-examination that 'non-valued' countryside was protected by the Framework, albeit the appellant's view was that this protection was very limited.

*LP policies GR1 and GR5*

64. It is common ground that these are not policies for the supply of housing. The Council's position is that, although they predate the Framework, they are broadly consistent with the approach towards the protection of the natural environment. The appeal site is not a 'valued' 'landscape' for the purposes of paragraph 109, but the Framework's approach to other areas of the countryside means that these policies accord with the national approach.
65. That accords with the approach taken in the Goldfinch Close appeal decision<sup>40</sup>. This decision referred to the approach of the Framework in protecting the intrinsic character and beauty of the countryside, which was given significant weight in the balance.

*NP policy HOU01*

66. NP policy HOU01 is a relevant policy for the supply of housing within the meaning of paragraph 49 of the Framework and, as a five year housing land supply cannot be demonstrated, the Council accepts that policy HOU01 is not up to date – despite the fact that the NP was made only just before the Inquiry.
67. However there are a number of matters to be taken into account in deciding the weight to be accorded to the policy<sup>41</sup>:
- Brereton is a rural parish containing two small villages, which is not intended by the LP or the emerging CELPS to accommodate significant housing development. In the emerging plan, growth in Brereton and Brereton Heath would be confined to small scale infill.
  - The NP is in general conformity with the saved strategic policies of the LP.
  - The NP is not anti-growth but is intended to deliver a sensitive housing strategy tailored to the needs of the Parish. It is not a requirement for every Neighbourhood Plan to boost significantly the supply of housing.
  - The NP evidence base identified the housing need range for the Parish to 2030, taking account of the increased housing requirement in the emerging CELPS. The Examiner was satisfied that this was a reasonably robust evidence base and that it was not unduly restrictive. This was having considered, amongst other matters, the representations of the current appellants.
  - The NP includes a degree of flexibility and allows for potentially increased provision.

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<sup>39</sup> Appeal decisions and commentary at appellant's closing, Document 8 Paragraphs 16.1 – 16.5

<sup>40</sup> CD 12.6

<sup>41</sup> In full at appellant's closing, Document 8 Paragraphs 21.1 – 21.12

- There is no certainty in the emerging CELPS as to the distribution of housing, nor what Holmes Chapel's contribution will be.
- The NP has been prepared in the context of the emerging plan. Although the Inspector has only issued interim Views at this stage, his position is clear and material, although he stated that he could not endorse the need or distribution of housing at this stage.

68. Overall the appeal scheme is fundamentally contrary to the provisions of the NP. Paragraph 198 of the Framework states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

*Sustainability (including landscape impact)*

69. In accordance with the Suffolk Coastal and Renew cases<sup>42</sup>, the Council accepts that the question of sustainability should be assessed in accordance with paragraph 14 of the Framework – the development would not be sustainable only if the adverse impacts significantly and demonstrably outweigh the benefits. The absence of a five year housing land supply is not an automatic green light to planning permission. Housing development should only be permitted where it amounts to sustainable development.
70. The construction of market and affordable homes, and the provision of employment floorspace, are contributions towards the economic and social dimensions of sustainable development. But this has to be weighed against the loss of open greenfield land and the fundamental undermining of a recently made NP.
71. Local residents and representatives explained the attraction of the appeal site in its setting. The fact that the land is close to the built up area makes it important for local residents. The proposal represents a very significant extension of Holmes Chapel for around 500 metres along London Road and would result in a fundamental change in the character of the site from open pastureland to a housing estate. Although the hedgerows and trees would be largely retained, they would be in a totally different landscape context.
72. The most important characteristic of this rural site is its openness, which would be lost as a result of the appeal scheme. There would be a permanent significant adverse effect on the character of the site and the local landscape. The Landscape and Visual Impact Assessment (LVIA) shows that the Year 1 landscape effect would be 'moderate - substantial', reducing to 'moderate' with mitigation in Year 15. In terms of visual effects, six of the views have a visual effect of 'substantial' at Year 1, reducing to 'moderate – substantial' at Year 15 with mitigation. There was the suggestion in the appellant's landscape evidence that the Year 15 effect would be 'neutral', but this is in conflict with the LVIA and this watering down of the effect is not supported by the facts<sup>43</sup>.
73. The appeal scheme would be contrary to LP policy GR1, and would impact on the landscape character of the local area and obscure views across the open

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<sup>42</sup> Documents 2. Suffolk Coastal [2016] EWCA Civ 168; Renew Land [[2016] EWHC 571 (Admin)

<sup>43</sup> Appellant's closing, Document 8 Paragraphs 30.1 – 30.4 expands on this point

greenfield site – contrary to LP policy GR5. The suggestion was made that LP policy GR5 adds nothing to LP policies PS8 and H6. However the former is a landscape character policy, whereas the latter are open countryside policies.

74. The fact that greenfield sites on the edge of settlements are needed to meet the housing requirement does not mean that the appeal scheme is acceptable.

*Conclusion for the Council*

75. There is no requirement for a neighbourhood plan to wait until a local plan is adopted, and many neighbourhood plans precede local plans. The Hook Norton case<sup>44</sup> is distinguishable because, in that instance, there was not necessarily a conflict with a neighbourhood plan policy. Whereas in the current case there is a clear conflict with NP policy HOU01.
76. In this case there is clear landscape harm and a conflict with the recently made NP. The NP would be fundamentally undermined as soon as it had been brought into effect. The proposal is not sustainable development and material considerations do not indicate otherwise than dismissing the appeal.

**The case for others who attended the Hearing and written representations**

77. Councillor B Bath (Holmes Chapel Parish Council)<sup>45</sup> updated the Inquiry on the progress of the Holmes Chapel Neighbourhood Plan. It is expected that formal submission is imminent. Holmes Chapel already has a substantial amount of approved housing, well beyond the needs and requirements of the Local Service Centre. The site is outside the SZL. The appeal proposal is harmful in landscape terms and in terms of cumulative impact on the services within the settlement. The distance from the appeal site is such that most trips will be by car – exacerbating existing congestion.
78. Councillor L Gilbert (Cheshire East Council) stated that accessibility was the key. Whilst accepting that Holmes Chapel is a Local Service Centre with a range of facilities, the settlement experiences severe parking problems, which would discourage the use of the facilities. In addition the local schools and health centres are full, and would be over-stretched by the proposed development.
79. Councillor A Lindsay (Brereton Parish Council)<sup>46</sup> updated the Inquiry on the position of the NP, which has now been adopted. This should be given greater weight than the emerging CELPS and should not have reduced weight because it was prepared in the context of the LP. The extent of public involvement in the NP process was stressed. The proposal is fundamentally contrary to NP policy HOU01 and a number of other open space and landscape policies.
80. Mr C Matchett used to live in the cottage opposite the appeal site. He supported the emerging Holmes Chapel Neighbourhood Plan. There are several locations which are preferable to the appeal site and would not have the same impact on the countryside. He questioned the extent to which the appellant had sought alternative sites.

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<sup>44</sup> CD 12.9

<sup>45</sup> Statement at Document 6

<sup>46</sup> Statement at Document 5

81. 9 written representations were submitted at the appeal stage, with additional comments submitted to the Council before its decision on the application<sup>47</sup>. These representations objected on grounds including the cost of the affordable homes, urban sprawl, impact on London Road, loss of countryside, impact on local services, absence of need for employment provision. Fiona Bruce MP objected on highway grounds and in relation to the conflict with the Brereton NP.

### **Conditions and Obligation**

82. A range of planning conditions were discussed and agreed (without prejudice) at the Inquiry.
83. A Unilateral Planning Obligation<sup>48</sup> was discussed at the Inquiry. It deals with a contribution to a public right of way, a highways contribution, contribution to secondary education, and the transfer and management of open space.
84. The policy support for the footpath works and justification for the costings has been set out in the Council's Community Infrastructure Levy Compliance Statement<sup>49</sup>. The policy support related to the highway works has been provided<sup>50</sup>, and justification for the detailed costings has been given in the appellant's evidence. It is agreed that a primary education contribution is not needed and the policy support for the secondary education contribution has been set out<sup>51</sup>. In line with policies in the LP<sup>52</sup>, the proposal includes open space which would be controlled by a management company.

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<sup>47</sup> All on file

<sup>48</sup> Document 10

<sup>49</sup> Document 11 Paragraph 1.1 and Paragraphs 1.4/1.5

<sup>50</sup> Document 11 Paragraph 2.1

<sup>51</sup> Document 11 Paragraph 3.1 and Paragraph 3.4/3.4

<sup>52</sup> Document 11 Paragraph 4.1

## Conclusions

[Numbers in square brackets denote source paragraphs]

### *Background, agreed matters and main considerations*

85. Two of the Council's reasons for refusal are no longer in contention and are not being defended by the Council [14, 17]. Firstly it is now agreed that the site is in a reasonably accessible location in relation to services, facilities and public transport, adjacent to the Local Service Centre of Holmes Chapel. The second reason for refusal related to insufficient information regarding the impact on the highway network. Further material has since been provided and this is no longer being contested by the Council.
86. There are a number of agreed matters, largely set out in the Planning and Highway Statements of Common Ground [17]. In summary, the most important of these are:
- The Council cannot demonstrate a five year housing land supply and there is a substantial shortfall. Paragraphs 14 and 49 of the Framework are engaged.
  - It is common ground that the appeal proposal breaches LP policies PS5, PS8 and H6, and NP policy HOU01 [18, 57].
  - LP policies PS5, PS8 and H6, and NP policy HOU01 relate to the supply of housing and cannot be considered up to date under paragraph 49 of the Framework. (However the Council considers that weight should be given to the countryside protection elements of policies PS8 and H6.)
  - The delivery of market housing and 30% affordable housing (a policy-compliant level) is a significant social benefit. The provision of employment floorspace is an economic benefit. Other benefits arising from the scheme are agreed.
  - Highway matters are agreed between the main parties, including trip generation rates, traffic distribution and modelling. A new roundabout at the A50/A54 junction is proposed and is agreed to provide a significant degree of betterment.
87. With this background, the main considerations are:
- The effect of the proposal on the settlement pattern in the area, in the light of adopted and emerging policy.
  - The effect of the proposal on the character and appearance of the area.
  - Whether there are any considerations, particularly in relation to the housing land supply position, sufficient to outweigh any harm or conflict with policy in relation to the above matters.

### *The effect of the proposal on the settlement pattern in the area, in the light of adopted and emerging policy*

88. The key policies in relation to the settlement pattern are agreed to be LP policies PS5, PS8 and H6, and NP policy HOU01 [18, 57]. Policy PS5 defines Holmes Chapel as a settlement having a Settlement Zone Line (SZL), beyond which is



open countryside where restrictive policies apply (LP policies PS8 and H6 and, more recently, NP policy HOU01).

89. The appeal site is in the countryside outside the SZL and, as none of the exceptional circumstances set out in the policies apply, the proposal is agreed to be contrary to the development plan. Under these circumstances, in line with s.38(6) of the Planning and Compensation Act 2004, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The parties agree that this is the position in this appeal [18, 57].
90. However the parties are also agreed that there is no five year housing land supply in this local authority area [17]. There is no agreed figure for the shortfall, largely due to issues around the Examination of the emerging local plan (CELPS), but this appeal is not the place to consider the precise extent of the housing land supply position. What is important is the agreement between the main parties that the shortfall is substantial and it appears that there is only around a 3 year supply [17, 40].
91. Paragraph 49 of the Framework is therefore engaged. This makes it clear that relevant policies for the supply of housing should not be considered up-to-date. This is the case even if part of the development plan has been recently adopted – as is the case with the NP. (This will be considered further below.) The parties are agreed that the LP and NP policies related to the settlement pattern are relevant policies for the supply of housing, which are accordingly not up to date [17, 23, 60].
92. The Framework goes on to state (paragraph 14) that where policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or where specific policies in the Framework indicate that development should be restricted. That is the agreed position in this case.
93. The Council has stated [57] that the policies are ‘in principle’ policies rather than dealing with points of detail and that the proposal is therefore a significant breach of the development plan. However Framework policy does not make any such distinction in relation to relevant policies for the supply of housing, and this does not necessarily increase the weight I give the policies.
94. Conversely the appellant has set out reasons why the settlement policies should be accorded very limited weight [23, 29, 32]. These relate to the age of the demographic evidence and the SZLs, based on a revoked Structure Plan which underpinned the LP policies. The NP also conforms to this LP approach. There is also the fact that the LP was clearly intended to be reviewed some time ago, and that the general policy of restraint in the LP was based on an outdated approach and that it conflicts with the Framework.
95. Whilst the appellant’s arguments may have considerable force, this does not take the matter much further beyond the agreed position that the policies are policies relevant to the supply of housing and are out of date in the light of the absence of a 5 year housing land supply. Whilst policies which are out of date should not be ignored, and should be accorded appropriate weight (not defined in the

- Framework), in view of the evidence on the significant shortfall in housing delivery the relevant LP and NP policies accordingly have limited weight.
96. Specific reference should be made to the very recent emergence of the NP, which was made immediately before the Inquiry. It should be noted that the Council agreed that NP policy HOU01 is a relevant policy for the supply of housing within the meaning of paragraph 49 of the Framework. As a five year housing land supply cannot be demonstrated, the Council accepted that policy HOU01 is not up to date.
97. Reference was made to paragraph 198 of the Framework, which provides that where a planning application conflicts with a neighbourhood plan (as in this case) that has been brought into force, planning permission should not normally be granted. However the position is not 'normal' in that as NP policy HOU01 is clearly a relevant policy for the supply of housing, and is in conformity with LP policies which are themselves out of date, only limited weight can be accorded to the policy. The Council's arguments seeking to give additional weight to the NP do not alter the position.
98. It is clear that the Brereton community has put a considerable effort into preparing the NP, and it is appreciated that it would be frustrating for one of the key policies to be accorded reduced weight due to the lack of a five year housing land supply in the District – a matter over which the Parish has no control. But there is a significant national housing shortage and, if the LP were delivering what national policy requires, the planning balance would have been different.
99. The emerging CELPS is in the course of Examination, anticipated to resume later in the year [12]. A number of significant matters remain unresolved, including issues related to the supply/delivery and distribution of housing. Under these circumstances, the emerging CELPS can be accorded very little weight.
100. A final matter which needs to be resolved is the suggestion that the out of date policies have a 'dual function', and that this is relevant to their weight. The phrase 'policies for the supply of housing' extends to a range of policies whose effect is to influence the supply of housing by limiting the places where development may be allowed – such as countryside protection policies. The Council has argued that the relevant LP policies have a dual function of restraining development and protecting the countryside [61, 62, 63]. The suggestion is that the countryside protection aspect of the policies is not out of date and is in line with Framework policy to recognise the intrinsic character of the countryside (a matter discussed below).
101. With due respect to those who have attempted this disaggregation in other appeal decisions, it is not considered that this is a feasible approach in this instance. Whilst accepting that the policies have two purposes, the principles are interrelated and cannot be disentangled. In any event, as in the Barwood Land case, it seems illogical to regard a policy as out of date in relation to housing land supply, only to regard it as more up to date in relation to countryside protection policy. It is not clear what weight should be ascribed to the policy under those circumstances.
102. In any event, even if the countryside protection purpose of the policies were considered up to date, the effect of this part of the policy would be to influence the supply of housing land by restricting suitable locations. There would

therefore be a good argument that the countryside element of the disaggregated policy would be considered a relevant policy for the supply of housing in its own right. As with the 'housing element' of the policy, it would be regarded as out of date.

103. In conclusion, the proposal is contrary to the LP and NP policies identified above in relation to the settlement pattern in the area. However, in the absence of a 5 year housing land supply, paragraph 49 of the Framework provides that such policies should not be considered up to date. The Council accepts that position, and I only accord the conflict with those policies limited weight.

*The effect on the character and appearance of the area*

104. Dealing first with the policy context, there was considerable discussion at the Inquiry as to the approach in the Framework towards the protection of the landscape. It is common ground that the area including the appeal site does not form part of an internationally, nationally or locally designated landscape [49, 64]. Indeed, the LP specifically identified locally protected areas (called Areas of County Value) but, presumably as a conscious decision, did not include this area [49].
105. It is therefore clear that the area is not within a valued landscape within the meaning of paragraph 109 of the Framework. That much is agreed. However the appellant's written position was that the Framework does not protect countryside which does not fall within the category of valued landscapes. This approach was said to be supported by Framework paragraph 113 which suggests that protection should be commensurate with the status of an area.
106. This approach effectively equates to a contention that, outside valued landscapes, the effect of a proposal on the countryside is not a relevant material consideration. However one of the core planning principles in the Framework is to recognise the intrinsic character and beauty of the countryside. If this principle did not imply a level of protection, albeit less than would be applied to a valued landscape, the recognition would be meaningless. In the event, the appellant accepted at the Inquiry that there could be some level of protection in the Framework to sites which are not within a valued landscape [50].
107. Especially where there are development plan policies in force, there is no doubt that the effect of proposals on a non-designated landscape can be a relevant material consideration.
108. Turning to the policies relevant to this issue, LP policies PS8 and H6 have a countryside protection element. However, for the reasons set out above, these policies can only be accorded limited weight.
109. LP policies GR1 and GR5 are not policies for the supply of housing, as GR1 is of a general nature and GR5 is a landscape character policy. However the appellant contends that these policies are inconsistent with the Framework as they protect all countryside without distinction [51]. However, given the core planning principle in the Framework, although these policies do not fully accord with the more subtle approach in the Framework, the policies are in general conformity with national policy.
110. The site is a series of fields of varying sizes and shapes, bounded by hedgerows and hedgerow trees [5, 48]. Various character assessments refer to the

pastoral landscape wherein hedgerows are an important element. The site is visible from London Road and from the adjoining footpaths. From these locations a number of aspects of the assessment produced on behalf of Brereton Parish Council are self-evident. In particular the effect of the railway to the north and the outliers of the settlement of Holmes Chapel are notable features [53, 55, 73]. The conclusion of that assessment was that the area has a low sensitivity to development, and this is a reasonable judgement.

111. As well as viewing the site from the agreed viewpoints in the immediate vicinity, the opportunity was taken to consider the effect of the proposal from more distant locations. However, due to the generally flat topography and the layering effect of the hedges and hedgerow trees, the effect of the proposal from locations beyond the immediate area around the site would be negligible.
112. The Landscape and Visual Impact Assessment (LVIA) produced by the appellant was the subject of some debate at the Inquiry, although the Council did not criticise the work, or produce any alternative assessment or significant evidence. The conclusion of the LVIA was that the Year 1 landscape effect would be 'moderate - substantial', reducing to 'moderate' with mitigation in Year 15 [52, 72]. In terms of visual effects, the assessment is broadly the same. This accords with what was seen on the ground, particularly with regard to the visibility of the site from the road and footpaths.
113. At the Inquiry the Council criticised the appellant for attempting to 'water down' the effects of the proposal as set out in the LVIA, particularly in relation to the suggestion that a moderate impact would not be notable and/or significant [72]. However this largely comes down to a matter of semantics, and the conclusion that the proposal would cause a permanent limited adverse effect on the landscape is inescapable.
114. Similarly, the visual experience for users of the adjacent footpaths would change and be diminished, despite the retention of existing hedges and hedgerow trees, woodland, and the addition of substantial planting strips and significant areas of open space. Given that part of one of the footpaths runs through the site itself, and the remainder of the affected footpaths run very close to the site, this is inevitable and self-evident.
115. However both the effect on the landscape and visual impact are agreed to be limited to no more than the site, London Road, and limited parts of the footpath network. In relation to those areas, there is a conflict with the policies discussed above. However, in assigning weight to this conflict it is noted that the landscape itself is not specifically protected and that this moderate harm and conflict with policy would be repeated for virtually any development of a greenfield site – and that such sites are going to be needed to meet the housing requirement. The proposal would cause some limited harm to the character and appearance of the local area.

#### *Other considerations*

116. Dealing first with the need for market housing, the Council put forward an Objectively Assessed Need (OAN) of 1180 d/pa at the Examination in Public (EiP) (2014) of the emerging CELPS. This was contested by the appellant at the EiP, who contend the OAN is 2271 d/pa. The Council's figure was not endorsed by the Inspector in his Interim Findings. The Council's latest position is that the

OAN is 1800 d/pa. There is therefore no agreed figure for the quantum of need – but it is clear that the need is very substantial [38, 39, 59].

117. Whichever annualised requirement figure is applied, it is clear that a significant increase in housing delivery is required, and the parties agreed that there needs to be around a fourfold increase in delivery. It is also agreed that there has been persistent under-delivery of housing, such that a 20% buffer is required [39]. The existing shortfall is substantial.
118. Overall the appellant's case is that there is only a 3.29 year supply [40] and the authority, whilst not in a position to give a precise figure at this stage in the Examination of the emerging CELPS, did not dissent from this order of magnitude. In an area where the authority cannot demonstrate a five year housing land supply, and where it is agreed that the shortfall is substantial, the provision of up to 190 dwellings is clearly a significant material consideration weighing in favour of the proposal.
119. Turning to affordable dwellings, there is no clarity as to the outstanding need, with various figures being put forward [41]. However what is clear and agreed between the main parties is that delivery has to be substantially increased. There was no disagreement that the majority, if not all, of this delivery will be dependent on market housing schemes housing providing an element of affordable housing in line with policy. Under these circumstances, the provision of a policy compliant 30% affordable housing element is a significant factor weighing in favour of the scheme [17].
120. The provision of commercial floorspace is also regarded as a benefit of the proposal [17], although the position is perhaps less clear cut than in relation to housing provision. There was some suggestion that there would be limited demand for the employment element of the scheme [81], but the balance of the evidence is that the provision of employment floorspace weighs in favour of the proposal.
121. Overall, these matters are summarised briefly in this section, as there is no significant dispute between the main parties. However the weight which they contribute in favour of the appeal scheme is very considerable.

### *Conditions*

122. A set of recommended conditions is appended to this report. The conditions are very closely based on those discussed at the Inquiry and agreed between the Council and the appellant. They were not the subject of objection by any other party. Some minor amendments have been made to align them more closely with national policy. All are necessary and reasonable and meet the other tests in Planning Practice Guidance.
123. For the avoidance of doubt, the approved plans are specified in a condition (Condition 1). As the application is in outline, details of the reserved matters need to be submitted for approval (Conditions 2 and 3). In view of the scale of the development, and the fact that two uses are being approved, a condition is necessary in relation to the phasing of the development (Condition 4). A number of subsequent conditions refer back to this phasing condition.

124. The accesses onto London Road for the residential and commercial development need to be approved and constructed before occupation of the relevant phases of the development, in the interests of highway safety (Condition 50).
125. A scheme for affordable housing, including not less than 30% of the dwellings, is to be submitted for approval and implemented. This is necessary to ensure one of the benefits of the development (Condition 6).
126. Various matters related to infrastructure and the construction of the development need to be submitted for approval, in the interests of the proper functioning of the development. These include details of surface water drainage (Condition 7), and an Environmental Management Plan (Condition 9).
127. So as to encourage sustainable modes of transport, a Travel Plan for each phase of the development needs to be approved and implemented (Condition 8). For environmental reasons, a Low Emission Strategy for the residential and commercial elements needs to be submitted and implemented (Condition 16) and electric vehicle infrastructure provided (Condition 17).
128. To investigate and remediate any land contamination, conditions are necessary to undertake investigations and address any unexpected issues (Conditions 10 and 11).
129. In the interests of the appearance of the development and the promotion of suitable habitats, a Habitat and Landscape Management Plan should be approved and implemented (Condition 12). A detailed Arboricultural Method Statement is necessary in the interests of the appearance of the development and the retention of trees, shrubs and hedgerows (Condition 13). For similar ecological reasons, a condition is necessary to avoid disturbance to nesting birds and the provision of bird boxes (Conditions 14 and 15).

#### *Planning Obligation*

130. The Obligation makes a financial provision for the upgrading of part of an existing footpath (Brereton no.3) prior to the occupation of the first dwelling, and its subsequent maintenance [84]. This is necessary as part of the footpath would become a landscaped corridor within the development. This is supported by a number of policies in the LP, and justification for the detailed costings has been provided.
131. The Obligation makes provision for the funding of a roundabout at the junction of the A50 and the A54, prior to the commencement of the development. The junction is acknowledged to be performing poorly, and it is common ground that the impact of the traffic from the development necessitates the provision of a new roundabout [17]. This is supported by a number of policies in the LP, and justification for the detailed costings has been provided. The evidence is that, with improvement, London Road and the surrounding network is capable of accommodating the additional traffic which would be generated by the development [17].
132. It is agreed between the main parties that a primary education contribution is not needed [84]. However the development would generate demand for secondary education at Holmes Chapel Comprehensive School and Sixth Form College. The agreed methodology for the calculation of the contribution has

been set out and will be paid in phases. This is supported by the LP and other documents [84].

133. In line with policies in the LP, the proposal includes amenity greenspace and play facilities. This would not be the subject of a financial contribution as the area would be controlled by a management company. The Obligation would provide for details and management plan to be approved by the Council, the formation of the management company, and a timetable for implementation of the open space. It would then provide for the transfer of the areas to the management company, future funding of the company by the buyers of each dwelling, and detailed arrangements for future maintenance. These matters were discussed at the Inquiry, particularly with a view to ensuring that the arrangements would ensure the future maintenance of the open space. This is secured by the Obligation.
134. It is agreed between the main parties that the impact on health facilities is acceptable and that a contribution is not necessary.
135. The evidence clearly demonstrates that the provisions of the Obligation are directly related to the proposed development and are necessary to make the scheme acceptable in planning terms. Therefore I consider that the Obligation meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Some provisions are designed to mitigate the impact of the proposal and these elements therefore do not provide benefits in favour of the proposal. However other matters, most notably the footpath upgrading, highway improvements and open space provision, have a wider benefit and weigh in favour of the appeal.

*The planning balance and conclusion*

136. The proposal is in breach of LP policies PS8 and H6 and NP policy HOU01, as is agreed by the parties. In addition, there is a conflict with LP policies GR1 and GR5 and some limited harm to the character and appearance of the local area. On that basis, the appeal should be dismissed unless material considerations indicate otherwise.
137. The primary material consideration in this case is the fact, accepted by the Council, that the authority cannot demonstrate the five year supply of deliverable housing sites required by the Framework and that there is a significant shortfall. This has serious consequences for the delivery of market and affordable housing in the area.
138. The development plan policies dealing with the settlement pattern are out of date, despite the fact that the NP has only recently been made, as they are relevant policies for the supply of housing. They therefore attract only limited weight by virtue of the operation of paragraph 49 of the Framework. In line with paragraphs 49 and 14 of the Framework, planning permission should be granted where it amounts to sustainable development (assessed through Framework paragraph 14) taking account of all relevant considerations.
139. In terms of the economic role of sustainability, the authority accepts that the provision of employment space is a material consideration in favour of the development. There would also be a significant number of construction jobs over the 6.5 year build period. The construction of market and affordable

homes would result in direct and indirect economic benefits and a significant increase in local spending power.

140. In terms of the social role of sustainability, the provision of new market and affordable homes in an accessible location adjacent to a Local Service Centre is a very significant benefit – especially in the light of the pressing need for housing in the area. The scheme is agreed to result in a significant highway betterment.
141. There are some positive environmental elements of the scheme, most notably the intended provision of open space in excess of policy requirements, and the fact that the proposal would not result in the loss of high grade agricultural land. However, as discussed above, there would be some landscape and visual harm resulting inevitably from the change from fields to a housing/employment development.
142. Taking the three dimensions of sustainability together, notwithstanding the limited landscape and visual harm which would result, the social and economic benefits are such that I find the proposal represents sustainable development. The limited adverse impact does not significantly and demonstrably outweigh the benefits such that the proposal does not represent sustainable development. The Framework's presumption in favour of sustainable development applies.
143. The considerations are relatively finely balanced, especially in the light of the recent emergence of the NP. However on balance the material considerations, including the policies in the Framework and the housing land supply position, are sufficient to outweigh the limited landscape and visual harm.

*Recommendation*

144. I recommend that the planning permission be granted subject to conditions.

*P. J. G. Ware*

Inspector



## **Annex – Recommended conditions**

1. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
  - Drawing No. 2014-008-001 Location Plan
  - Drawing No. C14052 001 P3 Access Planand shall be substantially in accordance with the Framework Plan and the Design and Access Statement.
2. Details of 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.
3. Application for approval of all the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. 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 both the phases of commercial and residential development shown on the approved phasing plan. The 'residential development' refers to the development of up to 190 dwellings. The 'commercial development' refers to 350 sq.m. of B1 commercial space. Thereafter, development shall be carried out in accordance with the approved phasing plan.
5. No dwelling on any phase of the residential development shall be occupied and no commercial development shall be occupied until the accesses for the proposed phase of development, as shown on drawing no. C14052 001 P3 have been constructed in accordance with construction details that have been agreed in writing by the local planning authority.
6. The residential development shall not begin 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 set out in the Glossary to the National Planning Policy Framework. The scheme shall include:
  - The numbers, type, and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings

- The tenure of the affordable housing shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be 'pepper-potted' across the site.
  - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the open market dwellings shall be occupied before the affordable housing is completed and available for occupation, provided that there shall be a high level of pepper-potting of the affordable units.
  - 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.
  - 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.
  - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
  - The affordable homes to be built to the standards adopted by the HCA at the time of development.
7. 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:
- Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, the measures taken to prevent pollution of the receiving groundwater and/or surface water, the discharge of surface water to mimic the mean annual runoff from the existing site, the results of percolation tests and flood water exceedance routes both on and off site.
  - 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 the residential development and no commercial development shall be occupied until the

surface water drainage works applying to that phase have been completed in accordance with the approved scheme.

8. No phase of residential or commercial 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 after 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.
9. No phase of residential or commercial development shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
  - The hours of construction work and deliveries;
  - The parking of vehicles of site operatives and visitors;
  - Loading and unloading of plant and materials;
  - Storage of plant and materials used in constructing the development;
  - Wheel washing facilities;
  - Details of any piling required including, method (using best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
  - Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
  - Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;

- There shall be no burning of materials on site during demolition / construction;
- A scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.

The approved Environmental Management Plan shall be implemented and in force throughout the construction phase of the development.

10. Prior to the development commencing:

- A Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority;
- If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the LPA. The remediation scheme in the approved Remediation Statement shall then be carried out;
- 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 LPA prior to the first use or occupation of any part of the development hereby approved.

11. In the event that unexpected contamination is found after the development of any phase of residential or commercial development has commenced, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme, including timescales, must be prepared which would be subject to approval in writing of the local planning authority.

12. No phase of residential or commercial development shall commence until a Habitat and Landscape Management Plan (HLMP), including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of habitat and landscaping other than those within the curtilages of individual dwellings for residential phases, shall be submitted to and approved in writing by the local planning authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved HLMP.

13. No development of any phase of residential or commercial development 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:

- Details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site;
- Implementation, supervision and monitoring of the scheme of protection;
- A detailed tree work specification and details of its implementation, supervision and monitoring;
- Implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage parking, and deposit of spoil or liquids;
- 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.

14. No construction works in any phase of residential or commercial development shall take place between 1st March and 31st 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.
15. No phase of residential or commercial 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.
16. No phase of residential or commercial development shall commence until a low emission strategy including a timetable for implementation has been submitted to and approved in writing by the local planning authority. The approved strategy shall thereafter be implemented in full and in accordance with the approved timetable.
17. Prior to commencement of development on any phase, details of electric vehicle infrastructure to be installed on the commercial unit/residential properties shall be submitted to and approved in writing by the local planning authority. No property/commercial unit shall be occupied until the approved infrastructure

relating to that phase has been fully installed and operational. The approved infrastructure shall thereafter be retained unless otherwise agreed in writing by the local planning authority.

**APPEARANCES****FOR THE LOCAL PLANNING AUTHORITY:**

Mr G Keen of Counsel He called:	Instructed by the Head of Legal Services
Ms N Wise-Ford BSC(Hons) MA MRTPI	Principal Planning Officer

**FOR THE APPELLANT:**

Mr G Cannock of Counsel He called:	Instructed by Gladman Developments Ltd
Mr C Taylor BA(Hons) DipLa/CMLI	Director, TPM Landscapes
Ms K Fitzgerald BA(Hons) MPlan MRTPI	Senior Planner, Gladman Developments
Mr N A McKenzie CMILT BEng(Hons) MSc	Transportation Director, Hydrock Consultants Ltd (Evidence unchallenged, called only in relation to the Obligation)

**INTERESTED PERSONS:**

Cllr B Bath	Holmes Chapel Parish Council
Cllr L Gilbert	Cheshire East Council
Cllr A Lindsay	Brereton Parish Council
Mr C Matchett	Former resident of Holmes Chapel

**INQUIRY DOCUMENTS<sup>53</sup>**

1	Lists of persons present at the Inquiry
2	Judgements handed in: Suffolk Coastal District Council and others v Richborough Estates Partnership and others [2016] EWCA Civ 168; Cheshire East and others v Renew Land Developments Ltd [2016] EWHC 571 (Admin); Woodcock Holdings v SSCLG [2015] EWHC 1173 (Admin)
3	Opening for the appellant
4	Opening for the Council
5	Statement by Cllr Lindsay
6	Statement by Cllr Bath
7	Brereton Neighbourhood Plan decision document
8	Closing submissions on behalf of the Council
9	Closing submissions on behalf of the appellant
10	Unilateral Obligation (20 April 2016)
11	Council's Community Infrastructure Levy Compliance Statement

<sup>53</sup> Core Documents on file



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.