

Planning, Design and Access Statement

Old Oak Farm, Winchester Road, Fair Oak

25 September 2023

RTPI Chartered Town Planner

Wessex Planning

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1 INTRODUCTION

INTRODUCTION

1.1 This planning, design and access statement has been prepared by Wessex Planning Ltd on behalf of Mr Jason Lomas in support of a planning application for the change of use of land from residential to paddock, and the replacement and relocation of two lawful dwellings with two self-build dwellings and provision of parking and garden areas together with new landscaping along the site frontage.

1.2 The existing mobile homes benefit from certificates of lawful residential use, and it is settled law that the stationing of such mobile homes changes the use of land to residential use.

1.3 The application follows a formal pre-application enquiry with the LPA, the response to which is attached as Appendix 1, and seeks to address the concerns raised by the LPA, which can be summarised as follows;

- Principle of development
- Harm to the character of the countryside
- Adverse impact on the amenity of neighbours
- Ecological impacts and Biodiversity Net Gain

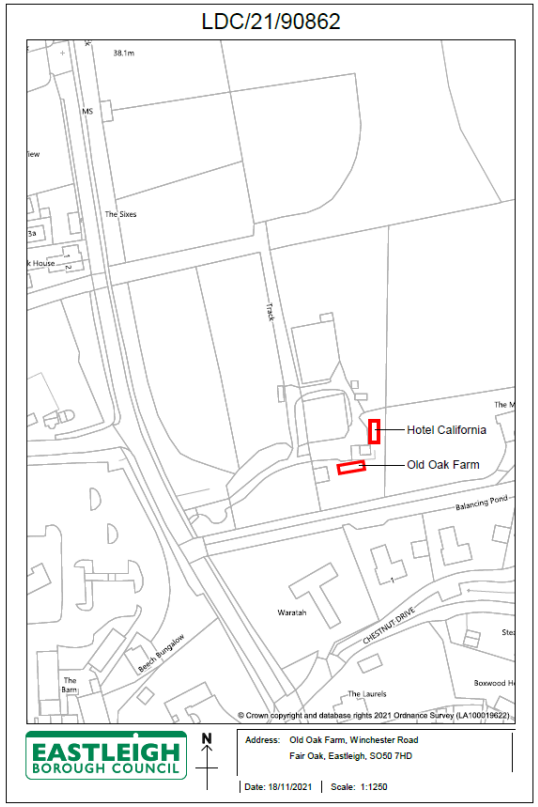
1.4 The submission includes the following:

- Landscape and Visual Impact Assessment
- Landscape Strategy
- Ecology Report
- Tree Survey
- Nutrients Report and Management Strategy
- Location Plan
- Site Constraints Plan
- Site Opportunities Plan
- Block Plan/Site Layout
- Proposed Floor Plans
- Proposed Elevations
- Streetscene

2 SITE CONTEXT AND HISTORY

2.1 Old Oak Farm lies to the east of Winchester Road, outside of the defined settlement boundary of Fair Oak, and is therefore designated as countryside under the adopted local plan. To the south is a residential dwelling 'Waratah' which was recently granted permission for four dwellings in its rear garden. To the east is a line of mature Oak trees. To the north is open countryside and to the west is the 'In-Excess' garden centre.

2.2 The site currently comprises of two mobile homes ('Old Oak Farm' and 'Hotel California') which were granted certificates of lawful use for permanent residential use in November 2021 (see LDC plan below).



2.3 The remainder of the area is in use as associated garden and includes chicken coops, dog kennels, and household items that would usually be stored inside a garage or other outbuilding. Various old cars and caravans are also kept on the site primarily for residential storage purposes but also in connection with the keeping of the applicant's horses. The site has a very unkempt appearance.

<u>Gated access to the two dwellings from Winchester Road</u>



<u>Hotel California</u>



Old Oak Farm



Looking north-east across site from within the site



Looking northwards from within the site



Looking south upwards towards the dormer window in the roof of 'Waratah'



2.4 The site is bounded by trees to the east, mature hedgerows to the west and south, and open countryside to the north. There is also an internal conifer belt, which screens the internal part of the site.

2.5 The site lies within flood zone 1 and therefore has a low probability of flooding from rivers and the sea.

2.6 There are 2 historical planning applications relating to this site available for review on the LPA's planning website.

- *O/20/89174 | Outline application for the erection of 4no. dwellings | Decided Withdrawn by Applicant | 27/04/2021*
- *LDC/21/90862 | Lawful Development Certificate for an existing use: Siting of 2no. static mobile homes | Decided CLUED – Certificate Issued | 23/11/2021*

3 SITE CONSTRAINTS AND OPPORTUNITIES

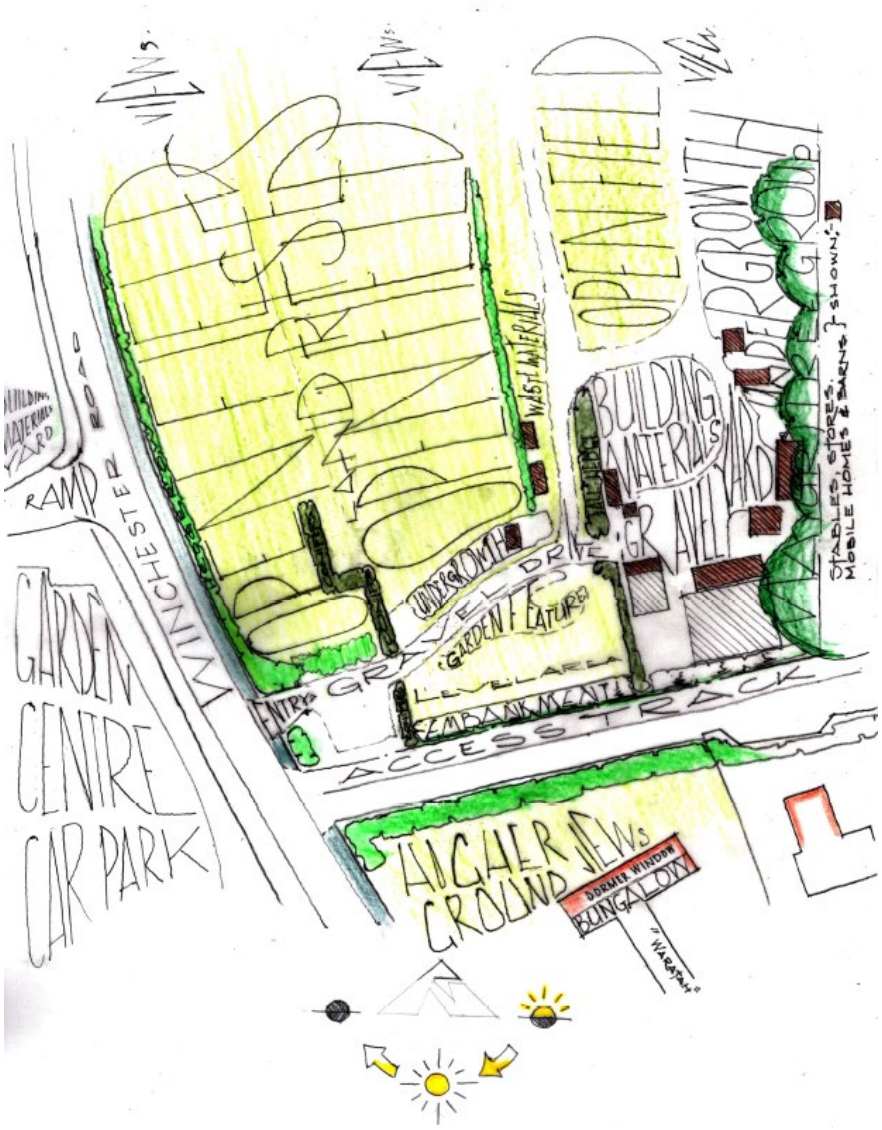
3.1 The plan below, which was submitted at pre-application stage demonstrates a thorough appraisal of the site's existing characteristics. The site is accessed from Winchester Road by a gravel/packed earth drive which winds its way to a yard area to the front of the 2 existing dwellings.

3.2 The fields to the north of the site give open views down the hill to the north.

3.3 The eastern boundary is characterised by a line of mature trees including two large Category B pedunculate Oak trees. The existing mobile homes are sited either within or very near to the tree's root protection areas.

3.4 The southern boundary is defined by an embankment up to an access track to a further dwelling beyond which lie 'Waratah' and the four houses that have recently been constructed in its back garden. Waratah has clear long distance views over, rather than into, the site to which the eye is drawn. Views directly downwards into the site are constrained simply by land levels. One would need to crane ones neck downwards from the 1st floor dormer windows to have any clear view of the site.

3.5 Within the site are two lines of mature conifers which screen the internal areas of the site from view.

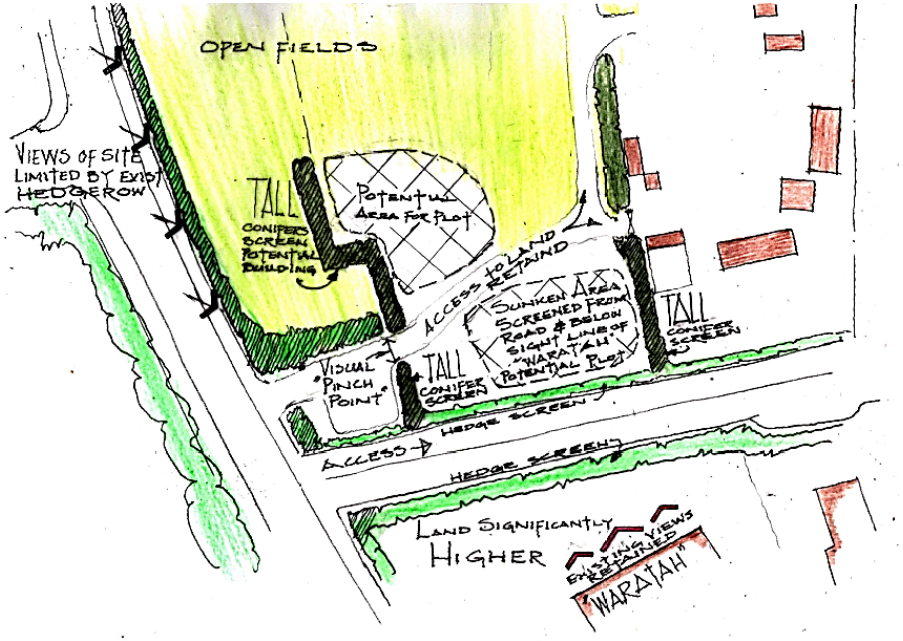


3.6 A more detailed site opportunities plan, also provided at pre-application stage is provided below.

3.7 In particular, views of the site proposed for the replacement dwellings are very restricted by, first of all, the high hedgerow that lies on the western boundary with Winchester Road.

3.8 Further into the site, there is a line of conifers which further screen an area of land considered appropriate for siting the two replacement dwellings.

3.9 This area of land is naturally split into two parts - the higher area to the southern side of the access track which includes a flat area of land that has been 'cut into' providing an amphitheatre-type shape to the land here, and a lower area to the northern side of the track provided by the natural slope of the land.



3.10 Finally, a further coniferous tree line screens the existing dwellings and associated garden paraphernalia. This area also includes the foundations for a stable block building on the southern boundary, although the block has yet to be completed. However, the applicant also keeps horses in the immediately adjacent fields.

3.11 The proposals represent a good opportunity to improve the living conditions of the applicant, whilst also moving the residences, and their associated paraphernalia out of the root protection areas of the mature Oak trees on the eastern boundary. This represents both a material social and environmental benefit.

3.12 Moving the residential element westwards would also allow the applicant's horse-keeping activities to be separated from his domestic activities by utilising the easternmost parcel of land solely as a paddock with stabling.

3.13 The general tidying up of the site and provision of more residential storage within the new dwellings would also be of visual and landscape benefit to the site. This also represents a material environmental benefit.

3.14 There is potential to improve the current visibility splays from the site by the potential relocation of the roadside hedge. This would represent a material benefit in terms of accessing the site and highway safety.

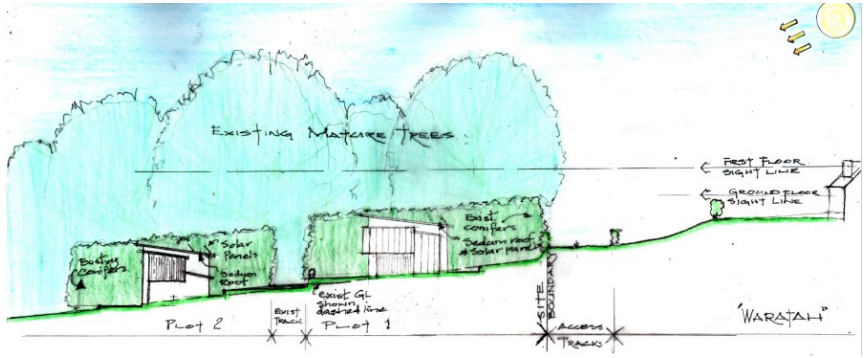
3.15 There is also potential to improve the site frontage with significant native tree planting. This would represent a further material environmental benefit.

3.16 There is also potential to improve the level of nutrient emanating of off the site. Foul waste currently drains to a septic tank. The new proposals include individual 'state of the art' sewage treatment plants. This is also a material environmental benefit of the proposals.

4 DESIGN EVOLUTION

4.1 The design evolution began with a thorough site appraisal. Whilst a replacement of the two mobile homes on their existing footprints was initially considered, this would have had serious impacts upon the root protection areas of the mature Oak trees on the eastern boundary. Additionally, the applicant would like to complete the construction of his stable block, located to the rear of 'Hotel California', the foundations of which have already been constructed. A new dwelling with a stable block positioned directly to the rear, with little intervening space, would not provide appropriate living conditions for neither man nor horse. Along with the existence of a central parcel of land bounded by coniferous screening, it was considered that moving the residential use a little further to the west would result in material environmental benefits.

4.2 The topography of the land, which includes a part excavated area within the central parcel, led to a consideration of how best to site any new dwellings within the existing lay of the land. Located on a slope, with views over the site from the adjacent dwelling 'Waratah', it was decided to prepare an initial site section to understand how these levels could work. In turn, an understanding of these levels meant that the next step towards design could be taken. The intial site section is provided below, shown from behind both of the frontage hedges (along Winchester Road, and within the site).

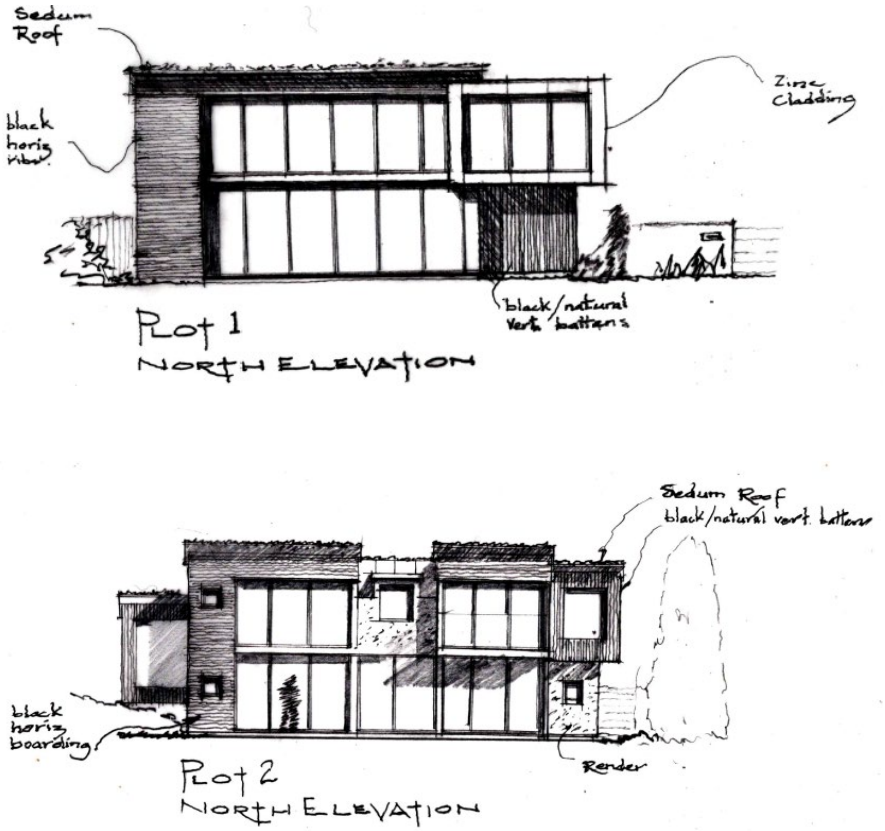


4.3 It became clear fairly early in the design evolution that a landscape-led design would be required, and that using the contours of the land, and the existing hedge lines to help nestle the dwellings into the landscape meant that a flat-roof or low monopitched, more contemporary solution could work well on this site. With views over the site from 'Waratah', such roofs would lend themselves to be planted with sedum or similar to soften any view from this dwelling.

4.4 It was considered that if such a design were to be used, then the resulting visual impact from any public vantage point would be minimised, whilst providing the material planning benefits envisaged, both in terms of living conditions for the applicant, the ongoing protection of mature Oak trees and a general tidying up of the site through the provision of a stable block for the horses (allowing many of the containers and caravans to be removed from the site), and a larger size of dwelling (allowing inside storage provision thus removing externally stored domestic paraphernalia).



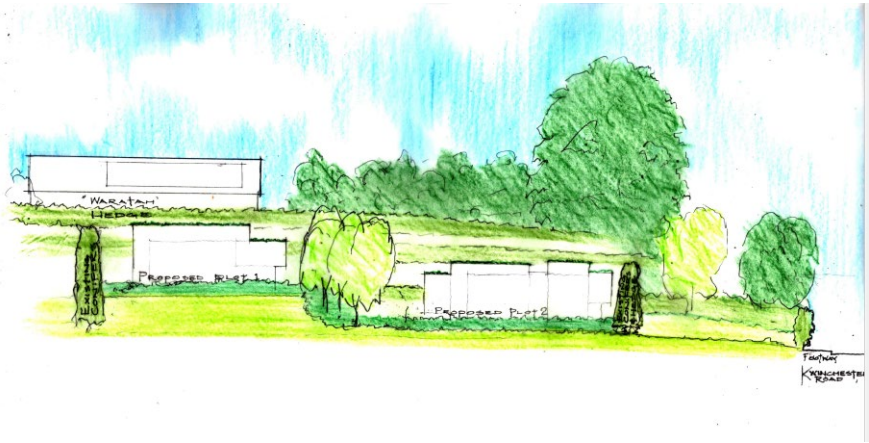
4.5 The initial designs that were proposed are shown below.



4.6 A mono-pitch contemporary design was proposed with floor to ceiling windows to take advantage of the far reaching views to the north.

4.7 Materials to be used reflected a rural vernacular, using black horizontal boarding to clad the dwellings. Green roofs would further allow the proposals to nestle into the natural slope without undue landscape or visual impact.

4.8 A sketch as to how the dwellings would fit into the landscape was provided at pre-application stage and is shown below. This view is from the north (although there is no public vantage point in this direction). The sketch shows that the massing of the proposed dwellings would be absorbed into the rising topography of the land, and also the backdrop of 'Waratah' at the top of the slope.



4.9 The proposal has since evolved into the proposal below as detailed in the next section.

5 PROPOSAL

AMOUNT AND LAYOUT

5.1 The proposal is to remove the existing mobile homes from beneath the mature Oak trees on the eastern boundary towards the centre of the site.

5.2 Plot 1 would be placed on the higher, southern side of the access track, cut into the embankment, with Plot 2 sited on the lower, northern side of the access track.

5.3 Plot 1 would have 4 bedrooms and a GIA of 169.5 square metres. Plot 2 would also have 4 bedrooms but have a slightly smaller GIA of 168.5 square metres.

5.4 Both plots would have a downstairs bedroom and ensuite with both dwellings designed to be fully wheelchair accessible.

5.5 Each plot would benefit from a large garden, a single garage and parking areas.



SCALE AND EXTERNAL APPEARANCE

5.6 Plot 1 (below) is two stories in height with a sedum-covered monopitch roof to mimic the local land contour. Whilst fenestration is limited on the southern side, the northern elevation takes advantage of the far-reaching views with floor to ceiling glazed windows. The glazing would be dark coloured and non-reflective.

5.7 The architecture is undeniably contemporary, and the materials used would be dark coloured horizontal timber and vertically seamed metal cladding, with some rendered elements, all beneath a sedum-covered roof. Windows and doors would be dark coloured aluminium.



5.8 Plot 2 (below) is also two stories in height with a sedum-covered roof monopitch roof to continue the local land contours on the northern part of the site. Again, fenestration is limited on the southern elevation with large floor to ceiling windows inserted into the northern elevation. To reduce any glare, however, the glazing would be dark-tinted and non-reflective.

5.9 The architectural style is similar to that of Plot 1 with dark-coloured horizontal timber and vertically seamed metal cladding, with some rendered elements, all beneath a sedum-covered roof. Windows and doors would be dark coloured aluminium.



ACCESS

5.10 The access would use the existing access point, but the landscaping proposals would improve visibility to the right on exit (to the north) through the setting back of the hedge and replacement with native woodland planting.

5.11 Internally to the site, the existing access would be slightly altered to a position around the north side of the proposed paddock area (the area in which the mobile homes are currently sited), rather than directly into it, as is currently the case.

5.12 This new position for the internal access also allows Plot 1 to benefit from a larger, landscaped garden area.

LANDSCAPING

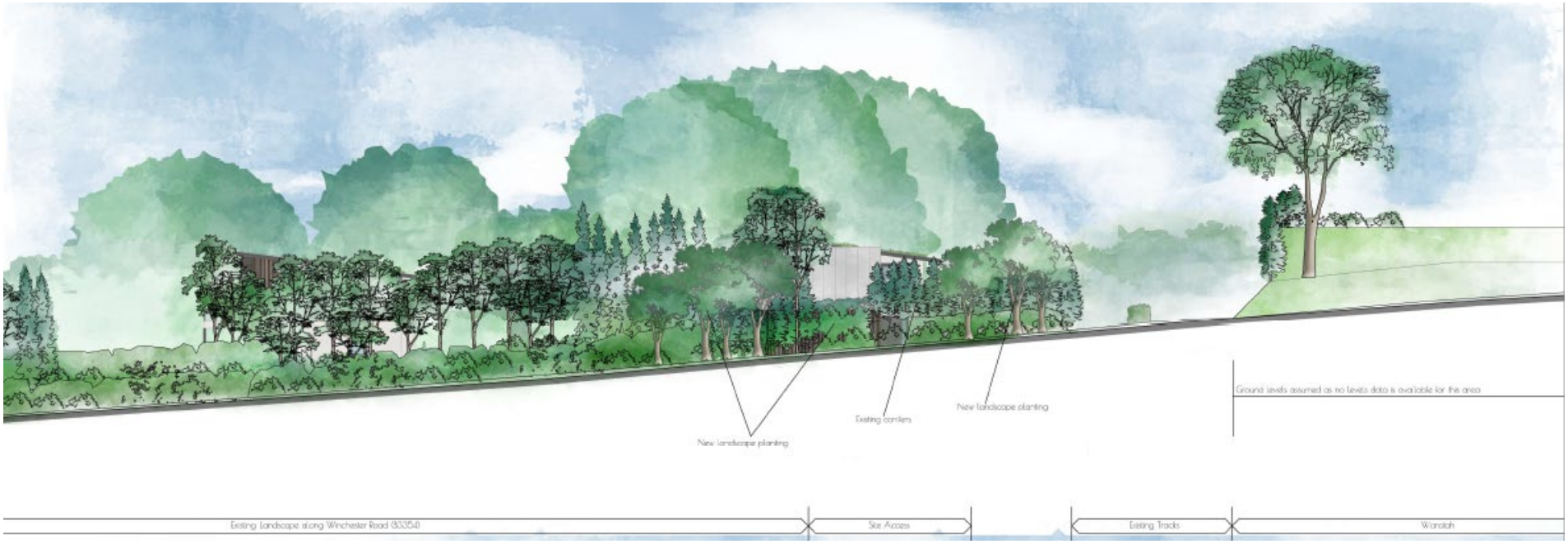
5.13 The landscaping proposals are key to the development. They have been specifically informed by a Landscape and Visual Impact Assessment which considers the identified landscape character, viewpoints and opportunities to improve existing landscaping.

5.14 Specifically the landscaping proposals look to create significant new native mix hedgerow and edge habitat, a substantial belt of woodland planting to the site frontage, include all ecological recommendations including the provision of ponds, hibernaculas and hedgehog passing places, and remove the existing non-native hedges once the new hedging is established and provides its own visual enclosure.

5.15 All existing buildings would be removed and the area in which the mobile homes are currently sited would be provided as horse paddock, for the owners horses.

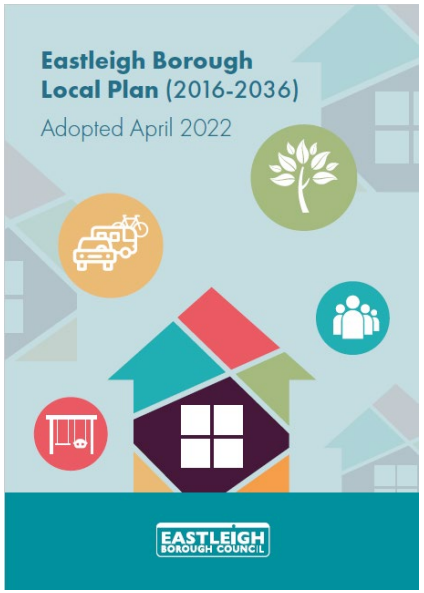


5.16 The submitted street scene gives a good indication of how the site could appear if one were looking at it from the 'In-Excess' garden centre opposite the site, although this isn't a public view. With the new native mix hedges and woodland planting, and the removal of all extraneous vehicles and structures from the site frontage, the landscape and visual impact is undoubtedly beneficial.



6 POLICY CONTEXT

6.1 The policy context comprises the Eastleigh Borough Adopted Local Plan 2016-2036 (adopted in April 2022), together with the National Planning Framework and its associated guidance.



6.2 The most relevant policies of the adopted Local Plan are:

Strategic Policy S5, New development in the countryside

1. *"Planning permission will be granted for new development in the countryside provided it is related to:*
   - *a. the provision of employment through agricultural development (policy DM17), the extension and replacement of existing employment uses (policy DM18) and the re-use of existing buildings (policy DM19);*
   - *b. residential extensions and replacement buildings (policies DM18 and 26), limited residential conversions (policy DM19), rural workers' dwellings (policy DM27) and accommodation for Gypsies, Travellers and Travelling Showpeople (policy DM31);*
   - *c. community, tourist, or visitor uses through the re-use of buildings including facilities for the interpretation of heritage assets (policies DM12);*
   - *d. outdoor recreation and open space (policies DM32 and DM33);*
   - *e. allotments and community farms (policy DM32);*
   - *f. cemeteries (policy DM37); and*
   - *g. essential public utilities (policy DM9).*
2. *In permitting new development in the countryside the Borough Council will seek to:*
   - *a. avoid adverse impacts on the rural, woodland, riparian or coastal character, the intrinsic character of the landscape including the avoidance of adverse landscape impacts on areas adjoining national parks and their settings, the significance of heritage assets and on the biodiversity of the area;*
   - *b. secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside and coast;*
   - *c. avoid sterilisation of mineral resources, in accordance with the Hampshire Minerals and Waste Plan;*
   - *d. safeguard the best and most versatile agricultural land unless the benefit of the development clearly outweighs the loss; and*
   - *e. protect soils during construction wherever possible in line with the 'Defra code of practice for the sustainable use of soils on construction sites'."*

Policy DM1, General criteria for new development

1. *"All new development should (as relevant):*
   - *a. not have an unacceptable impact on, and where possible should enhance:*
     - *i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast;*
     - *ii. biodiversity (avoiding significant adverse impacts); and*
     - *iii. the significance of heritage assets;*
   - *b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land;*
   - *c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings, spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;*
   - *d. not involve the loss of or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);*
   - *e. include a landscape scheme covering the design and layout of external space;*
   - *f. protect and enhance public rights of way and National Trails and provide fully connected green infrastructure that interlaces the development and connects into the wider network;*
   - *g. provide satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;*

h. *incorporate provision for people with disabilities and create accessible communities that cater for all;*
i. *incorporate design measures to inhibit criminal and anti-social behaviour;*
j. *incorporate provision for on-site waste management; and*
k. *include provision for public art associated with new large scale development in accordance with the Council's adopted Public Art Strategy."*

Policy DM2, Environmentally sustainable development

1. *"The Borough Council requires that:*
   a. *all new build residential development (C3 Use Class only) must achieve at the time a Reserved Matters or Full Planning Application is submitted:*
      i. *a 19% improvement in predicted carbon emissions, compared with the building regulations standard current at the time, through increased energy efficiency of the building fabric, unless this is superseded by an updated building regulations requirement equivalent to 'zero carbon homes'; and*
      ii. *a predicted mains water consumption of no more than 110 litres/person/day.*
   b. *all other development that is above 500 sq.m of floorspace measured externally (including extensions and conversions to existing buildings) must achieve BREEAM 'excellent' (or equivalent) or BREEAM 'very good' plus 'passivhaus' certification including a 15% improvement in predicted carbon emissions, compared with the building regulations current at the time, through low or zero carbon energy generation on site or in a Borough location agreed by the Council.*
   c. *all other larger developments above 10,000 sq.m of floorspace should also seek to fund post occupancy evaluation (POE) in addition to the above.*
2. *In addition to the above, all development above 500 sq.m of floorspace measured externally (including extensions and conversions to existing buildings) and external spaces within the curtilage serving developments of this size should where practical and viable:*
   a. *incorporate energy-efficient passive design principles, the best use of natural daylight and natural ventilation systems wherever possible;*
   b. *connect to any existing near or adjacent low carbon local energy network unless this is proved unviable;*
   c. *use recycled, low embodied carbon, low environmental impact and locally sourced materials in construction where possible;*
   d. *be designed with sufficient flexibility to enable the life of the building to be extended by re-use for other purposes where feasible;*
   e. *aim to deliver at least 1% of all residential units within the whole scheme which achieve full 'passivhaus' certification."*

Policy DM26, Residential extensions and replacement dwellings in the countryside

1. *"The extension or replacement of a permanent dwelling in the countryside will be permitted subject to the general development criteria and transport policies of the Local Plan and provided:*
   a. *the extension or replacement dwelling will not be disproportionate in size to the existing dwelling, neighbouring properties or in relation to its plot, or involve any extension to its curtilage; and*
   b. *in the case of a replacement dwelling, the proposal includes the replacement of the dwelling within the curtilage, and on the same footprint as the existing building, unless environmental and/or access benefits arise from an alternative location within the curtilage; and*
   c. *no additional dwellings are created.*
2. *Permission will not be given for the replacement of mobile homes with permanent dwellings.*
3. *Residential institutions will be treated for the purposes of this policy in the same way as dwellings.*

Proposals to extend or to replace rural workers dwellings will be considered under Policy DM27."

7 OTHER MATERIAL CONSIDERATIONS

NATIONAL PLANNING POLICY FRAMEWORK

7.1 The National Planning Policy Framework sets centralised guidance for Local Planning Authorities who are required to take its contents into account when taking decisions on planning applications. The relevant paragraphs are listed below.

7.2 In relation to the self-build aspect of the proposal, **paragraph 60** of the NPPF states that it is important that the needs of groups with specific housing requirements are addressed. At **paragraph 62**, the NPPF states that housing needed for different groups in the community should be assessed and reflected in planning policies including those people wishing to commission or build their own homes. Under Section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand.

7.3 **Paragraph 126** of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

7.4 With regards to design, **paragraph 130** of the NPPF states that proposals should function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; they should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping; they should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); they should establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; they should optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and they should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

7.5 **Paragraph 132** states that design quality should be considered throughout the evolution and assessment of individual proposals, and that applications that demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.

7.6 **Paragraph 134** states that development that is not well-designed should be refused but that, conversely, significant weight should be given to development which reflects local design policies and government guidance on design, or that which promotes high levels of sustainability or help raise the standard of design more generally in an area.

EASTLEIGH QUALITY PLACES DOCUMENT

7.7 The EBC Quality Places document provides more detailed guidance as to how to design places that are pleasing to the eye and that work in terms of their physical characteristics.

7.8 The document considers key design principles, site accessibility, context, layout and massing, external space, residential amenity, access, parking and services, architectural detail and internal space. The current Local Plan, adopted after the publication of this

document, also considered the need for space adaptable for the wheelchair user.

7.9 In particular relation to this proposal the key design principles are important, that development has a safe and convenient access point and is sustainably located, that the site context is subject to an analysis, that site density should be appropriate and reflect local character, that development should have its own identity, that external space is integrated into development, that boundary treatments are locally appropriate, that residential amenity of existing and new occupiers is considered, that access within a site is overlooked and that private amenity space is provided, that safe and convenient car parking is provided, that adequate waste storage is provided, that the scale form and design of elevations and external materials responds positively to the character of the area or site, that buildings should have active frontages and that internal space is flexibly laid out to allow adaptation over time.

SELF BUILD REGISTER

7.10 The LPA has a duty to grant sufficient permissions to service the numbers of people on its self-build register and also to have regard to future demand in its decision making. As a material planning consideration, the need for self and custom build permissions in an area is still a fairly recent addition to the list of considerations. However, at appeal level, this consideration attracts 'substantial weight' even outside designated settlement boundaries if the LPA has not kept up with the required permissioning of such plots.

7.11 Few LPAs are in the position of being able to demonstrate sufficient self or custom-build permissions, and this is a material consideration that should not be ignored by the LPA.

7.12 The Right to Build Taskforce were set up by central government to provide advice and information to local authorities, and their partners and stakeholders, to support the delivery of custom and self-build homes. In this respect their published guidance is a material consideration in the assessment of this application.

7.13 Their document "PG3.2: Counting relevant permissioned plots V3 – August 2022" advises local planning authorities how to count relevant permissions in order to satisfy the duty to permission sufficient SCB plots to meet demand. In paragraph 16 it is stated that

"In measuring whether the statutory duties have been met, it is for the planning authority to demonstrate the number of permissioned plots and indicate why the council considers the plot will be built or sold as a custom or self-build plot. The counting of all windfalls or all permissions on smaller sites is not an appropriate approach.

7.14 A helpful table identifying what can be counted and what cannot be counted as a suitable permission for CSB is provided in paragraph 25 within the document and reproduced below:

Table 1 – Qualifying Permissions for CSB Plot Supply

Definitely CSB	▪ Permission with signed Unilateral Undertaking committing to self-build; ▪ Permission with condition or agreement for marketing the plot(s) as a CSB opportunity; ▪ Permission that **creates a new dwelling** and has a submitted Form 7: Self Build Exemption Claim Form - **Part 1** and **Part 2**[3].
Possibly CSB requires evidence	▪ Outline permissions; ▪ Full permission with unknown intent; ▪ Rural/Agricultural worker's dwelling; ▪ Multi-unit flat where the owner creates multiple flats, and intends to occupy one as principle residence; ▪ Permitted Development approval for conversions; ▪ Dwelling demolition and redevelopment; ▪ Community Land Trusts.
Definitely Not	▪ Certificate of Lawfulness for a dwelling; ▪ Caravans are not self-build; *caravans do not meet the "construction" part of the definition (and self-build legislation seeks to increase the SME sector as well);* ▪ Ancillary accommodation; ▪ Build to Rent development; ▪ A substantial enlargement or redevelopment that creates new floorspace but not a new dwelling.

7.15 Eastleigh Borough Council are not a CIL authority and therefore the only method of ensuring that a permission is SCB, for the purposes of the legislation is to have the applicants complete a Section 106 legal agreement committing to self-build or to attach a planning condition for the same.

7.16 For any other SCB permission to be 'counted' requires detailed evidence to demonstrate its SCB status.

APPEAL PRECEDENT

7.17 There now exists a strong body of planning appeal precedent related to self and custom build. Various appeals are attached in the appendices to this statement. (See Appendix 2). From this body of appeal precedent, two important principles have emerged:

- That the weight to be given to the provision of self and custom build homes where there is evidence of non-provision should be 'substantial' or even determinative.
- That where no Local Plan policy exists in relation to the provision of self and custom build plots, the 'tilted balance' applies.

8 PLANNING ASSESSMENT

Principle

8.1 Policy DM26 of the adopted Local Plan specifically excludes the replacement of mobile homes with permanent dwellings. The Local Plan reasoning for this exclusion is to "limit the urbanising impact of development on the rural character of the countryside, and for reasons of sustainability".

8.2 Notwithstanding the fact that the applicant and his brother consider 'Hotel California' and 'Oak Farm' their permanent homes, the starting point is that the proposal is contrary to the development plan.

8.3 Therefore, it is incumbent upon the applicant to demonstrate that there are 'other material considerations' that, in this particular case, are of such weight that a decision otherwise in accordance with the development plan is a legitimate way forward.

Other material considerations

The Lawful Development Certificates

8.4 The lawful development certificates for the two mobile homes at Old Oak Farm allowed permanent residential usage of the land within two mobile homes. These red lines were drawn tightly around the mobile homes and disallowed any residential curtilage.

8.5 Realistically, however, most residential dwellings, even 'temporary' ones have an area of 'curtilage'. In this case, it is plain to see that an area of land is used as a shared curtilage to the front of the two mobile homes. This area consists of a shared driveway, and area of raised vegetable beds, and a chicken coop.

The Fall-Back Position

8.6 It is established case law that the stationing of a mobile home changes the use of the area of land on which it is stationed. However the replacement of a mobile home with another mobile home does not amount to 'operational development' as defined in Section 55 of the Town and Country Planning Act 1990.

8.7 Provided a new mobile home is located within the area of the red line granted by the Lawful Development Certificate, no planning permission is required.

8.8 Modern mobile homes offer all of the permanence created by a traditional permanent home. Indeed, provided a mobile home can be transported on and off site (either with their own wheels or by crane onto a transporter) and assembled on site in no more than two pieces, they are not subject to any design criteria.

8.9 It is useful to consider the design of modern mobile homes against older mobile homes. Many Local Planning Authorities expect a twin unit mobile home to resemble a clad metal box, such as those seen on park home sites i.e.:



8.10 All the images below are for twin-unit mobile homes by manufacturer 'Habitat'. Each is transportable in two pieces for assembly on site. All homes have the ability to have their twin pieces de-attached and transported elsewhere.



DuneZink


DuneZink


AlpineLodge



MackintoshPavilion-Render



Escarp


WWW.HABITATMOBILEHOMES.COM
PineGallery







8.11 Many LPAs are surprised by the level of finish of modern mobile homes and how the industry has moved on since 'park homes' were manufactured to one type of design; all were single-storey, and all had an appearance not dissimilar to a caravan. Now, such homes can be 2 storey in height, be of exemplar design and last up to 80 years. With an 80 year lifespan, and the ability for replacement at any time, there is a degree of permanence that cannot be ignored.

8.12 At pre-application stage, the LPA Landscape officer suggested that a long-term view should be taken. In objecting to the proposals, one can only assume that the landscape officer meant that, firstly, this area of the Borough would always remain as designated countryside over at least an 80 year timeframe and, secondly, that there is likely to be a situation where both mobile homes would be removed from the site and the land returned to pristine paddock land.

8.13 Evidently, with a good level of locational sustainability and a Certificate of Lawful Use for the stationing of two mobile homes, neither scenario is realistic.

8.14 The replacement of the two existing mobile homes with two new mobile homes, many of which offer attractive and contemporary 2 storey designs, can legitimately be considered a fallback position.

8.15 The applicant intends to purchase two such 2 storey mobile homes for stationing on the residential parcels of land identified by the Certificate of Lawfulness, should permission not be granted for the two proposed permanent dwellings.

8.16 It is useful to consider the design of the twin unit mobile homes included on the above pages against the design of the proposed dwellings opposite. It is evident that there is little difference.

North Elevation Plot 1



South Elevation Plot 2



The Trees

8.17 The existing mobile homes, especially Hotel California, are situated within either within the root protection area, or very near to a line of 'Category A' mature Oak, Hawthorne and Goat Willow trees. An excerpt from the submitted Arboricultural Report is shown below.



8.18 The LPA drew the Certificate of Lawfulness red line tightly around the existing mobile homes. This did not allow for a residential curtilage. The result is that there has been an uncontrolled proliferation of residential paraphernalia around the mobile homes, including within the RPA of the boundary trees, for at least 10 years. This usage has not only led to the unkempt appearance of the wider site but threatens the long term preservation of the boundary trees.

8.19 Whilst a residential use comes with a legitimate expectation of an area of land that can be used for outdoor amenity, none was delineated in the Certificate of Lawfulness. However, if ever an application was to be submitted for an area to be used as private outdoor amenity space, this could not be reasonably refused by the LPA. In this situation the LPA would attempt to control such amenity area to ensure it was outside the root protection area and the shade caused by these large boundary trees.

8.20 The existing usage and positioning of the two mobile homes, particularly 'Hotel California' is detrimental to the boundary tree line, as is evidenced in the tree report.

8.21 As such a replacement permanent dwelling located away from these trees represent an **environmental benefit to which significant weight should be given.**

Space Standards

8.22 Whilst space standards only apply to permanent homes, one of the mobile homes has a floor area of approximately 38 square metres and the other 40 square metres. With the minimum standard for a 1 bedroomed home being 39 square metres, there is an opportunity to improve the living standards of the occupants over and above replacing the mobile homes with two new mobile homes.

8.23 The improvement to living standards therefore offers a **social benefit to which significant weight should be given.**

Wastewater Benefits

8.24 The proposal is currently connected to a septic tank, which discharges untreated wastewater to the ground.

8.25 This water find its way to the River Itchen, as the site is located within its catchment. The River Itchen is a Special Protection Area which leads to the Solent and Southampton Water SPA, which is also a Special Protection Area.

8.26 It is known that the discharge of untreated wastewater results in a significant cumulative effect upon the habitats of the local SPAs by way of the nutrient enrichment. This alters the SPA environment and has a detrimental impact upon the species dependent upon them. The nutrients of concern are phosphate and nitrate.

8.27 The proposal would result in two dwellings, whose waste water discharge would be connected to two separate sewage treatment plants. This would result in a significant betterment of the nutrients discharged within the eventual effluent and therefore represents nutrient neutrality.

8.28 In wastewater terms, the proposal therefore provides an **environmental benefit to which significant weight should be given.**

Access improvements

8.29 The current vehicular access would remain to two residential units. However, whilst the access is an existing access and there is no requirement to improve it, the proposal looks to improve visibility to the north upon exiting the site.

8.30 It is proposed to remove a section of the frontage boundary hedging to help improve the sight line to the north, whilst planting woodland trees and hedging along the line of the new visibility splay.

8.31 As such, the proposal would provide a safer access point which is a **social benefit** t**o which significant weight should be given.**

Landscape Improvements

8.32 A full Landscape and Visual Impact Appraisal has been prepared to inform and accompany this proposal. It should be read in conjunction with this planning design and access statement.

8.33 As expected, the LVIA has considered existing landscape character carefully and concludes that the proposals would have a neutral impact on the landscape.

8.34 In relation to visual impact, the LVIA demonstrates that the site is visually well-enclosed and only minimally visible from any public vantage points.

8.35 The proposal also includes a detailed landscape strategy that includes woodland planting to the site frontage in a large area behind the visibility splays.

8.36 Not only would such planting improve the appearance of the site frontage significantly, but the woodland planting would increase biodiversity and further visually enclose the site.

8.37 The concluding verdict of the LVIA is that, with the planting proposed, the impact of the proposals would be beneficial.

8.38 The landscape strategy has weaved together the ecological recommendations with the planting proposals to ensure that significant improvements in biodiversity can be achieved.

8.39 The proposed re-landscaping of the site would provide an **environmental benefit to which significant weight should be given.**

Self and Custom Build

8.40 Self-building allows the construction of high quality homes that can be immediately delivered. The reasoning behind the Self and Custom Housebuilding Act 2015 was in response to methods sought to enable a higher rate of bespoke housing delivery. Common in countries outside the U.K, the move towards self-build is relatively new in contemporary times. However, in historical terms, the majority of housing in the U.K. was built using this method, including the majority of homes within Fair Oak. This proposal simply continues the organic nature of growth.

8.41 The Self and Custom Housebuilding Act requires positive decision-making in response to genuine self-build proposals. Appeal precedent demonstrates that the failure of an LPA to deliver sufficient suitable permissions to match relevant demand is a material consideration of significant or substantial weight (see appeal cases in Appendix 2).

8.42 A Freedom of Information request was submitted to the LPA to establish both the demand for SCB homes and the authority's performance in delivering suitable permissions. Both the request and the responses are attached at Appendix 3

8.43 In examining the information supplied by the LPA the information has been distilled into the table below.

Base Period Assessment of SCB provision (figures supplied by FOI response)

Base Period	Demand	Supply (LPA figures)	Evidenced Supply	Shortfall (against LPA figures)	Shortfall (against evidenced supply)
1 (Oct 16)	10	0	0	10	10
2 (Oct 17)	18	6	0	12	18
3 (Oct 18)	15	7	0	8	15
4 (Oct 19)	18	7	0	11	18
5 (Oct 20)	14	6	0	8	14
6 (Oct 21)	20	11	0	9	20
7 (Oct 22)	1	2	0	-1	1
8 (Oct 23)	0	0	0	0	0
TOTAL	96	39	0	57	96

Cumulative Assessment of SCB provision

3 year delivery rate	Required nos of permission	Cumulative Required Permissions	Actual Nos of Permissions (LPA view)	Cumulative Shortfall (LPA View)	Evidenced Supply
Oct 19	10	10	13	-3	0
Oct 20	18	28	20	5	0
Oct 21	15	43	26	22	0
Oct 22	18	61	37	46	0
Oct 23	14	75	39	82	0

8.44 Using the Right to Build Task Force's guide to counting relevant permissions, and appeal precedent, together with the evidence provided within the LPA's most recent Annual Monitoring Report, it is clear that the LPA have permitted no self and custom build dwellings with the ability to be 'counted' at all.

8.45 Indeed on Page 41, paragraph 4.2.24 of the LPA's 2020-2021 Annual Monitoring Report (AMR), the LPA admit that their figures are 'estimates' and that they are based on "permitted developments for one dwelling and national estimates on the proportion of likely self-build." No other detail appears in the AMR or in the FOI response. Neither an estimate nor an assumption that every permission for one dwelling is a SCB fulfils the Right to Build Task Force's guidance for counting relevant permissions.

8.46 Even if the LPA figures as to the number of SCB permission granted could be proven, the tables on this page demonstrate a shortfall of **82** SCB dwellings.

8.47 Finally, the legislation requires LPAs to 'have regard' to future SCB demand in their plan-making and decision-taking duties. However, there is no policy within the Local Plan which considers how to positively deliver SCB homes.

8.48 This application is for two SCB homes which would provide a small, but important, contribution towards evidenced SCB shortfalls.

8.49 The applicant is willing to provide a Unilateral Undertaking to secure this plot as a self-build dwelling.

Precedent and Sustainable Location

8.50 This area is known to be a sustainable one.

8.51 In 2021, a permission was given for a new dwelling in the garden of Steading, located to the south of the site but also within the designated countryside, partly on the basis of the good links to facilities, albeit the bus waiting facilities are not the best.

8.52 Almost directly outside the site, on the main Winchester Road, are several bus routes. The Z00 route runs between Eastleigh town centre and Marwell Zoo every hour between 10am and 4.30pm; Route 69 runs between Winchester and Fareham and provides three buses in the late afternoon to Fareham and 3 buses in the early morning to Winchester.

8.53 Just a 1 minute walk away (northwards) is a large garden centre with restaurant. Just 3 minutes northwards is a pub –'The Fishers Pond' and the small Fishers Pond industrial estate.

8.54 20 minutes' walk away (or 5 minutes cycle ride) is the village of Colden Common, complete with shop, community centre, post office, GP surgery, hairdressers, primary school, several pubs etc.

8.55 In a southerly direction, just 2 minutes' walk away, is the Vicarage Farm Business Park, a useful employment area complete with children's nursery.

8.56 Just 3 minutes' walk away in a southerly direction is another pub – 'The Fox and Hounds'.

8.57 8 minutes' walk away is a scout group hut (located within the new development to the west of Winchester Road) and another children's nursery.

8.58 Just 15 minutes' walk from the site, again directly south, is a shop - the 'Co-op', an Indian restaurant, newsagents, hairdressers, fish and chip shop and a funeral directors.

8.59 A little further on is Fair Oak Square, at 20 minutes' walk (or a 4-5 minute cycle ride) where many facilities and amenities can be found: a further two pubs – 'The George' and 'The Cricketers', several shops, a garage with a Tesco's Express, a post office, a bakery, a barbers, village hall, a pharmacy and a library.

8.60 A 23 minute walk or 6 minute cycle ride takes a traveller to Stokewood GP surgery and a further pharmacy as well as 'The New Clock Inn' (a further pub) and the Blackberry Drive open space and youth centre.

8.61 For schools, Fair Oak Infant and Junior and Wyvern secondary school are to be found less than half an hour's walk away (7 minutes bicycle ride).

8.62 Winchester Road has a safe tarmaced and kerbed footway from the site to all these facilities.

8.63 The site is therefore very sustainably located.

8.64 In addition, the site directly adjacent to the north 'Waratah' benefitted from a permission for 4 dwellings within its garden area in 2016 although it, too, is located in the designated countryside. This was an 'on balance' permission on the basis that the existing site was very untidy. The dwellings were also limited to one storey only as they would be sited on the brow of the hill.

8.65 The above permissions allowed a total of 5 new dwellings within the designated countryside. This demonstrates that the LPA has given permission for dwellings in this area on the grounds that the area is sustainably located. It has also given permission for dwellings in the countryside on the basis of 'tidying up' a site.

Design and Layout

8.66 The proposals are the result of an extensive period of consideration. First of all, a detailed site appraisal was carried out and then a detailed contextual analysis was produced. This confirmed that there were no overriding constraints to development but many opportunities for achieving significant planning and landscape benefit.

8.67 The location of the proposals is sustainable, as was concluded for the nearby 'Waratah' and 'Steading' proposals.

8.68 The siting of the proposed dwellings takes account of visual amenity and landscape impact by moving the existing residential use away from the large Oak trees on the eastern boundary into the screened centre of the site. In turn, this allows the horse-keeping uses to be separated from the residential use, to take place adjacent to the stables building, the foundations of which were constructed some time ago.

8.69 The final design and layout of the dwellings has been genuinely landscape-led through the consideration of landscape character and the impact of the proposals from any public vantage points. Minimally visible, the landscape strategy which incorporates woodland planting to the site frontage which, together with the sedum-planted green monopitch roofs and dark timber cladding, provides a strategy to reflect the contours of the site, blend seamlessly into the landscape, and limit impact in any private views.

8.70 The layout of the proposed dwellings provides sufficient amenity space, waste storage area, and parking areas.

8.71 The proposal also offers improved visibility splays at the access point through the proposed relocation of existing landscaping along the boundary with Winchester Road. The planting proposed would also

include the removal of a non-native hedge line and significantly enhance the public frontage of the site along Winchester Road.

8.72 In addition, separating the horse and human uses allows for a reconfiguration of layout and use that results in an overall landscape and environmental benefit through the potential for the completion of the stable block, and therefore the removal of the assortment of containers and old caravans located on the land and through the increase in space available to the applicant in terms of internal domestic storage.

Section 106 Agreement

8.73 If it brings the LPA further comfort, to ensure that the planning and landscape benefits of the proposal are secured, the applicant is willing to enter into a Section 106 agreement to secure the following:

- that the two dwellings would be self-built
- separation of uses on the site;
- the delineation of particular uses;
- the removal of both mobile homes;
- the removal of any extraneous structures;
- the protection of the line of oak trees;
- access improvements;
- wastewater disposal improvements;
- landscaping proposals;
- landscape management plan.

9 CONCLUSION

9.1 This application proposes the replacement of two mobile homes, each with a lawful permanent residential use, with two permanent self-build dwellings which would provide significant planning benefits for the environment.

9.2 Whilst the proposal is strictly contrary to the adopted Local Plan, there are several material considerations of significant weight that would allow a legitimate positive decision. These are summarised below:

Material Consideration 1 – Lawful Development Certificate

9.3 The proposal is not just for the replacement of any mobile homes. These mobile homes benefit from a permanent lawful residential use. The effect of the LDC is to make the mobile homes permanent dwellings to which the principle of redevelopment can be legitimately applied. (Please see appeal decision in Appendix 4). Significant weight should be attached to this material consideration.

Material Consideration 2 – The Fall-Back Position

9.4 The replacement of one mobile home with another does not constitute development. The improvement in mobile home designs means that there will be little visual difference between such designs and the permanent homes proposed. Significant weight should be attached to this material consideration.

Material Consideration 3 – The Self Build nature of the proposal

9.5 The LPA suffers from a severe shortfall in permissions given to meet the demand for self and custom built homes. A strong body of appeal precedent demonstrates that significant weight should be attached to this material consideration.

Material consideration 4 – The Sustainable Location/Precedent

9.6 As evidenced by the nearby Waratah and Steading permissions, and the sustainable travel times to facilities evidenced above, the LPA has confirmed this location as sustainable. Significant weight should be attached to this consideration.

Material consideration 5 – Removal of structures with RPAs of mature trees

9.7 The proposal would take existing structures and uses out of the root protection area of some large trees on the eastern boundary. This is a material consideration to which significant weight should be attached.

Material consideration 6 – Space Standards

9.8 The town planning system, exists in part, to help sustain and improve living conditions. The increase in floor area provided by these two self-built homes, and the ability to meet minimum space standards is a material consideration to which significant weight should be afforded.

Material consideration 7 - Nutrient Neutrality

9.9 The ability of the proposal to remove significant nitrate and phosphate contamination from the site wastewater through the replacement of a septic tank with two ‘state of the art’ sewage treatment plants is not insignificant. As such, this is a material consideration that should attract significant weight.

Material consideration 8 – Access

9.10 Whilst the access point is an existing access and no intensification is proposed, the landscaping proposals will help to substantially improve visibility to the right, as one exits the site. This improvement

to the access point is a material consideration to which significant weight should be attributed.

Material consideration 9 – Landscape

9.11 Whilst any proposal for new or replacement dwellings should be accompanied by planting proposals, the landscape strategy for this particular proposal has been informed by a full LVIA which has taken into account the identified landscape character of the area, and any views of the site. It has also weaved in the specific recommendations for improving biodiversity as set out in the ecological report and taken into account how the access and site frontage can be improved through replacement woodland planting. When compared with the existing condition of the site, this is a material consideration that should attract significant weight.

Material consideration 10 - Design

9.12 As above, whilst any design for new or replacement dwellings should be of high quality, this particular proposal has been genuinely informed by landscape character and a contextual analysis to ensure a design that is truly landscape-led. As such the design is of the highest quality. This is a material consideration to which significant weight should be afforded.

Material consideration 11 – Consequences of not giving planning permission

It is unrealistic to consider that the site might return to a pristine, bucolic example of untouched countryside. Rather, the site will remain in its existing condition, and the mobile homes will simply be replaced. To not take the positive opportunity for clearing the site of the existing mobile homes and extraneous structures would be a lost opportunity. To not take the positive opportunity for improving the access, the landscaping and the biodiversity of the site would be a lost opportunity. To not take the opportunity to improve the living space for the occupants or to remove phosphate and nitrate from the wastewater, or to improve the access is a lost opportunity.

9.13 The Town Planning system is not simply about making decisions due to a site's location in or outside a settlement boundary, albeit the spatial distribution of development is very important. It is about improving the environmental, social and economic conditions of an area and taking all material considerations into account.

9.14 This proposal allows the LPA the one-time opportunity to consider this site in both a positive and creative way, as the NPPF requires. A refusal of planning permission would demonstrate a negative decision overly focused on an adherence to a policy based on a line drawn on a proposals map. The one-time opportunity for a genuine improvement of this site, and the lives of its permanent inhabitants would be lost. This is a material consideration that should also be accorded significant weight.

Conclusion

9.15 **The combined weight of these 11 material considerations is considered sufficient to outweigh any divergence of the proposal from adopted Local Plan policy thereby allowing the LPA a legitimate route to positive consideration of the proposal.**

10 APPENDIX 1

Application Q/23/94407
Please ask for Summer Sharpe
Direct dial 023 8068 8841
Working hours Mon-Fri 9-5
Email Summer.Sharpe@eastleigh.gov.uk

Mrs Louise Cutts
Meadowsweet Cottage
Morleys Lane
Ampfield
Romsey
SO51 9BJ

Tuesday 7 March 2023

Dear Mrs Cutts

Without Prejudice

Town and Country Planning Act 1990
The Town and Country Planning (Development Management Procedure) (England) Order 2015

Application No:	Q/23/94407
Description:	Old Oak Farm, Winchester Road, Fair Oak, Eastleigh, SO50 7HD
Site:	Demolition of existing dwellings and replacement with 2 self-build dwellings

Thank you for your pre-application enquiry received 17 January 2023. I can advise that the proposals would require planning permission, and as such the following comments would be offered. The below comments have also been informed by a site visit (7 February 2023).

Site Context & Constraints

The pre-application site is located to the east of Winchester Road (B3354), accessed via an existing track. The pre-application site comprises a large piece of land including open fields and horse grazing. There are 2no. static mobile homes situated within the south-eastern portion of the site.

The surrounding area is classified as designated countryside. To the north-east of the pre-application site is a protected area for minerals. To the east and south are some residential properties. To the west is a strategic footpath along Winchester Road. Further west is a garden centre. To the north-west are other residential properties.

Planning History

Planning Application No.	Proposal	Decision
LDC/21/90862	Lawful Development Certificate for an existing use: Siting of 2no. static mobile homes.	Certificate Issued (November 2021)

Policy

In this instance, any future submission would be considered against the following policies and guidance:

Eastleigh Borough Local Plan (2016-2036)
Policies: S1 (sustainable development), S2 (approach to development), S3 (location of new housing), S5 (New development in the countryside), S12 (strategic footpath, cycleway and bridleway links), DM1 (general development), DM2 (environmentally sustainable development), DM3 (climate change), DM4 (zero or low carbon energy), DM6 (surface water management), DM8 (pollution), DM11 (nature conservation), DM13 (access), DM14 (parking), DM24 (Creating a mix of housing), DM26 (residential extensions and replacement dwellings in the countryside), DM29 (dwellings with higher access standards), DM30 (internal space standards), and DM38 (funding infrastructure).

National Planning Policy Framework (revised July 2021)

Eastleigh Borough Council Supplementary Planning Documents:
Quality Places; Residential Parking Standards; Biodiversity, and Trees & Development.

Assessment

Principle

The pre-application site falls within designated countryside and, as such Policy S5 of the Eastleigh Borough Local Plan (2016-2036) is of relevance. This policy sets out that there are specific criteria which development must comply with in order for it to be acceptable within the countryside. Section 1 notes types of development which would be compatible within the countryside, and Section 2 sets out what development will seek to do to ensure that the proposals do not have an adverse impact upon the countryside. This pre-application, proposing the addition of 2no. dwellings is not considered to fall within the criteria set out, thus would not be compatible with Policy S5.

It is, however, noted that there are 2no. existing static mobile homes within the south-eastern portion of the site. Thus, Policy DM26 relating to *residential extensions and replacement dwellings in the countryside* would be engaged. This is, again, subdivided into different sections.

Section 1 of Policy DM26 sets out that the extension or replacement of a permanent dwelling in the countryside will be permitted subject to the general development criteria and transport policies of the Local Plan and provided:
a. the extension or replacement dwelling will not be disproportionate in size to the existing dwelling, neighbouring properties or in relation to its plot, or involve any extension to its curtilage; and
b. in the case of a replacement dwelling, the proposal includes the replacement of the dwelling within the curtilage, and on the same footprint as the existing building, unless environmental and/or access benefits arise from an alternative location within the curtilage; and
c. no additional dwellings are created.

Section 2 of this policy explicitly states: *Permission will not be given for the replacement of mobile homes with permanent dwellings.*

Therefore, in terms of its basic principle the proposal is not considered to be acceptable.

Whilst the principle is not considered to be acceptable, the following comments would be offered, should you still wish to submit a planning application.

Design & Landscape

As noted within the above principle section, the proposals do not conform to the abovementioned criteria through which development would be permitted within the countryside. Therefore, the proposals are not considered to be acceptable, however, the following comments upon general design and landscaping are offered:

The submitted drawings provide an indicative design style, with the proposed dwellings being of a modern/ contemporary design. In isolation, the contemporary design could be acceptable, however further information on materials, finishes, window details would be required.

Whilst on site, it was noted that the site and surroundings experience topographical changes. In terms of placemaking and scene setting, a Landscape Visual Impact Assessment would be required (including a night-time assessment which would also be prudent given the expanse of glazing on the northern elevation facing the open countryside).

Ultimately, whilst the overall design and appearance of the proposed dwellings could be refined, the introduction of residential development in this location would undermine the physical extent and have an urbanising effect detrimental to the character of the countryside.

The Council's Landscape Officer has also noted that in their consideration they have to discount the current unkempt appearance of the site and take a long-term view. As such, the improvement of the current appearance is not a relevant reason for development in the designated countryside area. Nor would the harm arising from the overall development be offset by 'landscape improvements'.

To conclude, the proposals are considered to result in harm to the intrinsic character of the countryside, resulting in unacceptable urbanisation, thus would not be acceptable.

Amenities

This section will be separated into the amenities of future occupiers and impact upon neighbouring amenities.

Internal & External Standards for Future Occupiers

The nationally described space standards (NDSS) set out the minimum space standards required for new residential development. This is dependent upon the number of storeys, bedrooms, and occupiers. Bedrooms must also be of a set size; 7.5m^2 for single occupancy and 11.5m^2 for double occupancy.

The pre-application proposes 2no. dwellings. No floor plans have been provided, therefore an informed opinion in this regard cannot be provided. The LPA would advise that any new residential development would be required to accord with the above NDSS. Habitable rooms must also be provided with 'adequate natural light'. Further, external amenity should be at least 60% of the footprint of the host dwelling to comply with the Council's Quality Places SPD.

Neighbouring Amenities

As part of this pre-application a site meeting was undertaken. This predominantly focused on the site itself. It was acknowledged that there were significant topographical changes on the site and to the south with the neighbouring properties. However, a visit to the neighbouring properties to the south was not undertaken.

Plot 1 is proposed to be located to the southern boundary positioned fairly centrally within the plot. To the south is a neighbouring residential dwelling, separated by an access track and vegetation (the exact distance is unknown). The Council's Quality Places SPD sets out separation distances for properties back-to-back (22m). However, in this instance, the neighbouring dwelling to the south is on higher ground than the proposed dwelling, and therefore concern about overlooking may arise. Should a formal planning application be submitted a site visit to this neighbour would be undertaken to be able to fully assess the potential harm.

Due to the separation distance and orientation of Plot 2, it is unlikely that this dwelling would have an adverse impact upon any neighbouring amenity.

Highways

Please note, that should a formal planning application be submitted, Hampshire County Council Highways would be consulted upon. The County Council operate a chargeable pre-application advice service, and as a result have not been consulted as part of this pre-application.

The pre-application site benefits from an existing access to the east of Winchester Road (B3354). It was noted that the site was bound by gates, set back within the site. It was also noted that there were horses. Should the arrangement with horses/ livestock continue, if alternative gates/access were to be proposed, they would be required to be set back from the highway to allow longer vehicles to pull in and open/ close gates without remaining on the highway (Winchester Road).

The Council's adopted Residential Parking Standards sets out how many vehicular parking provisions are required for residential dwellings. This is dependent upon the number of bedrooms. In this instance, it is unknown how many bedrooms each dwelling would provide, however it is noted that both Plots (1 & 2) would benefit from driveways which could accommodate vehicles. Additional information would be required in this regard to ensure the proposals would be Policy compliant and adhere to the relevant SPD.

In addition to vehicle parking, bicycle and bin storage would be required. No information has been provided in this regard. Further information would also need to be provided with regard to bin collection.

Trees

The Council's Arboriculturalist has been consulted as part of this pre-application. They have provided the following comments:

As stated within the application documents, the principal arboricultural feature of this site is to the east. Fundamentally, the position of the proposed dwellings should not impact the significant trees on site. However, it Is not completely clear what will happen to the existing site to the east and so we would reserve the right to request more detailed arboricultural information at full planning, if required.

Ecology

The Council's Ecologist has been consulted as part of this pre-application. They have provided the following comments:

There is a discrepancy between the red line boundary on the information submitted. For the full application the ecological assessment will need to be updated for the actual site boundaries and layout and include a habitat map.

The report states that no rare or scarce species were noted on site, nor any species listed on Schedule 9 of the Wildlife & Countryside Act. Although they are not Schedule 9 species Thorn Apple Datura stramonium (which is very poisonous) and Field Horsetail Equisetum arvense (which is persistent and invasive) have been identified on site, should not be allowed to spread, and should be avoided in residential gardens. Pieces of Field Horsetail should not be included in spoil deposited elsewhere on site as it will be difficult to control.

I accept the judgement of the ecologist that the presence of chickens and goats makes the presence of reptiles less likely, however there are records of reptiles nearby and the site photos show that there is suitable reptile habitat on site (in areas without chickens), so a precautionary working method must be included in the updated ecological report. The report did not contain the customary time limitations, but if there is more than 24 months between the report date (September 2022) and the start of construction works, an update walkover survey will be required. If chickens are moved off site, a reptile survey may also be required.

Due to the record of badgers nearby, a pre-works badger check will also be required. If the plans submitted in the full application involve works near trees, they will need to be assessed for bat roost potential and nesting bird potential. A dark corridor/woodland buffer should be kept around the eastern boundary tree line. The report states that The Oak trees along the eastern boundary of the site are mature trees of local landscape and ecological value. The precautionary working method recommended in the report (5.3.8) is appropriate both for badgers and hedgehogs.

Mitigation measures for nesting birds include woody vegetation clearance only to be done between September to February (ie. outside of bird nesting season which is usually considered to be between March and August) or if this is not possible, only

after a check by a suitably qualified ecologist. Provision of native shrubs in the garden and bird boxes such as swift, sparrow and house martin nest boxes built into the new dwellings could provide mitigation for loss of habitat and biodiversity enhancement.

The vegetation clearance method in Technical Appendix 4 (not 6 as mentioned in the text at 5.3.4) is appropriate to avoid harm to most protected species and hedgehogs.

Any future application should seek to provide a biodiversity net gain. The application should be supported by a biodiversity enhancement/landscape plan and a surface water drainage plan.

Planning Obligations – Impact upon SPA

The addition of residential development is considered to have an impact upon the recreational disturbance and water quality of the European Protected Sites, which would need to be offset, in accordance with the Habitats Regulations.

Recreational Disturbance SPA - Solent & Southampton Water

The Solent & Southampton Water Special Protection Area is an internationally designated conservation site and is protected for its overwintering birds. It is recognised that new house building (within a 5.6km buffer of the designated area) is placing increased pressure on these overwintering birds from more people visiting the coastline. As such the Council requires all housing developments within the buffer to make a financial contribution towards the Solent Recreation Mitigation Strategy, which aims to limit recreation disturbance to our coastline through careful management. The site does not appear to be located within the designated area.

Nitrates & Phosphates – Water Deterioration

In terms of water quality, Natural England have highlighted that new residential development can have an adverse impact upon the European protected Solent Complex and River Itchen SAC, for the features for which they are designated, through phosphate and nitrogen loading resulting from additional sewage generated from future residents. These impacts under the Conservation of Habitats and Species Regulations 2017 are required to be mitigated in order for development to be acceptable.

The Council has adopted its own strategy for achieving nitrate neutrality whereby it identifies areas of agricultural land and remove these from a nitrate intensive use, thus reducing the nitrogen input into the protected sites, with the level of reduction then being used as a means of offsetting the impacts of development proposals within the Borough. This ensures no overall net increase in nitrates within the Solent and

thereby allow a development to achieve nutrient neutrality. In order to do this, the Council calculates the level of nitrate mitigation this land provides (measured in kg) and makes 'nitrate credits' available to developers to buy, with funding being secured during the planning application. The charge for these credits is £3,000 plus VAT (£3,600) per kilogram of nitrates that require offsetting, with this fee including estimated costs of land purchase and ongoing maintenance.

In order to calculate the level of contribution required a nutrient budget must be submitted with the planning application and confirmation of the mitigation to be used to offset the nitrates generated from the development.

The Council also has a strategy for achieving phosphate neutrality. The charge for these credits is £4,500 plus VAT per dwelling. Additional information can be found on the following link: https://www.eastleigh.gov.uk/planning-and-building/water-quality-issues-in-the-solent-catchment-area

Applicants are not obliged to use the Council's scheme and other options for achieving nutrient neutrality are possible. However, certainty needs to be given that the mitigation scheme achieves nitrate neutrality in perpetuity to the satisfaction of Natural England.

However, should you wish to purchase Council credits to offset the nitrogen output, then you would need to complete an 'expression of interest' and send to the following email address: nutrientoffset@eastleigh.gov.uk to check the availability of credits. For further information, please see the following link: https://www.eastleigh.gov.uk/planning-and-building/nutrient-neutrality-offset-scheme

Recreational Disturbance – New Forest SPA

Natural England have raised the issue of new residential development resulting in more visitors to the New Forest National Park and subsequent increased recreational disturbance. The site falls within the 13.8km radius of the New Forest where new residential schemes need to contribute toward mitigation projects. The Council have a strategy which requires monetary mitigations (£2,220 per dwelling) to offset the proposed development which you may choose to use.

Other Matters

Sustainable drainage
All new housing developments need to incorporate a sustainable drainage system,

which should include naturalised filtration where possible. A sustainable water drainage plan needs to be included within the planning submission and a ground survey should be undertaken to establish whether infiltration is possible.

Sustainability

Thought should be given to incorporating a wide range of sustainability measures into the proposed development. This may include a fabric first approach, design adapted to maximise light and provide solar shading, PV panels for water heating and power, green roofs, ground source heat pumps, electric vehicle and bicycle charging points, water butts, rain gardens etc. It is noted that the submitted elevations denote a sedum roof, and on site the potential for solar panels were discussed.

All new residential developments are expected to provide a 19% improvement on carbon emissions (compared to building regulations) and water consumption of no more than 110litres per person per day.

Conclusion

To conclude, the proposals are not considered to be acceptable in principle as they would be in direct conflict with Polices S5 and DM26.

I trust the above comments are of assistance. Please note, these comments are given without prejudice basis and will not be binding should any future planning application be submitted.

Should you have any queries, please do not hesitate to contact Summer Sharpe via the details at the top of this letter.

Yours faithfully,



Andy Grandfield
Executive Head for Planning and Economy

11 APPENDIX 2

The Planning Inspectorate

Appeal Decision

Hearing (Virtual) held on 6 June 2023

Site visit made on 7 June 2023

by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/W3520/W/23/3316136
Land West of Suffolk House, Ixworth Road, Norton, Suffolk, IP31 3LP

- 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 Ash Property Partnership Ltd against the decision of Mid Suffolk District Council.
- The application Ref DC/22/01941, dated 8 April 2022, was refused by notice dated 23 December 2022.
- The development proposed is Erection of 9 self-build/custom build dwellings.

Decision

1. The appeal is allowed, and planning permission is granted for the erection of 9 self-build/custom build dwellings at Land West of Suffolk House, Norton, IP31 3LP in accordance with the terms of the application, Ref DC/22/01941, dated 8 April 2022, the Unilateral Undertaking submitted with it and subject to the conditions in the attached schedule.

Preliminary Matters

2. The application is submitted in outline form with all matters reserved except for access. In the Hearing, it was confirmed that the plan reference 100-225/006E, whilst marked as indicative, constituted full details of the access arrangements against which the development was assessed. I have taken this into account in my decision.

3. Policies referenced in the Council's decision notice are from the Mid Suffolk Local Plan 1998 (MSLP), the Core Strategy 2008 (CS) and the Core Strategy Focused Review 2012 (CSFR). These policies are prior to the preparation of a Joint Local Plan (JLP) between the Council and neighbouring Babergh District Council. During the Hearing it was reported that the Examination in Public of the JLP was ongoing and thus emerging policies could only be given limited weight at the current time. I have taken this policy position into account in my decision.

4. A Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) accompanies the appeal. A signed version was provided to the Hearing, to which the Council agreed served the purpose required of it. Some formatting and typographical amendments were agreed to be necessary during the Hearing, and a final signed version of the UU was received on 26 June 2023. I shall return to this later in my decision.

Main Issues

5. The main issues for the appeal are:

   - whether the appeal site is in an appropriate location for the type of development proposed; and
   - whether there are material considerations to warrant a departure from the Development Plan.

Reasons

Whether the site is an appropriate location

6. The appeal site constitutes an open field in undeveloped countryside to the rear of properties within the village of Norton. It is broadly rectangular in shape and abuts the settlement of Norton on its eastern and southern boundaries. Access to the appeal site is to the east off the A1088, Ixworth Road, in between a pair of bus stops and along the boundary with Suffolk House.

7. The appeal proposal would provide 9 new self-build dwellings, all of which would be outside of the village. It was indicated during the Hearing that the settlement boundary for Norton would be unlikely to change in the emerging JLP. The Development Plan, particularly policies H7 of MSLP and CS1 of the CS, directs new development to within existing settlements. There is an expectation within policies CS1 and CS2 that the areas outside settlements, identified as being countryside, would be protected for their own sake.

8. I note the Council's unchallenged submissions that it has a robust five-year housing land supply position[1] with more than enough land to meet its housing requirements within existing settlements and allocations. In light of this, it is clear to me that development of the appeal site for housing would be contrary to the spatial strategy of the Council and would undermine a plan-led system.

9. On this basis, the proposal would conflict with the aims of the adopted Development Plan seeking to locate housing growth within existing settlements. The appeal site would therefore be an inappropriate location for new housing, in conflict with policies H7 of the MSLP, and policies CS1 and CS2 of the CS.

Whether there are material considerations to warrant a departure

10. The appellant highlights that the appeal scheme is for self-build and custom housing and has submitted a UU to secure the development as such. The appellant stated that a failure of the Council to provide enough serviced plots to meet the housing needs constituted a breach of the statutory duties for the authority under the Self-Build and Custom Housebuilding Act 2015 (as amended) (the Act). This should, it was argued, weigh in favour of allowing the appeal.

11. The Council admitted that only 153 permissions for self-build units had been granted compared to a register of 286 self-builders, thus a shortfall of 133 units[2] currently exists.

[1] Purported to be in excess of 10 years at the date of the Hearing
[2] Document entitled: "Appeal Self Build Custom Build by Base Period" submitted during the Hearing

12. The appellant stated the shortfall was likely to be higher because the Council's self-build register, shared jointly with Babergh Council, identified that 585 self-builders required a serviced plot, not just 286. Furthermore, the appellant criticised the Council's use of Community Infrastructure Levy (CIL) forms to reach the 153-dwelling figure, stating that actually only few permissions granted genuinely secure housing for such purposes. In addition, it was alleged the Council had not taken into account secondary data sources in calculating its housing need.

13. I have reviewed the evidence and there is no doubt, even on the best-case position of the Council, that there is an actual shortfall of self-build and custom dwellings of a minimum of 133 units. The statutory duty under the Act to provide enough serviced plots has therefore not been met to date, nor over the last few years[3]. In these circumstances, even if the reality is that the shortfall in supply may be greater than envisaged, the weight of failing to meet the statutory duty is substantial. Taking into account the advice of the planning practice guidance[4], I recognise that the Council has been making progress in seeking to provide for self-build dwellings, but this does not reduce the weight of the failed duty. Such weighs in favour of the proposal as a departure from the Development Plan.

14. The appellant also raises that, in the absence of a planning policy within the adopted Development Plan tackling self-build housing, the tilted balance in paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged. Appeal decisions were submitted evidencing a similar approach and conclusions on this matter.

15. The Council accepted that it does not have an adopted policy for self-building at the current time, giving only limited weight to policy LP08 in the emerging JLP that would support provision of self-build units. Paragraph 11(d) of the Framework directs that where there are no relevant development plan policies, permission should be granted subject to 11(d)(i) or 11(d)(ii). I was not presented with any compelling evidence for me to take a different view to that of other Inspectors in the appeal decisions cited. Therefore, despite the Council demonstrating a five-year housing land supply, I conclude that the tilted balance does apply in this instance.

16. The appeal development would result in the loss of an undeveloped greenfield site, although I have not been presented with any argument that the landscape is of particular significance or sensitivity. None of the restrictions in footnote 7 to paragraph 11(d)(i) of the Framework are said to apply. Future residents may have high reliance on the private car due to the limited public transport options, but the Framework acknowledges access to public transport is likely to differ between urban and rural areas. Furthermore, it is reasonable to conclude that a proportion of trips could be carried out to services within the village on foot or by bike. I do not therefore consider there is significant environmental harm arising from the development.

17. From my site visit, I noted that the appeal development would be in close proximity to the village hall, primary school, grocery store and the nearby public house. I observed that all of the local services for day-to-day living said

[3] Paragraph 4.7 of the LPA Appeal Statement of Case
[4] Paragraph: 038 Reference ID: 57-038-20210508

to be available by the appellant[5], as agreed by the Council, were within easy walking distance. In this context, the appeal development would be suitably located to make use of local shops and services and thus contribute to the viability and vitality of these facilities. It would therefore contribute economically and socially to the rural community.

18. I note that the Council had not alleged the appeal site was in an unsustainable location in previously refused applications for open-market housing. It was said during the Hearing that the appeal site effectively had become more unsustainable with the ever-increasing housing land supply of the Council[6]. However, it was confirmed in the Hearing that the economic, social and environmental parameters regarding the appeal site and the village of Norton had not changed since the previously refused schemes. I therefore find no reason to consider the appeal site an unsustainable location on the basis of the land supply position alone.

19. Whilst the Council argue that parts of policies CS1 and CS2 of the CS are consistent with the Framework, I have no substantive evidence to convince me to depart from the findings of other Inspectors on the weight to be given to these policies[7]. I therefore consider the conflict between the appeal scheme and the Development Plan to have reduced weight.

20. Objectors to the development have raised issue with highway safety, effects on heritage assets and wildlife. However, no arguments have been advanced by the Council or its consultees on these grounds and there are no detailed submissions to substantiate the arguments made. To this extent, there is nothing before me to justify a case of planning harm arising from the development.

21. In conclusion, the tilted balance is engaged and the planning benefits of providing 9 self-build units, in light of an identified shortfall, would be substantial. The submission of the UU, which I have reviewed and consider meets the necessary tests for obligations[8], adds security to the benefits of meeting the local housing needs. These benefits include the economic and social support for the rural community as well as meeting the local housing needs. Whilst the development would conflict with the spatial strategy of the Council, this would not significant and demonstrably outweigh the benefits. This is particularly in recognition of the statutory duty upon the Council to deliver serviceable plots.

22. On the basis of the above, I consider there are material considerations to warrant a departure from the Development Plan in this instance. The appeal should therefore succeed.

Conditions

23. A list of conditions was supplied by the main parties within the signed statement of common ground, which included the implicit agreement of the appellant to those conditions requiring submissions prior to commencement of development. The conditions were discussed and, in part, revised during the Hearing. Nonetheless I have the following comments to make.

[5] Paragraph 11 in the appellant statement from Mr Cobbald
[6] Purported to be in excess of 10 years at the date of the Hearing.
[7] Appeal 3291011 and the Appeal cited in paragraph 6.27 in the Appeal Statement of Tetlow King Planning
[8] Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

24. For clarity on the development hereby permitted and how reserved matters submissions should be managed, having regard to the self-build nature of the development, I have imposed conditions 1, 2 and 3. This includes a 5-year period for reserved matters submissions to be made to the local planning authority, as agreed between the main parties in the Hearing.

25. In imposing condition 4, I have taken into account the annotation that plan 100-225/006E is indicative. However, the main parties confirmed this was the only plan that secured the means of access to the appeal site and had formed the basis of all highway assessments to date. It is therefore logical to ensure, in the interests of highway safety, that the access is carried out in accordance with that plan.

26. Conditions 5 and 6 are necessary to ensure archaeological assets are duly protected, whilst conditions 7, 8, 9, 11 and 12 are all required in the interests of highway safety for all users.

27. The footway crossing required under condition 10 would be provided, in part, on land forming part of the public highway. Delivery of the footway would therefore have to be secured via an agreement pursuant to section 278 of the Highways Act 1980 (as amended). The Highway Authority have requested the crossing and, from my site visit, I believe it to be necessary to ensure safe use of the highway by all users, given the speed and nature of traffic. I have imposed condition 10 so that the local planning authority are notified of the approved details. I have modified the condition to require the crossing to be fully completed prior to the occupation of the first dwelling rather than the nineth, to ensure delivery of the necessary infrastructure in the event that less than 9 dwellings are built.

28. Condition 13 is necessary for proper management of the development whilst conditions 14 and 15 are imposed to ensure construction across the site is undertaken without detriment to the living conditions of nearby occupiers. To ensure adequate protection and enhancement for local wildlife, conditions 16 to 19 are necessary.

29. During the Hearing, the main parties agreed to an additional condition securing a phasing plan for the scheme. I consider that the wording of condition 20 broadly reflects the agreement reached, and the condition is both reasonable and related to the development hereby permitted.

Conclusion

30. For the reasons given, subject to the conditions in the attached schedule and the UU, I conclude that the appeal should succeed.

D Wallis

INSPECTOR

SCHEDULE OF CONDITIONS

1) Approval of the details of the layout of the development, the scale and appearance of buildings, and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before the construction of the dwelling on that particular plot is commenced. The development of each plot shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 5 years from the date of this permission

3) The development of each individual plot hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved for that plot.

4) The development hereby permitted shall be carried out in accordance with the details shown on the Local Plan received by the Council on 11 April 2022 and, insofar as it relates to the matter of access to which this permission relates, Drawing 100-225/006E.

5) Prior to the commencement of development, the applicant shall secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI), which has been submitted to and approved in writing by the local planning authority. The WSI shall include an assessment of significance, research questions and:

   i. The programme and methodology of site investigation and recording

   ii. The programme for post investigation assessment

   iii. Provision to be made for analysis of the site investigation and recording

   iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation

   v. Provision to be made for archive deposition of the analysis and records of the site investigation

   vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

   vii. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

6) No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under the above condition and the provision made for analysis, publication and inspection of results and archive deposition.

7) Before the access is first used, vehicular visibility splays shall be provided as shown on Drawing No. 100-225/006E with an X dimension of

2.4 metres and a Y dimension of 38 metres in North direction and 59 metres in the South direction to the nearside edge of the carriageway and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction to visibility shall be erected, constructed, planted or permitted to grow over 0.6 metres high within the areas of the visibility splays.

8) No part of the development hereby permitted shall be commenced until the existing vehicular access has been improved, laid out and completed in all respects in accordance with Suffolk County Council's standard access drawing DM01, with a minimum entrance width of 4.5 metres for a shared access and made available for use. The access shall be retained as such thereafter.

9) Prior to the development hereby permitted being first occupied, the improved vehicular access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5 metres measured from the nearside edge of the metalled carriageway, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The access shall be retained as such thereafter.

10) Prior to the commencement of development, details of the new footway crossing on A1088 shall be submitted to and approved in writing by the Local Planning Authority. The footway shall be laid out and constructed prior to the occupation of the first dwelling hereby approved in accordance with the approved scheme. The footway shall be retained thereafter in its approved form.

11) Concurrent with each submission of reserved matters for an individual plot, details of vehicle parking, including secure, lit and covered cycle storage and electric vehicle charging infrastructure for that plot shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the relevant plot is brought into use and shall be retained as such thereafter.

12) Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway including any system to dispose of the water. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained as such thereafter.

13) Concurrent with each submission of reserved matters for an individual plot, details of the areas to be provided for the storage and presentation for collection/emptying of refuse and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved bin storage and presentation/collection area shall be provided for each dwelling prior to its first occupation and shall be retained as such thereafter.

14) Any construction work associated with the proposal shall be restricted to:

    i. 08.00 and 18.00hrs Mondays to Fridays;

    ii. and between the hours of 09.00 and 13.00hrs on Saturday.

There shall be no working and/or use operated on Sundays and Bank Holidays. There shall be no deliveries to the development outside of these approved hours.

15) Prior to the commencement of development, a demolition and construction management strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include access and parking arrangements for contractors' vehicles and delivery vehicles (locations and times) and a methodology for avoiding soil from the site tracking onto the highway together with a strategy for remedy of this should it occur. The construction of the development on any and every plot shall only take place in accordance with the approved strategy.

16) Mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecology Survey (MHE Consulting Ltd) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

17) Prior to the commencement of development (including any demolition, ground works, site clearance) a Biodiversity Mitigation Method Statement for mobile protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the method statement shall include the following:

    i. purpose and objectives for the proposed works;

    ii. detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);

    iii. extent and location of proposed works shown on appropriate scale maps and plans;

    iv. timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;

    v. persons responsible for implementing the works;

    vi. initial aftercare and long-term maintenance (where relevant); and

    vii. disposal of any wastes arising from works.

    The works shall be carried out strictly in accordance with the approved details and shall be retained as such thereafter.

18) Prior to works above slab level, a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

    i. purpose and conservation objectives for the proposed enhancement measures including birds, bats and hedgehogs;

    ii. detailed designs to achieve stated objectives;

iii. locations of proposed enhancement measures by appropriate maps and plans;

iv. timetable for implementation demonstrating that works are aligned with the proposed phasing of development;

v. persons responsible for implementing the enhancement measures; and

vi. details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

19) Prior to the occupation of the development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, lsolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained as such thereafter. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

20) Prior to the commencement of development, a Community Infrastructure Levy (CIL) phasing plan shall be submitted to and approved in writing by the Local Planning Authority. This shall detail the delivery of CIL to the local planning authority on a plot-by-plot basis and how relevant dates and milestones will be recorded. The development shall be carried out in accordance with the phasing plan, which shall remain in effect until all dwellings hereby permitted have been constructed.

APPEARANCES

FOR THE APPELLANT:
Phil Cobbald
Simon Gray
Andrew Moger

FOR THE LOCAL PLANNING AUTHORITY:
Daniel Cameron
Robert Feakes

DOCUMENTS

1. Statement of Common Ground signed 5 June 2023
2. Unilateral Undertaking signed 26 June 2023
3. Appeal Self Build Custom Build by Base Period
4. Appeal Decision 3291011

Ministry of Housing, Communities & Local Government

Our ref: APP/A0665/W/14/2212671

Mr Jon Suckley
HOW Planning
40 Peter Street
Manchester M2 5GP

4 November 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DARNHALL ESTATE
LAND OFF DARNHALL SCHOOL LANE, WINSFORD, CHESHIRE
APPLICATION REF: 13/03127/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Melvyn Middleton BA (Econ), DipTP, Dip Mgmt, MRTPI, who held a public local inquiry on 27-30 November 2018 into your client's appeal against the decision of Cheshire West and Chester Council to refuse your client's application for planning permission for a high quality residential development with associated open space, access and infrastructure, in accordance with application ref: 13/03127/OUT, dated 12 July 2013.

2. On 25 February 2014, 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.

3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 7 July 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 10 August 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 2016 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted.

5. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Philip Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 2853
Email: PCC@communities.gov.uk

Matters arising since the close of the inquiry

6. On 4 July 2019 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the publication of the Cheshire West and Chester Local Plan Part 2 (CW&CLP P2) Inspector's Report and Schedule of Main Modifications. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 19 and 29 July 2019. The Secretary of State's conclusions on these representations are set out in this Decision Letter below.

Policy and statutory considerations

7. 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.

8. In this case, the adopted development plan for the area comprises the Cheshire West and Chester Local Plan P1 (CW&CLP P1) Strategic Policies to 2030 (adopted 29 January 2015); the Cheshire West and Chester Local Plan P2 (the P2 plan) (adopted 18 July 2019); and the made Winsford Neighbourhood Plan (November 2014). The Secretary of State considers that relevant development plan policies include those set out at IR28-33 and P2 plan Policies W1, GBC 2 and DM19.

9. 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 supplementary planning guidance on affordable housing, developer contributions and landscape character. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

Development plan

10. The Secretary of State has had regard to the Inspector's conclusions on the VRBLP at IR378-382. At the time of the inquiry, the Inspector undertook a planning balance based on a finding that saved policy GS5 of the VRBLP in terms of its settlement limits was out of date such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework ("tilted balance").

11. Matters regarding the VRBLP have now moved on as the P2 Plan has been adopted which includes allocations, boundaries and detailed polices replacing those parts of the VRBLP that were saved. The Secretary of State considers that the most important policies for the purposes of this appeal are STRAT 1, STRAT 2, STRAT 6, STRAT 9, Policies H1 and H2 of the WNP, and P2 plan Policies W1 and GBC 2.

12. The appellant does not argue that Policies STRAT 1 or STRAT 2 are out of date (IR48). The Secretary of State considers that STRAT 1's aim of enabling development that improve and meets the economic, social and environmental objectives of the Borough in line with the presumption in favour of sustainable development is consistent with the Framework, and thus concludes that the policy is not out of date. He further considers that Policy STRAT 2's objective of setting minimum housing and employment

development targets and requiring development to be brought forward in line with the settlement hierarchy is consistent with the Framework, and thus concludes that the policy is not out of date. For the reasons given at IR384 he agrees that while STRAT 9 is not fully consistent with the wording of the Framework, it is not out of date and is capable of attracting weight for the reasons set out below.

13. The Secretary of State considers that the P2 Plan policies W1 and GBC 2 have been found compliant with the Framework by the Plan Inspector, and for that reason the Secretary of State concludes they are not out of date. He further notes that there is no contention that the WNP is out-of-date. As such he concludes that these policies when taken as a whole are not out of date, and that thus the development plan is not out-of-date.

Five year housing land supply

14. For the reasons given at IR325-6, the Secretary of State agrees with the Inspector that there is no evidence for disagreeing with the housing land supply details set out in the Housing Statement of Common Ground. He has had regard to the report of the Inspector into LLP Part 2, and the representations of the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019 as to whether the report on the plan confirms that the Council can demonstrate a 5 year housing land supply. However, he considers that the focus of the local plan examination was not to reach a judgment on housing land supply, that the plan Inspector did not have access to the Housing Land Monitor Review and was not considering the definition of deliverable as set out in 2019 Framework. As such has based their conclusions on the recommendation of the appeal Inspector, who heard the evidence, including more recent changes, cross examined at Inquiry at greater length than the plan Inspector, and subsequent representations from the parties.

15. The Secretary of State has gone on to consider the issue of supply. In doing so he has had regard to his guidance on deliverability issued 22 July 2019. For the reasons given at IR341-344 the Secretary of State agrees with the Inspector's conclusions on preliminary points. The Secretary of State has had regard to representations on behalf of the appellant dated 26 July 2019, with regards to evidence of deliverability.

16. For the reasons set out at IR345, the Secretary of State agrees that 167 dwellings should be deducted from the five year supply figure to account for potential future demolitions. He has gone on to deduct a further 430 dwellings, namely student accommodation, for the reasons set out at IR346-350.

17. For the reasons given at IR360-364 the considers that there is clear evidence to conclude that the disputed sites as set out in paragraph 3.9 of the Statement of Common Ground are deliverable.

18. He has gone on to consider the deliverability of six non allocated sites without planning permission that are disputed. The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.

19. The Secretary of State has gone on to consider the Inspector's analysis of build-out rates and lead in time at IR368-70. For the reasons given he agrees that supply should be

reduced by 505 dwellings. For the reasons given at IR371-372, he agrees that 115 dwellings should be removed from the supply figure for windfalls.

20. For the reasons given above, he thus concludes that 1,439 dwellings should be deducted from the supply figures. He thus agrees that supply is 5,838.

21. He has gone on to consider the housing requirement. The Secretary of State has noted the Inspector's analysis at IR327 – 335 and conclusions that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the ongoing annual requirement, based on the facts of this case. He has had further regard to the representations from the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019. While he accepts that the method of dealing with past oversupply is disputed, whether the requirement is 5,150, as stated by the Council, or 5,775, as stated by the appellant, in any case the Secretary of State concludes that the Council can demonstrate a 5 year housing land supply.

Settlement boundaries, impact on countryside & countryside policies

22. At the time of the Inquiry the Inspector considered all the relevant development policies relating to settlement boundaries and countryside protection. However, since then the Council has adopted the P2 plan, which sets out new settlement boundaries in policy W1. The proposal sits outside these development boundaries.

23. For the reasons given at IR383 the Secretary of State agrees that the proposal is in clear breach of policy STRAT9. For the reasons given at IR384 he agrees that while not fully consistent with the wording of the Framework, the policy is not out of date and is capable of attracting weight depending on the circumstances of the case. The Secretary of State recognises that the Council has breached the settlement boundaries in previous grants of planning permission to ensure that there is a sufficient supply of housing land. Nonetheless, those cases would have been decided on their individual merits and in a different planning context. In any case, the settlement boundaries that were breached in those instances were those set out in VRBLP, not those established by SW&CLP P2. However, for the reasons given at IR385 he agrees that it should be given reduced weight given to the site's position adjacent to a new urban area proposed under STRAT 2. The Secretary of State has had regard to the Inspector's conclusion (IR388-389) that as the impact of the proposal on the landscape would not be significant, and thus the conflict with policy Strat 9 is limited. Although the Secretary of State agrees that the proposal would not have a significant impact on the landscape, given the loss of open countryside and the clear conflict with STRAT 9 and its aim of protecting the intrinsic character and beauty of the Cheshire countryside, as underpinned by the boundary policy W1 in the CW&CWLP P2, he concludes that this should attract significant weight.

24. For the reasons given at IR390 the Secretary of State agrees that the proposal would conflict with Policy STRAT 1 by virtue of not minimising the loss of greenfield land. He further agrees however that in respect of the other elements of the policy, except as set out below, the proposal is either neutral or contributes towards their requirements, for the reasons given at IR391. The Secretary of State that there are other sites that have been allocated or granted planning permission prior to the adoption of P2 which also do not encourage the redevelopment of previously developed land (PDL) (IR391), but that does not diminish the harm that arises in this case. The Secretary of State has judged the appeal on its own merits in the context of an up-to-date plan and a five year housing supply. As such while the extent of the conflict with policy STRAT 1 is limited, he gives moderate weight to this conflict.

The Winsford Neighbourhood Plan (WNP)

25. The Secretary of State has had regard to the Inspector's analysis at IR395-398. The Secretary of State agrees for the reasons given that Policy H1 is a policy that guides and regulates whether new development in and around Winsford should be located. He further concludes, in agreement with the Inspector at IR398 that as the appeal proposal is not one of those proposed for residential development in the WNP it is contrary to Policy H1 and contrary to the WNP as a whole. While he agrees that there is support from the proposal from Policy H2 (IR398), that the proposal does not conflict with the seven themes of the plan (IR397), and the fact that housing requirement Policy H1 is expected to meet is a minimum requirement, he does not agree that Policy H1 should be given no more than moderate weight. He considers that as the Council can demonstrate a five year housing land supply H1 is not restricting housing delivery, and he affords this conflict significant weight.

Housing

26. For the reasons set out at IR392 the Secretary of State agrees that it would be premature to suggest that the requirement from the Station Quarter cannot be delivered over the next eleven years. He further agrees (IR393) that Policy STRAT 6 does not give support to the proposal, but there is also no conflict with it.

Economic benefits

27. For the reasons set out at IR403-407, the Secretary of State agrees that the economic impacts from the provision of market housing are a benefit of significant weight. He further agrees (IR406) that the impact on agricultural land does not weigh against the proposal.

Social benefits

28. The Secretary of State agrees that the social benefits of the provision of affordable housing should be given substantial weight, for the reasons set out at IR408-411. He further agrees, for the reasons set out at IR412-414, that the social benefits of the self-build element of the scheme should attract substantial weight. He also agrees with the Inspector (IR415) that the local training, employment and procurement elements should attract significant weight in favour of the proposal.

Environmental

29. The Secretary of State notes the Inspector's findings at IR 417-420 that that the negative environmental impacts of the proposal are counterbalanced by the ecological and

recreational benefits, and as such neutral in the planning balance. However, given his findings on the conflict with STRAT 9 above he concludes that the environmental harms outweigh the benefits.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR317-318 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

31. Having had regard to the Inspector's analysis at IR319-322, the planning obligation dated 6 December 2018, the Unilateral Undertaking dated 17 December 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR322 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies STRAT 1, STRAT 9 or WNP Policy H1 and outside the settlement boundary established by policy W1 of the P2 plan, 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. Having regard to his conclusions on the development plan and housing land supply above, he concludes that the presumption in favour of sustainable development is thus not engaged.

33. In favour of the proposal he finds the economic benefits from the provision of housing, to which he attaches significant weight. He accords further substantial weight to the social benefits of the provision of affordable housing, local procurement, training and employment.

34. Against this he attaches moderate weight to the conflict with policy STRAT 1. He attaches significant weight to the impact on the loss of countryside contrary to policy STRAT 9. He finds that the conflict with WNP Policy H1 should attract significant weight.

35. As such the Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

36. The Secretary of State therefore concludes that the appeal should be dismissed, and planning permission refused.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission.

Right to challenge the decision

38. 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.

39. A copy of this letter has been sent to Cheshire West and Chester Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

Representations received in response to the Secretary of State's reference back letter of 4 July 2019

Party	Date
Cheshire West and Chester Council	16 and 23 July 2019
Avison Young	18 and 26 July 2019
Robin Wood Associates (The Darnall Fighting Fund)	17 July 2019
Winsford Town Council	25 July 2019

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Melvyn Middleton BA(Econ), DipTP, Dip Mgmt, MRTPI

an Inspector appointed by the Secretary of State

Date: 16 April 2019

Town and Country Planning Act 1990

Cheshire West and Chester Council

Appeal by

Darnhall Estate

Land off Darnhall School Lane, Winsford, Cheshire

File Ref: APP/A0665/W/14/2212671

LIST OF ABREVIATIONS

Abbreviation	Reference
AH	Affordable Housing
AM	Andy Mojer
AMR	Annual Monitoring Report
Ap.	Appendix
BF	Beth Fletcher
BP	Ben Pycroft
CD	Core Document
CW&C	Cheshire West and Chester
C2s	Extra Care Residential Institutions
DP	Development Plan
ds.	Dwellings
dpa.	Dwellings per annum
Framework	National Planning Policy Framework
GCN	Great Crested Newt
ha	hectares
HELAA	Housing and Economic Land Availability Assessment
HESA	Housing Education Statistics Authority
HLM	Housing Land Monitor
HLS	Housing Land Supply
HSoCG	Housing Statement of Common Ground
ID	Inquiry Document
JillS	Jill Stephens
JonS	Jon Suckley
JS	James Stacey
k.	Kilometre
LP	Local Plan
m.	Metre
NP	Neighbourhood Plan
NPPG	National Planning Policy Guidance
OR	Original Report
Pg.	Page
Para.	Paragraph
Pdl	Previously developed land
PSoCG	Planning Statement of Common Ground
PoE	Proof of Evidence
P1	Part 1
P2	Part 2
Re	Re-examination
S	Section
SHMA	Strategic Housing Market Area
SMEs	Small and Medium Sized Employers
SoS	Secretary of State
Sqm.	Square metre
SR	Supplementary Report
VRBLP	Vale Royal Borough Local Plan
WNP	Winsford Neighbourhood Plan
Xic	Examination in Chief
Xx	Cross-examination

File Ref: APP/A0665/W/14/2212671
Land off Darnhall School Lane, Winsford, 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 Darnhall Estate against the decision of Cheshire West & Chester Council.
- The application Ref 13/03127/OUT, dated 12 July 2013, was refused by notice dated 26 November 2013.
- The development proposed is a high-quality residential development with associated open space, access and infrastructure.
- This report supersedes that issued on 7 July 2016. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal is allowed, and outline planning permission be granted.

BACKGROUND

1. The original inquiry into this appeal opened on 10 June 2014 and closed on 11 June 2014. Following the inquiry, the Inspector's original report (OR) and recommendation to allow the appeal were submitted to the Secretary of State (SoS).

2. By letter dated 14 April 2015 the SoS decided to reopen the inquiry as he had received representations that material considerations had changed. In essence the Council considered by then that it could demonstrate more than a five-year supply of housing land. Additionally, the Cheshire West and Chester (CW&C) Local Plan (LP) Part One (P1) Strategic Policies had been adopted in January 2015 and the Winsford Neighbourhood Plan (WNP) had been made in November 2014.

3. The matters upon which the SoS wished to be further informed related to

   a) the extent to which the appeal proposal complied with the Development Plan (DP);

   and

   b) whether the proposal amounted to sustainable development, having regard to national policy, including whether there is a demonstrable 5-year supply of deliverable housing sites.

4. The inquiry reopened on 15 September 2015 and closed on 18 September 2015. The Appellant proposed a revision to the housing offer in advance of the reopened inquiry. The new proposal was that 40% of the dwellings would be affordable, that 10% of the housing would be self-build and that the remaining 50% of the housing, the 'unrestricted' open market element, would be developed by local house builders. The proposal considered at the original inquiry was for 30% affordable housing (OR37 & 149). The Appellant also proposed a revised condition entitled 'Training and Employment' and new conditions entitled 'Self-build Housing', 'Local Builders' and 'Local Procurement'. The Inspector referred to these other 'non-housing' benefits as 'novel' elements.

5. A supplementary report (SR) dealing solely with the additional matters raised by the SoS and the Appellant, along with a further recommendation on the appeal, were subsequently submitted to the SoS.

6. The Inspector once again recommended that the appeal be allowed, and outline planning permission granted subject to conditions. For the reasons set out in SR 248-259 the Inspector found that the proposal overall would be contrary to the DP (SR 260). For the reasons set out in SR 211-246, he also found that there was a housing land supply of 5.12 years (SR 246) and therefore that the DP's policies for the supply of housing were up to date (SR 247).

7. He then went on to look at whether the proposal would amount to sustainable development. He found that there would be significant economic benefits and very substantial social benefits from the development and that they clearly outweighed the moderate environmental harm that he had identified. The Inspector went on to point out that the DP should not be set aside lightly and that a failure to comply with the DP could give an indication that the development would not be sustainable overall.

8. In concluding, he said that it was a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of new homes. He found that there were substantial economic and social benefits arising from the proposal, particularly the significant proportion of affordable homes and the other 'novel' elements of the housing offer (SR 115&119). In his opinion, the conflict with the DP, the starting point for decision making, and the adverse impacts on the countryside were outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the other benefits then being offered. He therefore recommended that the appeal be allowed, and outline planning permission be granted subject to conditions.

9. The SoS disagreed with the Inspector's recommendation. That was largely because he considered the conditions entitled 'Training and Employment', 'Self Build Housing', 'Local Builders' and 'Local Procurement' would not satisfy all the relevant policy tests in paragraph 203 of the then National Planning Policy Framework (Framework) 2012 and the National Planning Practice Guidance (NPPG), and therefore should not be attached to any planning permission (SoS 16-22).

10. The SoS considered that this reduced the economic and social benefits of the development identified by the Inspector in his SR. In the SoS's opinion the situation effectively reverted to the position at the time of the original inquiry as set out in the OR where the Inspector concluded that the proposal would result in a number of economic benefits, including the New Homes Bonus Scheme, construction jobs, additional local spend and employment arising from the additional expenditure (OR 147).

11. In concluding the SoS did not consider that the reduced economic and social benefits outweighed the clear conflict with the up to date DP and the moderate harm to the environmental dimension of sustainable development. He therefore dismissed the appeal and refused planning permission (SoS 31).

12. The Appellant appealed to the High Court on twelve grounds. It succeeded in the case of three, all of which related to the claimant's allegation that the SoS had erred in law in wrongly rejecting some of the proposed conditions. These conditions required training and employment measures, local building firms and local procurement to be provided/used as a part of the development.

13. The Court rejected the SoSs claim that the conditions had insufficient precision and/or there would be difficulty of detection and therefore enforcement. In the Court's opinion these conditions did potentially go to the weight to be attached to the economic and social sustainability of the proposal and accordingly would have been material in forming part of the overall planning balance[1].

14. On 7 November 2017 the SoS wrote to the parties to inform them that he needed to reopen the inquiry. In his view the following matters require further consideration.

    a) Having regard to the terms of the Consent Order quashing the SoS's decision (Richard James Verdin (t/a the Darnhall Estate) v Secretary of State for Communities and Local Government and Cheshire West & Chester Borough Council and Winsford Town Council), the implications of this in relation to the evidence that was before the Inspector and before the SoS;

    b) The current state of play with regard to the CW&CLP, part 2 (P2) and any implications for the further consideration of this appeal;

    and

    c) Any other material changes in circumstances, fact or policy, that may have arisen since his decision of 7 July 2016 was issued and which the parties consider to be material to his further consideration of this appeal.

PROCEDURAL MATTERS

15. The resultant inquiry was held on 27-30 November 2018. I carried out an accompanied site visit on 30 November. Unaccompanied site inspections were also carried out by me, on 26 November, when I observed the site and its surroundings from public viewpoints, as well as the extent and nature of the local facilities and on 27-30 November when I visited Winsford Town Centre and other locations in the area referred to in evidence.

16. This report should be read alongside the relevant parts of the SR dated 7 July 2016. The figures in square brackets [ ] in the following paragraphs relate to the various cases advanced at this Inquiry and refer to either the relevant Inquiry Document or Core Document, which contain the source of the material being reported upon and which are set out in the lists at the end of this report. References to paragraphs in the previous Inspector's original report are prefixed "OR", those in his supplementary report are referenced "SR". I shall use the abbreviation "para." for paragraph, "pg." for page, "S." for section "Ap." for appendix, "CD" for core document and "ID" for inquiry document.

[1] High Court Case No: CO/4195/2016, para 81 [CD 16/1].

17. This further report addresses the implications of the Consent Order and provides an update on the DP and its relevant planning policies as well as other material changes in circumstances, fact or policy that have arisen since the SoS made his decision. It also sets out the updated cases of the parties and my conclusions and recommendations in relation to the redetermination of the appeal. Lists of appearances, inquiry documents and recommended conditions for the reopened inquiry are appended.

18. An updated Planning Statement of Common Ground (PSoCG) [ID 1], dated 19 November 2018, was agreed between the Council and the Appellant. This document updates those submitted in advance of the original inquiry (OR7) and the supplementary inquiry (SoCG2). The updated PSOCG again records that the appeal site is situated in a sustainable and accessible location. It also confirms that the development would not result in any adverse technical impacts that cannot be mitigated against through the implementation of conventional mitigation measures. These could all be made the subject of conditions.

19. The relevant DP policies and the current status of the emerging CW&CLP P2 are set out and agreed, together with the economic, social and environmental benefits of the scheme. The document concludes by setting out six areas where the parties disagree. These include the weight to be given to some policies and whether the proposal accords with the DP when read as a whole, the five-year housing land supply position, whether the appeal proposals constitute sustainable development and the weight to be attributable to the 'novel' elements referred to by the previous Inspector and the mechanisms by which they could be secured.

20. A Supplementary SofCG on five-year housing land supply (HSoCG) was submitted on 23 November 2018 [ID 2]. Within this document, certain matters in relation to housing land supply are outlined and with an indication as to whether they are individually agreed or in dispute. I will refer to these later.

21. An updated transport assessment [CD 5/11] was submitted to the Council by the Appellant on 31 August 2018. It demonstrates that the conclusions of the original assessments remain valid. The Highways Authority has raised no objections to this or the details of the proposed means of access, which is not a reserved matter.

22. In November 2017 the Council requested an updated ecology report. This was submitted on 12 October 2018 (Appendix 4 to SoCG). Among other matters it identified that Great Crested Newts (GCNs) were foraging on the site and breeding in ponds close to the site. A mitigation strategy is proposed to compensate for the loss of GCN habitat within the site. This includes:

    a) Provision of 2.4 hectares (ha.) of high-quality terrestrial habitat for GCNs immediately off-site to the west, including long-term management and safety;

    b) Provision of four new ponds for GCNs immediately off-site to the west (within range of other identified breeding ponds), including long-term management and safety;

    and

    c) Enhancements to three ponds off-site which were recorded as containing GCNs but could be improved to enhance their value to GCNs and improve their breeding opportunities.

23. If the appeal is allowed and the development implemented, a traditional Natural England European Protected Species licence would be required before the works are implemented.

THE SITE AND SURROUNDINGS

24. The appeal site, extending to about 6.5ha, comprises three fields divided and bounded by hedgerows. Within the hedges are several mature trees. The site slopes slightly down from north-east to south-west, with an overall fall of about 3 to 4metres (m.) across the site.

25. A bridleway, which also acts as an access track to Beech House Farm, runs along the south-western boundary of the site, beyond which is undulating open countryside. To the north-west are further larger fields, with similar topography to the appeal site, stretching towards schools and other development at Hebden Green, on the western edge of Winsford. To the north-east the site is contiguous with the large housing areas of south-west Winsford, the cul-de-sac of large dwellings in Peacock Avenue being immediately adjacent. Darnhall School Lane bounds the site to the south-east, with further housing estates on the opposite side of the road. Beyond the southern tip of the site, where the bridleway meets Darnhall School Lane, lies Knobs Cottage and two former small farmsteads, one of which is now used as a livery. They are collectively known as School Green. Further south is agricultural land and woodland separating Winsford from the small village of Darnhall which lies about 1.0kilometre (km.) beyond the edge of the built-up area of the town.

26. The appeal site is some 1.5km. to the south-west of Winsford Town Centre. Within about 1km. of the site is a small convenience store in Vauxhall Way, the primary school on Darnhall School Lane and bus routes which pass along Glebe Green Road, Swanlow Way and Darnhall School Lane.

27. One field, which is about 2.0ha. (31% of the site area) in extent, is located within the township of Winsford, which has a made Neighbourhood Plan (NP). The other two fields, which are about 4.42ha. (69% of the site area) in extent, are located within the parish of Darnhall.

PLANNING POLICY

28. The development plan now comprises the CW&CLP P1, the WNP (in as much as its area affects the appeal site) and the saved policies of the Vale Royal Borough Local Plan (VRBLP) [CD 13/2]. The Council approved the CW&CLP P1 Strategic Policies [CD13/1] for adoption in January 2015. This followed its examination in 2013/14 and the publication of the Examining Inspector's Report on 15 December 2014 [CD13/3a]. The Inspector agreed a minimum net housing requirement for the plan period of 22,000 new dwellings (Policy STRAT 2) or 1,100 dwellings per annum (dpa). The parties agree that 9 of its policies are relevant to the determination of the appeal.

29. Policy STRAT 1 (Sustainable Development) seeks to enable development that improves and meets the economic social and environmental objectives of the Borough in line with the presumption in favour of sustainable development. As

well as setting minimum housing and employment development targets, Policy STRAT 2 (Strategic Development) requires development to be brought forward in line with a settlement hierarchy. Most of the new development is to be located within or on the edge of one of four towns, of which Winsford is one. Several key sites were identified, leaving further sites to be identified through the CW&CLP P2 and/or NPs.

30. Policy STRAT 6 (Winsford) says that the town will be a focus for development in the east of the Borough and that development proposals will help to support the continued regeneration of the town. Additionally, it indicates that at least 3,500 dwellings will be provided in the town.

31. Policy STRAT 9 (Green Belt and Countryside) seeks to protect the intrinsic character and beauty of the Cheshire countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. It lists the types of development that will be permitted in the countryside. These include replacement and reused buildings and developments which have an operational need for a countryside location that is of an appropriate scale and does not harm the character of the countryside.

32. Other policies of the adopted plan relevant to the appeal are STRAT 10 (Transport and Accessibility), SOC 1 (Delivering Affordable Housing), SOC 3 (Housing mix and type), SOC 6 (Open space, sport and recreation), ENV 2 (Landscape), ENV 4 (Biodiversity) and ENV 6 (Design and Sustainable Construction).

33. The WNP [CD15/1] was made on 19 November 2014 following a referendum on 23 October 2014. These events followed its examination in May 2014 and the report of the Examiner dated 30 July 2014 [CD 15/2]. The housing policies of the WNP, amongst other things, indicate that permission will be granted for residential development on 24 sites set out in a table (totalling some 3,362 homes) and on previously developed land (Pdl) (Policies H1 and H2). Only a part of the appeal site is within the WNP area, but it is not allocated for development in the plan.

34. Some of the policies of the VRBLP remain saved following the adoption of the CW&CLP P1. Of particular relevance to the appeal is Policy GS5 (Open Countryside) [OR 17] which along with the VRBLP Proposals Map defines the extent of open countryside where Policy STRAT 9 of the CW&CLP and Policy GS5 of the VRBLP apply.

35. Policies BE1 (Safeguarding and improving the quality of the Environment), BE4 (Planning Obligations), BE21 (Renewable Energy), RT3 (Recreation and open space in New Developments), NE7 (Protection and Enhancement of Landscape Features) and NE8 (Provision and Enhancement of Landscape in New Development) are also considered to be relevant [OR 17 & 18. SoCG pg.10].

36. The Council has prepared the CW&CLP P2. This includes allocations, settlement boundaries and detailed policies. The P2 plan will eventually replace those parts of the VRBLP which are still saved. It was submitted for examination on 12 March 2018 and examined in September. Main Modifications have still to be published and the plan's adoption is not anticipated before the summer of 2019.

37. Relevant policies include Draft Policy W1(Winsford settlement area), against which there are unresolved objections concerning the land allocations and the location of the settlement boundary. Draft Policy DM20 (Mix and Type of New Housing Development) also has outstanding objections.

38. Draft Policy GBC2 (Protection of Landscape) is intended to replace VRBLP Policy GS5. Draft Policy DM19 (Proposals for residential development) includes assessment criteria for housing development in the countryside.

39. Supplementary planning guidance on affordable housing, developer contributions and landscape character are still in place [OR 21].

40. The Framework remains as the main expression of the Government's policies on achieving sustainable development. The document was revised in July 2018 and updated in February 2019. The revisions have resulted in a change of emphasis in some parts of the document. The supporting NPPG is continuously reviewed and updated. I will deal with the relevant changes later in this report.

OTHER AGREED FACTS

41. The main parties agree that the Appeal site is in a sustainable and accessible location. The centre of Winsford, where there are a wide range of shops and services is located approximately 1.5km. to the north east of the site.

42. The site has good accessibility for pedestrians and cyclists. There is an uncontrolled crossing point on Darnhall School Lane to the north east of the site that includes dropped crossings and tactile paving. This crossing links the pedestrian routes out of the site into the wider pedestrian network on both sides of Darnhall School Lane and beyond. In terms of cycle provision, regional cycle route 75 is carriageway based within the locality, with cyclists using lightly trafficked routes to the north and south of the appeal site.

43. The site is well connected by local public transport. The closest bus stops to the site are situated on Glebe Green Drive and are about 380 metres from the site's Darnhall School Lane frontage and around 540 metres from the middle of the site. There is a half hourly bus service in both directions to Crewe and Northwich, the latter via Winsford Town Centre.

44. Winsford railway station is within a 5km. cycle ride of the appeal site. The station is situated on the Birmingham to Liverpool line and provides services that stop at key destinations including Crewe, Stafford and Wolverhampton. The station offers potential opportunities for future residents to undertake employment related trips via rail.

45. In March 2017 the Council revised its open space standards. It is agreed that the required provision can be accommodated on the site. Indicative proposals are shown in Appendix 3 to the PSoCG. These substantially exceed the requirements.

46. The parties agree that the mitigation proposals to compensate for the loss of GCN Habitat meet the three derogation tests.

47. The Appellant and the Council agree that the appeal proposals will deliver the following benefits:

Economic Benefits

a) The creation of up to 370 temporary jobs in the construction sector, or up to 75 full time equivalent jobs over a 5-year period;

b) The creation of up to 184 additional households that would generate additional household spending in the local economy;

c) The support of around 22 additional permanent jobs in the local economy due to additional local expenditure;

Social Benefits

d) The proposals will deliver a choice and mix of up to 184 high quality dwellings, which comprises 2, 3, 4 and 5-bedroom dwellings in the form of mews, semidetached and detached properties;

e) The development would be implemented in a timely manner through a reduced time-limit condition for the submission of reserved matters that would also require the development to be started within 2 years from the date of the outline planning permission or 1 year from the date of the approval of the Phase 1 reserved matters, whichever is the later;

f) Up to 74 affordable housing units (40%) in the tenure mix that the Council has requested (50% intermediate housing and 50% social rented). That provision is 10% higher than the percentage that the Council seeks, and it is agreed that significant weight should be given to this in the re-determination of the appeal;

g) On site open space provision (including formal and informal public open spaces). The Indicative On-site Open Space Plan demonstrates that 12,281 square metres (sqm.) of on-site open space could be provided. This significantly exceeds the Council's adopted open space standards. These require only 5,080.40sqm. of on-site open space. The open space provision would take the form of high-quality linked open spaces that are easily accessible to both the proposed residents and the local community;

h) A financial contribution based on the Sports England Playing Pitch New Development Calculator would be provided towards the provision of off-site outdoor sports facilities and playing pitches, as well as a maintenance contribution;

i) A Parks and Recreation contribution of £828 per dwelling which could result in a maximum contribution of £152,352;

j) A 'Play Youth' contribution of £117.30 per dwelling which could result in a maximum contribution of £21,583.20 for a Non-equipped Area of Play for children of an older age;

Environmental Benefits

k) The site is situated in a sustainable and accessible location and the scheme is accessible in respect of bus, walking and cycling provision;

l) Accessible new spaces will be created which will be accessible to the local community;

m) New footpath and cycle links and enhanced connections to the wider public footpath network to include pedestrian and cycle movements;

and

n) The appeal proposals would conserve the natural environment and sufficient appropriate mitigation would be provided to ensure that there would be no detrimental impact on protected species. Furthermore, the creation and long-term management of four new ponds and associated terrestrial habitat off-site, to offset the loss of two small ponds of low biodiversity value on site, would result in enhanced habitat available to the local amphibian population.

MATTERS OF DISAGREEMENT

48. The matters of disagreement between the Council and the Appellant are:

a) The weight to be attributed to Policies GS9 of the VRBLP and STRAT9 of CW&CLP P1;

b) Whether the appeal proposals accord with the DP, when read as a whole;

c) The Council's deliverable 5-year housing land supply (HLS) position;

d) Whether the appeal proposals constitute sustainable development;

e) The weight to be attributed to the proposals for self-build housing, involvement of a small and medium sized employer (SME) local builder and the benefits to the local employment strategy and the local procurement strategy;

and

f) The mechanisms to secure the proposals for self-build housing, an SME local builder, the local employment strategy and the local procurement strategy.

THE CASE FOR DARNHALL ESTATE[2]

Introduction

49. The Appellant's case is not predicated on identifying a shortfall in the 5-years HLS. It relies on the fact that it is a proposal for housing on the edge of one of the four main towns in the Borough, where there is a minimum housing requirement of 3,500 and a pressing need for more affordable housing. This proposal is an innovative way to deliver both in a positive way that will assist in diversifying the housing offer at Winsford. All of this is within the context of the Government seeking to boost significantly the supply of housing.

50. Numerous appeal decisions show that there is no need to demonstrate a shortfall in HLS to secure a planning permission. These are set out in CDs/17. However,

[2] References to the Framework refer to the revised Framework July 2018 as the cases for Darnhall Estate and Cheshire West and Chester Council predates the updated Framework February 2019.

the Appellant believes that there is a shortfall in the 5 years supply. It considers the Council's supply figure to be inappropriately inflated for a variety of different reasons. A shortfall is of course both an additional material consideration which weighs heavily in favour of the proposal. And it is a route to triggering the tilted balance.

Five-year housing land supply

51. The parties disagree as to whether the Council can demonstrate a five-year HLS. The reasons relate to both the housing requirement for the 5-year period and the supply.

52. Ben Pycroft (BP)'s proof of evidence (PoE) at paragraphs 4.10 to 4.15 explains that the Council is not able to demonstrate a five-year supply in accordance with paragraph 74 of Framework 2018. The Council's figure should be *"produced through engagement with developers and others who have an impact on delivery and been considered by the Secretary of State."* The Council has not engaged in any such engagement with developers or others.

53. The Council has also failed to follow the guidance in the NPPG. This explains the need for LPAs to engage with stakeholders when preparing their five-year supply position statements at paragraphs 3-030, 3-047, 3-050 and 3-051. This has not happened at CW&C.

Past surplus

54. The Council's position is that there has been a surplus in delivery of some 2,192 dwellings since 2010. That figure is arrived at by comparing the requirement for the first 8 years of the plan period (2010-2018), which is a figure of 8,800 (8 x 1,100) with the supply over the same period, which the Council say is 10,992. Hence the Council say there is an oversupply of 2,192. This then leads the Council to claim that the annual requirement for calculating the 5-years supply is only 917 dwellings per annum. This removed 915 dwellings from the requirement over the 5-year period.

55. The Appellant asserts that one takes the annual figure of 1,100 dwellings per annum (agreed with the Council)[3] multiplied by 5 to arrive at the base requirement (before adding the agreed 5% buffer). Past surpluses should not be used to discount the future requirement. The Council's approach (the residual method) forms no part of present national policy or guidance. Indeed, it would seem a very odd approach to take in the light of the Framework's priority to boost significantly the supply of new homes[4], and especially when the Council's housing requirement is set at a minimum. If any 'carry forward' of historic over-supply was intended, the Government would have said so and used similar wording to that set out in paragraph 3-044 of the NPPG, which confirms that when there is a shortfall, it should be added to the five-year requirement.

56. The Council's suggestion that this approach gives rise to a "free-for-all"[5] is unconvincing. Each proposal that comes forward is judged on its merits. Whilst

[3] BP PoE paragraph 6.1 and BF PoE paragraph 6.4.
[4] Framework 2018, paragraph 59.
[5] Council's closing submission, paragraph 51.

the residual approach may have been appropriate Government Policy before 2,000, in the context of the current housing crisis and the acceptance that as a nation we are not building enough homes[6], it is no longer appropriate.

57. The Council's approach contrasts with its approach in is Annual Monitoring Report (AMR). The current AMR says that the annual net requirement remains at 1,100. Monitoring indicator STRAT 2(A) also measures annual net completions against a target of 1,100 net dwellings and indicator STRAT 2(B) measures net completions against a target of 5,500 dwellings over a five-year period. Neither measure makes provision for a requirement reduction based on over-supply [CD13.4, pages 37-39].

58. Beth Fletcher (BF) in cross examination (Xx) on Day 2 accepted that a delivery of 24,000, an amount over the minimum 22,000 set out in STRAT 2, would not be unsustainable. Added to which, the affordable housing needs have not been addressed over the past eight years.

59. The Council has referred to the Cotswold Local Plan Inspector's Report [CD18/10] . However, as BF explained in re-examination, 80% of the Cotswold District is restricted by being within an Area of Outstanding Natural Beauty (AONB). Providing a surplus there would be potentially problematic. CW&C has Green Belt. However, it amounts to nothing like such a high proportion of the Borough as to constrain the opportunity for exceeding the plan target, which is actually what the CW&CLP allows.

Communal Establishment and student accommodation completions

60. Since the Council engaged in this exercise of seeking to reduce their annual requirement to 917 dpa, the Appellant is bound to point out that what the Council has included in their surplus figure of 2,192 dwellings are 630 student units and 230 units in extra care residential institutions (C2). To be clear this is related to the Appellant's criticism of the Council's inclusion of such forms of development in their future 5-year supply calculation. But it is equally relevant to a claimed surplus, because the surplus itself is comprised of units derived from these forms of supply. The difference here being that the student accommodation and C2 uses form part of the completions, not the commitments.

61. This issue only arises if the Council's residual method is adopted and the surplus against the annual requirement in past years is deducted from the annual requirement. The need to consider the C2 issue here and the student accommodation point below (in terms of the housing requirement) is unnecessary on the Appellant's approach. But if the Council's approach is adopted, then completions were in fact 10,132 (860 lower) and the surplus should be reduced to 1,332. The difference between the parties relates to C2 (230) completions and student accommodation (630) completions.

62. 230 completions in respect of C2 communal care for the period 2010 to 2018 were wrongly included in the Council's completion figures. Paragraph 3.4 of the Housing Land Monitor (HLM) [CD13/5] states:

> *"The proposed revisions to the Framework suggest the inclusion of communal accommodation in the calculation of the housing delivery test. This type of*

[6] Housing White Paper, Foreword by the SoS (Feb 2017)

accommodation will be monitored through the Housing Land Monitor (HLM) process but will continue to be excluded from the housing completions and forecasting figures in accordance with the Local Plan (Part One).”

63. This was accepted by the Council’s witness BF on Day 2 of the inquiry, albeit her view was that it had not been included in the first place. The Appellant does not think that is right. BP shows the sources of these in table 8.3 of his Proof of Evidence (PoE) on page 22. The difference between BF and BP is that some permissions have been included which the Council thought were C3 (dwellings) but in fact are C2. As such the Council’s completions figure drops by 30 units to 10,762.

64. The Appellant’s position is that 630 completions in respect of student accommodation should also be removed from the Council’s surplus figure. These are shown on BP’s Table 8.2 in his main PoE.

65. Much of what BP says about student accommodation being inappropriately included, in the Council’s 5 Year Supply calculation, applies equally to the inappropriateness of including student accommodation in the Council’s completion data: BP’s PoE section 13 (pages 39 - 47).

66. The NPPG says that this is important to the requirement. Paragraph 3-042 of the Housing Land Availability Assessments NPPG (updated) in relation to ‘How should local planning authorities deal with student housing’ confirms that:

“all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double counting.”

67. The Council has not undertaken any such assessment to calculate the amount of accommodation that would be released into the housing market following completion of new student accommodation, as required by the NPPG. As such the Council has provided no evidence to the inquiry to demonstrate that any would be. The student accommodation completion figures should not form part of the completion data for the housing requirement in CW&C until such time as the Council can show development is releasing dwellings back into the housing market.

68. The issue of student accommodation was covered in the Tattenhall recovered appeal decisions[7]. The Inspector’s conclusions in relation to student accommodation are detailed in paragraphs 300-304 of the report to the SofS (pages 73 and 74) [CD 17/3]. In those decisions the Inspector found that as the Council had provided no evidence that the student units would release housing, currently occupied by students, into the market, the student units should be removed from the supply.

69. For the reasons BP explains in his detailed analysis of this issue (PoE chapter 13), students seem to be occupying an ever-increasing amount of homes in Chester, especially in the Garden Quarter where the Council have resorted to banning the

[7] APP/A0665/A/12/2185667, APP/A0665/A/12/2188464 and APP/A0665/A/12/2180958 [CDs 17/3, 17/4 and 17/5].

conversion of houses to HMO through issuing Development Management Orders. BP's evidence shows the number of Class N properties in the Council Tax base data has been consistently rising (PoE Table 13.2, page 44). The evidence shows that a lack of student accommodation in Chester, which the University itself has noted[8], is being met by more homes being converted into student Houses in Multiple Occupation, not less. The University has in fact noted students securing lodgings as far away as Liverpool, Manchester and Wrexham: (BP PoE, para 13.22). The number of full-time students at the university has increased significantly in recent years (see Table on page 3 of BP's Rebuttal PoE). As Inspector Dakeyne observed, many students will come into Chester from elsewhere or will be merely freeing up a bedroom in a family home. BP addresses all of these issues in detail. Full time student numbers at the University are increasing. Consequently, the Council will find it very difficult to find evidence that the new accommodation is releasing housing back into the housing market.

70. Students are part of the wider population. Nevertheless, their housing needs are not to be treated as part of the housing requirement unless they are expressly dealt with at the time of the Local Plan. The extent to which they are included in the resident population can vary between different towns and cities. When assessing overall housing needs it is necessary to look at the extent to which they form part of the census population and also if their numbers are likely to change. CW&C did look at this issue but its consultants (Nevin Leather Associates) advised that student numbers would remain static (see BP PoE, para 13.10, page 41). That being so, the fact that full time student numbers have increased means that one cannot simply take purpose-built student accommodation off the completion figures when it is plainly addressing an unforeseen increase in student numbers.

71. The 630 student accommodation completions are recorded in the Council's completion data to arrive at their surplus. The Appellant removes the related 630 completions to arrive at its total completions figure of 10,132.

Supply

72. The parties disagree as to whether the Council can demonstrate a supply of housing to meet the five-year requirement. The main point of contention is whether the Council has the requisite clear evidence that the sites it includes are deliverable within the five-year period, and what exactly is required by clear evidence.

73. In relation to supply, Framework 2018 at paragraph 67 states:

> *"Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:*
>
> *i) Specific, deliverable sites for years one to five of the plan period and*

[8] Nevin Leather Associates report 2012 [BP Ap.2C].

ii) Specific, deliverable sites or broad locations for growth, for years 6-10

and

iii) Where possible, for years 11-15 of the plan".

74. Paragraph 73 of Framework 2018 also states that local planning authorities should identify and update annually a supply of specific *"deliverable"* sites. Paragraphs 67 and 73 of Framework 2018 state that sites should be *'deliverable'*. *'Deliverable'* is now defined within the glossary as:

> *"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."*

75. The above definition in the glossary can be split into two parts.

a) those sites that require the appellant/developer/promoter to adduce clear evidence to remove them from being considered deliverable. These sites, of under 10 units or those benefitting from a detailed permission, benefit from what might be called a presumption of deliverability.

b) Secondly, for sites with outline permission, permission in principle, allocated in the development plan or identified on the brownfield register, the Council must provide clear evidence that housing completions will begin on site within five years. This list does not benefit from a deliverable presumption and such sites should not be included in the five-year supply until the Council provides the necessary clear evidence.

76. The definition was changed to remove, from active consideration, sites which do not have detailed planning permission. Other sites from the closed list can be included, but there is a need for clear evidence on delivery from such sites. The new definition is much more realistic than the previous one because there is often little prospect or certainty of an outline planning permission delivering completions within five years. That is because the conditions imposed on outline permissions often allow five years or more even for just a material commencement (i.e. no actual completions or delivery). Reserved matters can often take a long time to agree, often out-with the five-year period. Added to this, reserved matters applications can be refused and the yield from sites can often be changed.

77. Regarding allocations, where there is no outline permission, the prospect of delivery within five years is even less likely. One does not know when the application will be submitted, how long the negotiation of the planning permission will take and what the conditions will say about the amount of time, which will be

allowed for the submission of reserved matters, other conditions etc. Sites which are not even allocated and have no permission should not be in the supply at all.

78. The NPPG was updated on 13th September 2018. Paragraph 3-036" *what constitutes a deliverable site in the context of housing policy?"* provides examples of what form clear evidence may take and whilst not a closed list, it is indicative of the level and strength of evidence required by the Council.

79. The Appellant's case in relation to "*clear evidence*" is that the Council cannot demonstrate this for the vast majority of the sites with outline planning permission. Most fall far short of the required evidential hurdle and in consequence they should be removed from the supply. The *"Council has not come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon such sites"* which was the approach taken by the Inspector in the Woolpit decision at para 68, [CD 17/12].

80. The disputed elements within the Council's supply cover six categories. Three relate specifically to individual sites. The quantum and sites in dispute are all set out in the HSoCG. In total there are 1,854 dwellings in dispute in terms of the 5-year supply.

81. The Appellant's position in relation to the three categories of site is that none should be included within the Council's housing land supply. That is because none of them can be considered to be deliverable within the relevant 5-year period under the new Framework definition.

82. Sites under categories II (non-allocated sites without permission) and III (small windfall allowances) are not sites where the Council can demonstrate clear evidence that completions can be delivered on-site within five years.

83. For the avoidance of any doubt, the concept of a small site windfall allowance is not covered by the second sentence of the definition of deliverable. Sites that are not major development (i.e. sites of 9 units or less) can be included in the supply, but only if they have planning permission. Windfalls do not fall within that category.

84. A roundtable session was held on day 1 of the inquiry in respect of HLS. At no point in respect of any disputed site in categories I and III did the Council provide any documentary evidence, of the type suggested by the NPPG or at all, to support the deliverability of each site in these three categories. The Council offered oral evidence on some matters, but they produced not a single letter, email or SoCG to support it.

85. The Council offers no SoCG signed by a developer or anything similar. The Council does not have the necessary evidence suggested in the NPPG to support delivery on sites without detailed permission. At the same time, it relies upon evidence obtained after the base date, so its own case is not predicated on that being a hindrance. In reality the Council will not be able to obtain the necessary evidence until the next Annual Monitoring Report (AMR) and Housing Land Monitor (HLM). The new policy and guidance in the Framework and NPPG respectively require certainty in evidence. The Council simply does not have that evidence at the moment.

Allocated sites or sites with outline permission – (300 dwellings).

86. The Appellant now disputes 300 dwellings across six sites. The starting point for these disputed sites (outlined in chapter 14 of BP's PoE) is that they are not to be considered deliverable unless the Council adduces clear evidence. They are one of the four categories detailed in the closed list in Annex 2 of Framework 2018.

87. The Appellant's submissions in respect of all six sites is that the Council has not adduced sufficient evidence in relation to any of the sites to provide the clear evidence required. Their approach was strikingly similar to that of Welwyn Hatfield Borough Council at the recent Woolmer Green inquiry[9], with only verbal updates forthcoming, entirely unsupported by any documentary evidence. The inspector at that inquiry found the Council's evidence fell "*well short*"[8] of what was required. One has to ask why these verbal updates which BF provided were only verbal. One must assume if the relevant developer had been contacted, then they were simply not willing to commit what they were saying to writing.

88. Ledsham Garden Village (28 units) – no documentary evidence was forthcoming from the Council and reliance was placed by BF on '*intelligence*' received from a housebuilder, however this "*intelligence*" was not put before the inquiry in part or at all in any form which could be read, examined, scrutinised or tested in any way whatsoever. To a lawyer such evidence is usually dismissed as pure hearsay. These 28 units are in phase 6 of the development, the outline permission for which included a condition (condition 2) that states that all reserved matters do not need to be made until 24th July 2025, extendable by a further 8 years.

89. Rossfield Road Phase 5 (70 units) – There was no evidence before the inquiry regarding when reserved matters would be submitted, what they will include or when commencement would take place. Outline permission was granted just three days before the base date and as such completions should be expected post the 5-year period.

90. Lyndale Farm (24 units) – There has been no application for reserved matters and the submission of the construction management plan is a fairly simple act from the developer and is not clear evidence of the strength suggested in the NPPG.

91. Former Delamere Forest School (16 units) – Despite an application for reserved matters having been made, this was after the base date and is pending determination.

92. Land at Oakmere Road (24 units) – There has been no application for reserved matters and no clear evidence submitted by the Council to show that this site is deliverable.

93. Land at Wrexham Road (138 dwellings) – The site does not have planning permission but is allocated in the LP. The first application was made in June 2017 and a further full application and an outline application were made in December 2017. None have yet been determined. The phasing plan considers a construction period of over 14 years. The Council's verbal evidence was simply

[9] APP/C1950/W/17/3190821 and as set out in the PoE of BP at 4.35-4.38, and [CD 17/12].

that a case officer had been assigned and it would be taken to the committee "*next year*" but that it had been pushed back to "*deal with and sort issues*"[10]. Again, this is wholly insufficient.

Non-allocated sites without planning permission – 282 units

94. As explained in BP's PoE (pg19), the base date is a cut-off date. Whilst the previous NPPG indicated that sites without planning permission should automatically be considered deliverable, this is no longer the case. These sites are not contained within the closed list within the definition of *'deliverable'* and as such have a lower planning status than the previous category.

95. The Council has provided nothing by way of *'clear evidence'* for these sites, which are for reasons explained above problematic as a category anyway. Without planning permission, it is difficult to know when they will be delivered as one cannot even have sight of the conditions which will determine the timescale by which the permission is to lawfully come forward. None of these sites can be included in the supply.

96. The largest site within this category and touched upon during the round table session is Winnington Business Park (88 Units). It took the Council a year to determine the outline application, approval of which occurred after the base date[11].

97. An application for reserved matters is required to be made before a period of three years after the decision date has elapsed. This could be as late as 20th July 2021. That is just for the submission of the reserved matters. Lawfully, material commencement need not take place until after 2023. There is no evidence as to when completions will begin.

Small Windfall Allowances – 230 units

98. Paragraph 70 of the Framework 2018 provides:

> *"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends".*

99. Section 17 of BP's PoE deals in detail with the issue of windfall allowance. The Council's approach to this issue is simply to rely on past trends to support its windfall allowance. Past trends reveal that 122 dwellings could be expected to be delivered each year on small windfall sites (i.e. 610 dwellings over the five-year period). However, 620 dwellings on small sites with planning permission are already included in the supply. Therefore, by including a further 230 dwellings (i.e. 115 dwellings per year in years 4 and 5), this would mean delivery well in excess of past trends.

100. The Council includes all small sites without applying a lapse rate at all. That is not remotely credible because small sites lapse all the time. Additionally, some

[10] BF on day 1 of the inquiry.
[11] Decision Notice issued on 20th July 2018

small site permissions, such as a house or a bungalow proposed in the applicants own back garden (often known as retirement houses) can be repeatedly renewed because the applicant is not yet ready to move out of the main house. Such sites may be saved by modest implementation (i.e. they are not part of a non-implementation allowance). They are instead part of a non-delivery allowance. It is wholly unrealistic to assume that all of the 610 dwellings on the small sites will come forward in the 5-year period and then to add on top of that an extra 230 units from additional small sites. The past trend data does not support what the Council are doing and yet that is what the Framework requires.

101. The Inspector's decision in the appeal at Longden Road, Shrewsbury[12], in circumstances such as this was that the windfall allowance should be removed, and the same approach is encouraged to be followed here.

Demolitions and losses – 167 units

102. The Local Plan Part 1 is explicit in recognizing that the 1,100 dwellings to be achieved each year must be a net figure[13] and that therefore a gross delivery figure, which is higher, needs to be achieved. The Local Plan at para 5.21 actually refers to a gross figure of 1,150. The 1,100 needs to be achieved after having made an allowance for demolitions and losses.

103. BP has not simply stuck to the 1,150-gross figure in the plan. He has looked at the actual level of demolitions and losses which have taken place. This is lower than the evidence of 50 dpa which the Local Plan Inspector had before him. BP has therefore accepted that the trend in demolitions and losses has reduced since then. The 50 dpa figure was trend based at the time of the Local Plan. And the figure of 39 dpa now relied upon is similarly so.

104. The HLM report[14] details the demolitions and losses on an annual basis. This sums to 315 for the previous 8-year period, an average of 39 per annum. The figure included for the 5-year period by BP is 195 (39 p/a x 5 years), carrying forward the actual average of 39 dpa demolitions from the previous 8 years into the future 5-year period. BP's figure of 39 is therefore entirely trend based.

105. The table at Appendix 4 of the HLM does not record demolitions or losses as high as this. It simply identifies 28 demolitions which are expected to take place within the next 5-year period, and which are included within the Council's supply figure. As such, whilst BP's evidence of past trends suggests demolitions of 39 units p/a, giving rise to a total of 195 to be included over the five-year period, he gives credit for the 28 included in the Council's figures: 195 minus 28 = 167. Consequently 167 units should be deducted from the Council's five-year supply figure.

106. This same argument was advanced by BP at the Tattenhall appeals and was endorsed by the Inspector. There was nothing within the subsequent SoS report that suggested any departure from that Inspector's conclusions on the matter of demolitions.

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[12] APP/L3245/W/15/3011886 at paragraph 40 (BP PoE paragraph 17.16).
[13] Local Plan Part 1, paragraph 5.21, last sentence of the paragraph.
[14] HLM report appendix 2, at page 24 and table 4.2 on page 10.

Student accommodation – 430 units

107. As recorded above, BP's PoE at chapter 13 deals with this issue in detail (pages 39 to 47). Student accommodation can only be included within the Council's supply if they are able to demonstrate the amount of housing released into the market. They are not able to do that, not least because the Council have not undertaken any exercise to show this. They have no evidence that a single dwelling will be released into the market, as a result of the student accommodation to be built.

108. In reality this may be difficult to achieve anyway. The number of full-time students increased by 2,265 between 2010/11 and 2016/17 (26.8%), (see the table on page 3 of BP Rebuttal PoE). In the most recent year for which there is data (2016/2017) there was an increase of 610 units. For full-time student numbers to have grown by over a quarter in that period is a very large increase.

109. There has been a corresponding decrease in the number of part time students. However, such students' accommodation needs are very often different. They often live at home and combine their academic studies with a job or other commitments, such as caring. Full time students in contrast are much more likely to need accommodation. The University of Chester itself is aware of this as set out in the Nevin Leather Associates report of January 2012. This states that

> *"part-time students tend to remain in their existing homes, and many travel from outside of the City to study. The great majority of part-time students are unlikely to change their living arrangements in order to study"* (BP Rebuttal PoE, page 3, para 2.9).

110. The University of Chester is not the only further educational institution in Chester. Many solicitors train for their Legal Practice Course in Chester. The College of Law is now known as the University of Law in Chester. There are other FE institutions in the Borough as well. All of this adds to the increasing presence of students in the Garden Quarter (Chester) of which the Council is only too aware because some existing permanent residents are unhappy about this, hence the Council has been forced to restrict the conversion of houses to HMOs.

111. The Council tried to downplay the growth in full-time students by seeking to show that the University is located in a variety of different locations. However, the University's own documents show that around 60% of its students are based in Chester[15].

112. Much emphasis was placed at the Inquiry on the new campus at Shrewsbury, which being in Shropshire is outside of the Borough. This is however a new and very small part of the University. The in-take last years was around 170 students, which was said to be its biggest intake (BP Examination in Chief (XiC)). On that basis the earlier years must be smaller. It is but a small satellite campus. This position was endorsed by Inspector Dakeyne in the previous decision for this appeal and in the Tattenhall appeals decisions. The evidence presented to them was that student numbers would increase at the University such that the new accommodation, that is being built, would simply absorb the

[15] Background of Assessing demand for purpose-built student accommodation in Chester, University of Chester, August 2014: BP PoE, Ap EP 2D (pg2 first para)

additional numbers of students or those who at the moment are unable to find accommodation in Chester. For those reasons, the Appellant removes all 430 units in relation to student accommodation from the Council's supply.

Build rates and lead times – 505 units

113. The Appellant's challenge to the Council's suggested build rates and lead-in times results in a deduction of 505 dwellings from the Council's supply (S16 of the PoE of BP (pg.64 onwards)). To be clear all the Appellant has done is rely on the rates the Council itself has suggested in the HLM, or on empirical evidence.

114. In relation to the Ledsham Garden Village site, BP has applied a build rate based on the empirical evidence as to what was the actual build out rate achieved on an earlier phase on the site i.e. 66dpa. This is important because Ellesmere Port is not a strong housing market and local factors are relevant to what sales rates can be achieved there. The Council officers seek to distance themselves from the tangible, empirical evidence and instead base their projection on supposed intelligence from the housebuilder. There is no proof that the 140dpa. in years 3 and 4, are achievable on the site. BP applied the same consistent approach for the site at Grange Farm. Again, the Council provided no evidence to the Inquiry in any written or tangible form.

115. In relation to the former British Gas and Part of the former Gulf Oil sites, the Council has provided no evidence as to how their delivery rate has been calculated, save that they have departed from the standard method and assumptions for calculating this, as contained within their Housing and Economic Land Availability Assessment (HELAA) 2017 [CD13/6]. BP has applied the standard method and HELAA assumptions in his calculation.

116. In all cases, in relation to the build-out rates, the Council has failed to provide any documentary evidence to support their case or justify why it departs from its own standard method and assumptions. The 'email' highlighted by BF in relation to the Station Quarter, which suffers from ground conditions problems and fractious land ownership, was not provided to the inquiry.

Conclusion on Five Year Supply

117. The Council's approach suggests a five-year requirement figure of 4,815 dwellings, which is an annualized figure of 963 dpa. The Council's final supply figure is 7,277. This gives rise to a supply of 7.56 years [16].

118. The Appellant's approach is different. The Council's requirement for the 5-year period from the base date of 1st April 2018 is 5,500 (5 x 1,100 annual requirement). A 5% buffer is then applied (275 units), which means that a supply of 5,775 dwellings must be demonstrated. That gives rise to an annualized figure of 1,155 dwellings[17].

119. The Appellant's supply figure is 5,423[18] following removal of 1,854 units from the Council's supply. On that basis, the Council are unable to demonstrate a

[16] SCG on 5YS, dated 23 November 2018, third table under para. 3.15 on page 7, lines F- I.
[17] SCG on 5YS, dated 23 November 2018, first table under para 3.15 on page 7.
[18] SCG on 5YS, dated 23 November 2018, second table under para 3.15 on page 7, line G.

deliverable 5-year supply of housing land, having just a 4.69 years supply[19]. The inspector at Nether Peover, highlighted the fact that because the 5-years supply is a minimum requirement, then even a shortfall of 150 homes in Cheshire West should be seen as significant (BP PoE, Ap EP 1D, para 35). That approach seems particularly apposite when one is talking about a minimum on a minimum (i.e. a minimum 5-years supply requirement, based on a minimum LP requirement of "at least 22,000"). In the conjoined Tattenhall inquiry, the Inspector found a very modest shortfall.

120. As such, footnote 7 of the Framework 2018 is brought into play and the tilted balance in paragraph 11d is triggered in favour of the application. This is a second route to the tilted balance in addition to the fact that Policy GS5 is out of date.

The Statutory Development Plan

121. The starting point for the determination of this appeal is the DP. That is now,

a) CW&CLP P1, adopted on 29th January 2015;

b) The WNP, made on 19th November 2014;

and

c) The saved policies of the VRBLP First Review Alteration, adopted in June 2006, (specifically Policy GS5).

122. The primacy of the DP in decision making is reiterated at paragraphs 12 and 47 of the Framework. With regards to the specific weight to be attached to existing DP policies, paragraphs 212 and 213 state that due weight is to be given to relevant policies according to their degree of consistency with the Framework from the day of its publication.

123. The Framework (2018) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework (para 213). The closer a policy in a plan is to the policies in the Framework, the greater the weight that may be given. However, Lord Carnworth in his Supreme Court judgement reminds us that both a policy from a plan which is beyond its end date and a policy based on out of date housing requirements are out-of-date [CD 16/8].

124. As such, it follows and is accepted that should any of these policies be found to be *'out of date'*, then the titled balance within paragraph 11d) of the Framework 2018 would be applicable.

Conflict with the DP

125. It is important to note that it is a plan-led system not a plan-dictated system. A DP provides the opportunity to set spatial strategies, set minimum housing targets, remove land from the Green Belt and to allocate sites (which is especially important for large sites where developers need certainty). However,

[19] It is right to record that these figures do vary from the proofs of evidence as both parties have sought to adjust their figures following discussion on the HSoCG. It is the figures in the HSoCG of 23 November 2018 which are to be relied upon.

plans are not the last word on everything that should come forward. That would be a misunderstanding of what is meant by a plan led system. The second sentence of paragraph 12 of the Framework (2018) needs to be read in that context. Critically, the last sentence of that paragraph reverts back to the statutory test.

126. A plan-led system is also not a system where only allocated sites are required or receive permission. The Planning Inspectorate granted planning permission for 30,000 dwellings in 2017. Many will have been on unallocated sites. Without these important sites coming forward, the housing crisis would be even worse than it is already. Planning applications and appeals on non-allocated sites are vitally important to the system.

127. CW&CLP P1 Policies STRAT 9 and H1 and VRBLP Policy GS5 were considered by Inspector Dakeyne to be the dominant policies, as per paragraph 11d) of the Framework 2018, for the purposes of determining this appeal. This is agreed by both parties having been accepted by Jill Stephens (JillS) on day 3 of the inquiry.

Cheshire West and Chester Local Plan (Part One)

128. The proposal is largely consistent with the CW&CLP P1[20]. This includes the fact that the proposal is consistent with Policy STRAT 6 which is the policy for Winsford. The conflict with the LP is predominantly focused on Policy STRAT 9[21]. This restricts development to that which requires a countryside location and cannot be accommodated within identified settlements.

129. The opening line of the policy sets out that its aim is to protect the intrinsic character and beauty of the Cheshire countryside. This policy goes beyond and is more restrictive to development than the Framework, as JillS accepted in Xx. Although the policy was found to be sound at examination, the Framework 2018, which postdates Policy STRAT 9, at paragraph 170 b) does not go as far as stating that the intrinsic character and beauty of the countryside is to be *'protected'* as Policy STRAT 9 does. A less restrictive bar is set, in that it should be *'recognised'*.

130. This is an important distinction and a deliberate drafting difference within the Framework 2018. As such and in accordance with paragraph 213, Policy STRAT 9 is not consistent with the Framework 2018 and is out of date, triggering the titled balance within paragraph 11d).

131. The importance of the distinction between recognised and protected is well explained and was addressed by the Inspector in an appeal decision for a site at Cornerways, High Street, Twyning, Tewkesbury at para. 7-17 [CD17/43]. However, the later Court case of Cawrey Limited[22] does suggest that even under the Framework, the countryside does enjoy a degree of protection. Nevertheless, that is not the same as giving it outright protection.

132. The fact that the policy is not consistent with the Framework, diminishes the weight that can be given to it, reducing in parallel the magnitude of any conflict

[20] PoE of JonS.
[21] CD 13.1 pg.41.
[22] Cawrey Limited v SSCLG (2016) EWHC 1198 [CD11/3].

with it. The Council says that the conflict should be given full weight, but for a policy that is not consistent with the Framework, this cannot be the case. It must only attract reduced weight. However, to be clear, Jon Suckley (JonS) in his PoE has looked at the planning balance in circumstances where this argument is not accepted.

133. Policy STRAT 1 concerns sustainable development. In para. 3.5 of her PoE, JillS states that the proposal should support sustainable development principles set out within the policy: one such principle being to minimise the loss of greenfield land[23]. However, this is not an embargo against the loss of any greenfield land and as such the loss of greenfield land would not be contrary to this policy. If that was what was intended the drafting would have said so.

134. Policy STRAT 1 does not include a checklist of rules, mandating that all items be 'ticked off', but instead contains more flexible 'principles'. The PoE of JonS, at chapter 7, deals entirely with the topic of sustainable development, concluding at para.7.23 on pg.32 that the proposal will deliver benefits in all three objectives of sustainable development in accordance with Framework 2018 para.8. The section below, in relation to sustainable development, outlines the same and why there is no conflict with Policy STRAT 1.

Winsford Neighbourhood Plan ("WNP")

135. The WNP was made over four years ago. Only about 2 ha of the application site, the northern most field, falls within the remit of the WNP, equating to roughly 50 homes. The remainder of the site, approximately 4.5 ha cannot be said to be in conflict with the WNP in any shape or form as it is not within the WNP area.

136. Similarly, any conflict suggested with Policy H1 of the WNP cannot be levelled against the application as a whole, it can only exist against 31% of it, which in turn must reduce the weight of any conflict, if found. However, more importantly Policy H1 of the WNP does not contain a cap on development. This was accepted by the Council's witnesses repeatedly throughout the Inquiry. The examiner's report [CD 15/2] also confirmed this at paras 3.13 and 3.18.

137. Consequently, the housing requirement and allocation within the WNP is not a preventative ceiling to additional development. JillS accepted on Day 3 of the Inquiry that the wording within Policy H1 permits additional development over and above that allocated.

138. When the WNP was still in draft, but at the same committee as the Appellant's proposal, the Council itself granted planning permission for sites outside of the Policy H1 allocations and settlement boundaries, most notably at Swanlow Lane[24].

139. The Council's case focuses on the need to limit development in Winsford to the allocations made in the WNP. However, the allocations (3,362) do not add up to the LP's requirement (Policy STRAT 6). This requires at least 3,500. More housing is consequently needed at Winsford than just the WNP allocations.

[23] STRAT 1, bullet 6.
[24] JonS at para 13.16.

140. Mr Wood and the Council suggest that the WNP examiner rejected the site. However, this was not a LP examination. One needs to read the relevant paragraphs of Dr Mynors report accurately [CD 15/2], with care and in context. The Examiner was careful to say that he was not assessing the suitability of any particular site (para 3.29) and he made clear that he had a limited role as an Examiner (para 3.54). Whilst he had no reason to disagree with the Town Council's reasons for rejecting the site, he was plainly very mindful (and recorded the fact) that the Appellant was expecting to receive planning permission and the Borough Council were not opposing the site (para 3.50). He also made the very important point that sites can come forward, which are not in the plan, based on other material considerations (para 3.47).

141. One also needs to look at the context of the WNP itself. It was actually prepared against an intended housing figure for the Borough of just 21,000 new homes (see para 2.1.19 of the WNP). One thousand homes less than the LP actually requires.

142. Furthermore, a full investigation of the plan's housing allocations (which did not take place at the second inquiry) has revealed that 1,224 of the dwellings in the plan had permission before the plan was made. Additionally, there are delivery problems at the main location for development at the Station Quarter. That context is important because it suggests that despite the WNP having been made 4 years ago, it is not actually providing much assistance in meeting Cheshire West's housing needs. The lack of delivery at Winsford compared to Chester and Northwich suggests that there are real problems with delivery at Winsford.

143. The Council's case has evolved into suggesting that the proposal conflicts with the themes of the WNP. However, it is genuinely difficult to see how the proposal offends these when the proposal is similar to other housing proposals at Winsford. For example, the proposal will bring in new households and they will support the town centre, just as the allocations will do (see Theme 1, on pg.17 of the WNP). Added to which, the proposal will in fact assist in promoting some of the objectives of the WNP, such as the objective to create a variety of employment opportunities where initiatives to develop skills are proposed (WNP pg43). The training and employment obligation or condition, proposed by the Appellant will plainly do just that. In line with observations from the Inspector, the Appellant has sought to make that more localised with 20% of those employed needing to come from Winsford or the surrounding parishes.

144. The suggestion that the proposal is not in a gateway location was also easily dismissed by JonS in both Xx with regard to site W5 and in re-examination with regard to site O3. If anything, the appeal site offers more of an opportunity to create a gateway than either of these sites.

145. The Borough Council is careful to suggest that it was the view of the Town Council that the proposal offended the vision of the WNP. In truth, there is no conflict with the vision.

146. The Crane case suggests that the WNP needs to be read as a whole[25]. However, the Tesco case decided that all policies in the DP need to be read in their proper context[26]. This was reiterated and made clear by Lord Carnwath at para 63 in the Suffolk Coastal/Richborough Estates case[27]. The fact the WNP Examiner made clear that the allocations were not to be seen as a cap is a critical part of the context here. It would therefore be wrong to read into this plan, any suggestion that other sites cannot come forward.

147. In any event, the WNP was made on 19th November 2014 and allocated 3,362 homes (WNP page 46). However, following this on 25th January 2015, the CW&CLP P1 was adopted, and its policies take precedent[28]. This included the aim of 3,500 new homes being delivered at Winsford over the plan period.

148. For the reasons outlined above, the WNP is not delivering new homes in the numbers required. It allocates less than the Local Plan, which post-dated it and windfalls have not taken it above that. All the more serious because the Local Plan figure for the town is expressed as a minimum. Over one third of the dwellings in the plan already had planning permission by the time the WNP was made. A second third, at the main development location in the town (the Station Quarter), are simply not coming forward.

Vale Royal Borough Local Plan saved policies

149. Policy GS5 is the only saved policy of this plan that the proposal is stated as being in conflict with [CD 13/2]. It relates to development within the open countryside (pg 18). The policy is out of date because it is from a plan which only addressed development needs up until March 2016. More importantly it is based upon strategic housing and employment policies which are plainly out of date. This matter was considered in paragraph 63 of the Judgment discussed above[26].

150. The Daventry case[29], relied upon by the Council, relates to the guidance in the old Framework. It relates to a situation where the Inspector simply accepted that the policy was out of date without considering the extent to which the housing requirement in that plan was based on out of date housing requirements. That is what the Inspector did in the Cheshire East/Richborough appeal. The Supreme Court supported his approach. That case post-dates the Daventry case on which the Council rely.

151. Policy GS5 is retained simply as a 'stop gap' to prevent a 'policy vacuum' from occurring if it were to be removed. It will be removed when the CW&CLP P2 comes forward. The settlement boundaries proposed in P2 of the LP do not match those within GS5, further evidencing the out-datedness of GS5. The Council cannot suggest the policy has little relevance in the light of Policy STRAT 9. The fact is the Council need Policy GS5 to show where the settlement boundary is located. In granting permission for lots of sites beyond the Policy

[25] Crane v SSCLG (2015) EWHC 425 [CD16/3].
[26] Tesco Stores v Dundee (2012) UKSC.
[27] Suffolk Coastal DC v Hopkins Homes: Richborough Estates v Cheshire East Council (2017) UKSC 37 [CD16/8].
[28] Section 38(5) TCPA and NPPG Neighbourhood Planning, Paragraph: 084 Reference ID: 41- 084-20180222
[29] Daventry BC v SSCLG & Gladman Developments (2016) EWCA 1646 [ID 38]

GS5 boundary in Winsford, the Council have plainly not seen that boundary as a hindrance and must have given it reduced weight.

152. The Council's professional planning officers in their report to committee on 21 November 2013 [CD2/2] gave Policy GS5 reduced weight, correctly so, and stated it to be more restrictive than the Framework 2012, as was then.

153. The settlement boundaries contained within Policy GS5 have not prevented the Council from themselves granting planning permission for sites that sit outside of them and so it cannot be said to preclude such development. JillS accepted as much in Xx on day 3.

154. The Council made clear on Day 1 of the inquiry that Policy GS5 is to be viewed as an important policy. It is nevertheless plainly out of date. Consequently, the tilted balance is triggered through this alone, regardless of the 5-year supply issue.

Development plan conclusions

155. In relation to the policies most important for determining the application;

a) Whilst there is conflict with Policy STRAT 9 of the CW&CLP P1, this policy cannot be afforded full weight as it is more restrictive than the Framework 2018. In particular, it is not consistent with para 213. As such, the impact of any conflict with Policy STRAT 9 is reduced. Even if it is given full weight, it does not stand in the way of granting planning permission as Inspector Dakeyne's recommendation made clear.

b) Policy STRAT 1 of the CW&CLP P1 does not contain a mandated checklist of obligatory requirements. It is a flexible list of principles or desires. Loss of greenfield land is not embargoed within STRAT 1 and the proposal delivers on all three sustainable development objectives (see para. 204 below). The appeal proposal as such does not conflict with this policy.

c) Policy H1 of the WNP, does not set a maximum figure or a cap on development, this was outlined by Dr Mynors at the examination and is accepted by all parties. There is no conflict with this policy. However, even if there is, this policy does not stand in the way of granting planning permission as Inspector Dakeyne's recommendation made clear.

d) Finally, saved policy GS5 of the VRBLP is out of date. It is based on out of date housing requirements. Being out of date it triggers the tilted balance within paragraph 11d) of the Framework 2018 and permission should as such be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the Framework 2018 taken as a whole.

The benefits of the proposal

156. There are multiple benefits. These include the delivery of new homes to address the shortfall in the 5-year supply, the delivery of much needed affordable housing (AH), the provision of self-build housing, and the economic benefits of the proposal.

157. These are not to be treated as neutral. The point is well explained by the Inspector in the very recent appeal at Land East of Park Lane, Coalpit Heath [CD 17/13], who said at para 61 that:

> *"There are three different components of the housing that would be delivered: market housing, affordable housing and custom-build housing. They are all important and substantial weight should be attached to each component for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply."*

Small and Medium Sized Local House Builders

158. The proposal will deliver up to 92 market homes at a time when the Government has enshrined its objective of *"significantly boosting"* the supply of homes within national policy[30].

159. The benefit of these market homes is substantial, simply on the basis of a national housing crisis, but is increased on the Appellant's case where the Council cannot demonstrate a five-year supply of housing land. However, the Appellant's case does not live or die by the presence or not of a five-year supply, as many appeal decisions have seen permission granted in circumstances where the Council can demonstrate a 5-year supply of housing land[31].

160. The critical feature in terms of market housing is that the proposal is to be built specifically by small and medium sized builders from Cheshire. The Government's desire to support local housebuilders who mare Small and Medium Sized Employer(s) (SME) is well documented [CD 12/10]. There is an increasing awareness of the important role that they can play in helping to address the national housing crisis, the government has encapsulated this within national policy at paragraph 68 of the Framework 2018. This accords with the aims and desires of Government, something not lost on the Inspector at the Lydney appeal[32].

161. Further, the Lyons Review [CD 9/12] has identified the over reliance placed on large-volume, national house builders as one of the two main contributory causes for the housing crisis.

162. The Appellant has provided four letters from local SME building firms; Apex, Cruden, Garratt and Moorcroft. These explain the difficulties faced by such SME firms when competing against national housebuilders and outline the lack of suitable sites locally. All four express their interest in the appeal site and the proposal. These are real words from local, real builder SMEs, the exact businesses that the local approach of this proposal aims to assist. For these reasons the local SME builders' provision, to be secured through a legal agreement, should attract significant weight.

163. The Appellant also plans to implement a local training and employment strategy, to be approved by the Council prior to the commencement of

[30] Framework 2018 paragraph 59
[31] Appendix 18 to the PofE of JonS
[32] APP/P1284/13/OUT Land off Driffield Road, Allaston Road, Lydney, Gloucester

development, delivering localised benefits to the peoples of Winsford in the form of new skills, qualifications and careers. It should attract significant weight.

164. A very similar 'local approach' to the one offered here was put forward by the Appellants in the Lydney appeal. The SoS ultimately concluded that the benefits of this were significant enough to outweigh the conflicts with the development plan.

165. Following the concerns that the SoS had about the conditions used previously, the Appellant has sought to promote these local aspects of the proposal by way of a planning obligation. That was the successful approach taken by the appellant in the Lydney case.

166. The Appellant was content with conditions last time, as it would be this time as well. The Council officers prefer them as they believe conditions are easier to enforce in the event of a breach. However, having seen the Lydney decision approved on the basis of ensuring its 'Local Approach' was made legal through a planning obligation, the Appellant is reluctant to not make that the preferred mechanism now in this case.

167. Given the obligation (or condition) for the market housing to be built by a local SME builder(s), there is no real need to have a local procurement obligation (or condition). They will inevitably obtain a high percentage of their employees and material from the local area. That is why the Appellant agreed to its removal from the list of draft conditions.

Affordable Housing (AH)

168. At the heart of the Framework, is the government's objective to significantly boost the supply of homes of the right size, type and tenure (para 59 and 61). The Appellant contends that there is incontrovertible evidence of the need for significantly more new housing nationally, particularly affordable housing, given the existence and extent of the national housing crisis.

169. JonS's evidence at S8 suggests that many of the affordability indicators are now worse than in 2015. Affordability has worsened and so have housing waiting lists. Consequently, he rightly describes a graver more serious problem meriting an enhanced weight to this crucial benefit. The Council considers this to be part of a wider problem. However, the lack of a 5-year supply is a local manifestation of a more systemic problem. As the Inspector set out in the Ludlow case at para 40 page 9:

> *"whilst the LPA is able to demonstrate a deliverable five-year supply of housing sites based upon its requirements set out in Policy CS1, this is not a limit: there is an acute housing shortage in England. It is recognised in National policy that the government anticipates a significant boost to the supply of housing. In this respect, the provision of any extra housing to this national shortfall is a benefit in favour of the proposal, including both market and affordable housing"* [CD17/33].

170. The proposal will make a substantial contribution towards meeting the general housing needs in the area in accordance with the requirement placed upon local planning authorities to provide for the full objectively assessed housing needs of the area. The 2013 SHMA [CD13/8] sets out a requirement for 714 affordable houses per annum.

171. The problems of unmet housing need and delivery problems do not just beset market housing or general housing need. There is a particular problem in this Borough with affordable housing and Custom/Self-Build housing. As Cllr Hooton (Chairman of Planning – Winsford Town Council) explained, social housing has posed problems for Winsford over the years. He advised that the Town Council want to see more social housing from the Council and social landlords. The affordable houses proposed will be transferred to and managed by a Registered Social Landlord exactly how Cllr Hooton wishes.

172. The Council wish to portray the position of affordable housing delivery as being "*admirable*". However, the LP target is less than half the annual need arising in the District. The LP is failing at the outset to meet the full needs of household's requiring assistance with their housing choices. Whilst obviously now forming part of the DP, this requirement was not what JonS was comparing when assessing net annual affordable housing delivery against annual needs.

173. Comparing net annual AH delivery against the annual requirement in the Strategic Housing Market Area (SHMA), covering exactly the 5-year period, the delivery record is much less rosy. As JonS's evidence shows with this comparison (JonS Figure 4.7 page 37 of PoE) there is an accumulated shortfall of -1,503 dwellings over the first 5-year period. These households have not had their housing needs met. These households are being failed by this Council.

174. Given that the backlog is increasing, there can be no net 'social progress' in addressing AH needs in the District. Subsequently, it is highly questionable how the Council can be content with this, regardless as to how well it is performing against the pragmatically founded LP target. Any additional AH contribution must be especially beneficial in at least mitigating the continuing harm. In this context JonS considered the delivery of AH to be abysmal[33]. JonS agreed in Xx that delivery compared to the LP target was better but that is not the true picture of AH provision and need in CW&C.

175. A major part of the Appellant's case is the fact that the proposal involves the delivery of up to 74 affordable homes, equivalent to 40% affordable housing. The affordable housing offer at 40% is numerically 10% more than required by Policy SOC1. This equates to an extra 18 affordable homes or 32% more than would have been delivered by a policy compliant proposal. Furthermore, in the event that the Custom and Self-Build housing is not provided, that 10% would revert to AHs so that the AH offer would total 50% of the entire dwellings on the site. It was agreed in Xx of JillS that in this scenario the appropriate weight to be given in the planning balance would be very substantial.

176. The appropriate weight to be given to AH in the overall planning balance is of fundamental importance and has been a matter which the SoS and Inspectors have regularly considered. In JonS's opinion it should attract nothing less than very substantial weight. This contrasts with the substantial weight awarded by the Council, which appears to be a deliberate ploy on its part to downplay the vast array of worsening market indicators. These justify JonS's position of ascribing a greater degree of weight than was given in 2015. To merely accept the same weight would fail to take account of significant changes in local circumstances.

[33] See Section xiv of JonS's Executive Summary

177. The delivery of new housing contributes to the social and economic roles of sustainable development (SD). It delivers major benefits in line with the Framework's policy. Those merits are brought into stark reality by the evidence of JonS, and especially the 6,204 households falling into need. JonS explained that in spite of stricter registration criteria there remains a high number of households needing assistance with their housing needs. As the Inspector asserted at para 8.122 in the Pulley Lane, Droitwich Spa appeal [CD17/8]

"*Needless to say, these socially disadvantaged people were unrepresented at the Inquiry".*

178. As is evident from JonS's evidence, the need for accelerated AH provision pervades national and local policy. The estimated AH needs are considerable, with the 2013 SHMA setting out a requirement of some 714 affordable dwellings per annum.

179. As JonS explains, there is an accumulated shortfall of some 1,503 dwellings since 2013/14 (JonS figure 4.7 page 37 of PoE). Not an insignificant figure equating to almost half the growth in the waiting list between April 2015 and April 2018 (Change of 3,414 more households). The growth in the housing register has been staggering. It was previously acknowledged that the housing register had been artificially reduced in 2014 from 19,000 households to 2,790 households in 2015 (JonS figure 4.1 and para 4.7 page 32 of PoE). Despite the stricter qualification criteria introduced by changes allowed in the Localism Act 2011, the housing register has increased by over 3,400 households in the space of just 3 years. This is more than 3 households per day registering or re-registering (JonS XIC). There are now 6,204 households on the register as at 1st April 2018. Yet the Council make no reference to the worsening of the housing register.

180. The hugely important benefits of living in a home such as: secure tenure, ability to set down roots, ability to plan for families and to be close to relatives and support groups is immeasurable and has no doubt manifested itself into the *"grief and hardship"* referred to by Mr Boles back in 2013.

181. The Appellant contends that there is a vast array of indicators which have also not been fully considered by the Council. These indicators are illustrated by JonS in his PoE[34].

182. There can be no doubt that there is an acute need for AH in CW&C. The proposals will deliver a substantial number of AH, for which there is a significant demonstrable need and in a sustainable location. This should be considered in the context of significant under-delivery against the SHMA requirement, with JonS ascribing very substantial weight to the delivery of much needed AH. The need for AH at Winsford is also very evident. This point was echoed by Mr. Tony Hooton (see para 315 below).

183. Finally, Table 4.7, as contained within the PoE of JonS[35], highlights the underperformance of the Council when it comes to the provision of AH since

[34] JonS pgs. 31-34, 36, 37 & 51.
[35] Ibid at paragraph 4.22 page 37.

2013/14. In none of the previous five years has the Council achieved its identified AH need of 714 dpa[36]. The closest it has got was in 2017/18, with 552, still some 162d short. In the previous 5 years, the Council has achieved 2,067 net AH completions, 1,503 less than the required 3,570. It has delivered less than 58% of that which was required. This shortfall affects real people, in real need. Given the above, the AH provision must attract nothing less than very substantial weight.

Self-build

184. The Housing White Paper (CD12/7) is clear that:

> *"The government wants to support the growth of custom build homes".*

185. As recently as 16 October 2018, during a debate on housing and homeownership in the House of Commons (Appendix AM2), the Housing Minister Kit Malthouse reaffirmed the Government's commitment to self-build and custom build, stating that:

> *"We are very keen to encourage self-build".*

186. The revised Framework sets out at Paragraph 60 that in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at Paragraph 61 to say that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in policy, including *"people wishing to commission or build their own homes"* with footnote 26 of the Framework detailing that:

> *"Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and Custom-Build properties could provide market or affordable housing".*

187. The Council does not dispute that there are 309 households on their self-build register seeking a self-build or custom housebuilding serviced plot, nor do they appear to dispute that the Self-Build and Custom Housebuilding Act 2015 requires them to grant enough suitable development permissions to meet identified demand.

188. What has become apparent however is that the Council has no idea whether it is granting sufficient permissions to meet demand. As JillS conceded in Xx she does not know how many self-build plots the Council has granted planning permission for in the plan period. Furthermore, JillS was unable to point to any other site in Winsford that provides a self-build plot.

189. In the re-examination (re) of JillS, the Council sought to contend that because Winsford urban area is nil-rated for CIL then the chances of learning about self-build from CIL exemptions in Winsford was not possible. However,

[36] Taken from the 2013 SHMA.

this merely seeks to distract from the fact that the Council simply do not know how many self-build plots there are in CW&C and have no idea whether they have granted sufficient suitable development permissions to meet demand on their register.

190. It is important to remember that the Self-Build register, whilst being an important tool in helping to gauge local demand, cannot predict longer term demand for plots and is therefore only a part of the picture in robustly assessing demand.

191. The Framework is clear that:

> *"Local authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance within NPPG)"*[37].

192. It signposts the reader to the housing and economic development needs guidance, which states that:

> *"In order to obtain a robust assessment of demand for this type of housing in their area, local planning authorities should assess and review the data held on their register. They should also supplement the data from the registers with secondary data sources such as: building plot search websites, 'Need-a-Plot' information available from the Self Build Portal, and enquiries for building plots from local estate agents."*[38]

193. Appendix AM3 to Andy Mojer's (AM's) Self-Build and Custom Build Statement [ID9 Ap.13] contains secondary data supplied by Build Store who hold the UK's largest database of self-build building plot opportunities. This data shows that there were 443 registrants on their Custom Build Register wishing to create their own home within a 10-mile radius of the appeal site.

194. In addition to this, the Build Store secondary data shows that there were 1,209 Plot Search subscribers within a 10-mile radius of the appeal site. These are people who are actively looking for a plot to build or commission their own home within this area.

195. This is precisely the type of secondary data source that the NPPG expects to be used to supplement the Council's own self-build register, in order to obtain a robust assessment of demand in the area. The Council have failed to do this and in doing so cannot consider the data on their self-build register alone to form a robust assessment of demand within CW&C.

196. The fact that the Council have failed to robustly assess demand in line with the requirements of the NPPG calls into questions their contention that the 18 self-build plots on the appeal site would fail to come forward due to a lack of demand.

197. Emerging CW&CLP P2 Policy DM20 is intended to require residential development proposals to demonstrate how development proposals will address

[37] Paragraph: 011 Reference ID: 57011-2016040127.
[38] Paragraph: 020 Reference ID: 2a-020-20180913.

demand for self-build and custom build housing. But it sets no targets and allocates no sites.

198. It follows that it must be noted that neither adopted nor emerging policy expressly define a target for self-build and custom house building in CW&C. Additionally, the Council does not appear to have any particular mechanism (such as a percentage requirement to provide self-build plots on qualifying sites for example) for securing delivery.

199. Without sites such as the appeal site, which could deliver 10% of its units as serviced self-build and custom housebuilding plots, it is unclear how the Council intends to address demand for self-build and custom housebuilding within CW&C.

200. The Council's contention that there is insufficient demand and therefore the benefit of the self-build plots would fail to materialise as a deliverable benefit was mitigated during the inquiry by the introduction of a fall-back position. Should the self-build units remain undelivered within five years, then they would revert to affordable housing plots, thus increasing the overall affordable housing offer to 50%. The appellant contends that this should be afforded nothing less than very substantial weight. As JillS conceded in Xx, the fall-back position means that in either eventuality a material benefit of substantial weight would be delivered through the appeal proposals.

201. The appellant's position remains that there is sufficient demand for the 18 self-build plots despite the introduction of a fall-back position. When considered against the scale of unmet demand and the lack of a suitable strategy from the Council to address demand, the provision of 18 self-build and custom build plots through the appeal proposals should be afforded nothing less than substantial weight in the planning balance.

202. Full details of the self-build evidence is provided in the evidence of AM [ID9 Ap.13] and supplemented by evidence from JonS.

Local Training and Employment

203. The proposed condition is very similar but more specific than the condition the Council itself imposed on the Ledsham Road permission. The Appellant's suggested condition is much superior in its clarity and intention. The purpose is to ensure that some of the work carried out in building the site is done by people local to both Winsford and Cheshire West. There is clear evidence of multiple deprivation in Winsford and one might have expected the Council to welcome such a condition. There are no enforcement problems. The Appellant will ask the house builders and their contractors to keep a record of the people they employ, and each contractor will plainly be made aware of the condition. The Appellant's Estate office will itself keep all of the records.

Sustainable development

204. The proposal would deliver sustainable development, offering a wide range of benefits within all three objectives of sustainable development[39], on a site that is

[39] NPPF 2018 paragraph 8.

accepted as being in a sustainable location. Whilst this is dealt with in detail in chapter 7 of the PoE of JonS, the key benefits would be:

Economic

a) House building, with specific support for a local SME building firm with exclusive access for them to a major housing site;

b) Additional employment opportunities within both Cheshire West and Winsford in particular;

c) A commitment to the training of local people to work on the site;

d) Additional expenditure by the new households in the local economy;

Social

e) The delivery of a choice and mix of housing in a sustainable location, including: market housing, affordable housing and self-build on the one site;

f) An affordable housing provision of 40% against a Council requirement of 'up to 30%';

g) On site open space provision of at least 8,000sqm. against a Council minimum of 5,000sqm;

h) Financial contributions towards a new playing pitch, parks and recreation and play for youth;

Environmental

i) The site is located in a sustainable and accessible location in respect of bus, cycling and walking provision;

and

j) An enhanced habitat will be made available on site with the creation and long-term management of four ponds for the use of GCNs.

The Planning Balance

The Tilted Balance

205. The titled balance applies because Policies GS5 and STRAT 9 are out of date. It would also apply if there was not a 5-year supply of housing land. The proposal plainly satisfies the test in Framework, para 11(d) (ii). The adverse impacts come nowhere close to outweighing the benefits, which are many and attract much weight. There are no 11(d)(ii) policies which apply here.

Section 38(6) PCPA Balance

206. If the titled balance does not apply, then it is the conventional status test which applies. The Appellant does not consider that this proposal conflicts with the DP, save for Policy STRAT 9 of the CW&CLP P1, which should be afforded reduced weight in any event, owing to its inconsistency with para 213 of the Framework 2018.

207. However, in the alternative and should further conflict with the DP be found, including with regard to Policy H1 of the WNP, then the benefits which are termed other material considerations far outweigh the conflict found with the DP. This is the exact route to approval taken by Inspector Dakeyne and which can properly be taken again if required, based on the considerations and sustainable development outlined above.

Overall Conclusion

208. There is a real need for this type of development in England and Cheshire West, to assist in addressing the housing crisis. It is a proposal entirely aligned with Government policy. It is a proposal comprised solely of plots for self-build, custom build, small and medium sized local builders and affordable housing. The SoS should properly take these into account. His failure to do so last time was unlawful. Giving them little weight, as the Council suggests, would be wholly contrary to the thrust of Government policy, statement and emphasis. It would send precisely the wrong message to the house building and self-build sectors.

209. The WNP does not allocate the level of housing necessary to meet the Council's minimum requirement for the town as set out in the LP. It allocated land for 3,362 new homes, whereas the Local Plan requires a minimum of 3,500 new homes. Being later in time it is the LP figure which takes precedence[40]. Being a minimum, the Local Plan figure for Winsford is to be exceeded. That is what the plan intends. But to be clear, at para 3.13 pg 25 the WNP Examiner was plain that the housing allocations in the WNP were not to be seen as a cap [CD 15/2]. There are clearly delivery problems with the main site at the Station Quarter where over 1,000 homes are allocated. Not a single house has been completed in that area and the vast majority of the sites (nearly 800d) do not have planning permission.

210. The Appellant believes the Council is not able to demonstrate a 5-year supply of housing land. But to be clear, a shortfall in the 5-year supply is not a requirement to grant planning permission, as evidence by the SoS's own decisions at Hook Norton in Cherwell [CD17/42], and Watery Lane in Lichfield [CD17/39]. The former was also contrary to a newly made NP. The latter was contrary to a whole host of LP policies. The SoS also took that view in CW&C at Sealand Road, Chester [CD17/1]. There are a host of other appeal decisions in which this has also been the case, such as sites at Upper Chapel, Launceston [CD 17/23], Foldgate Lane, Ludlow [CD17/33], Drakes Broughton, Worcestershire [CD17/35] and Whitworth Way, Wilstead in Bedfordshire [CD17/45]. Additionally, in this Borough at Fountain Lane, Davenham [CD17/41] and Hill Top Farm, Northwich [CD17/40]. However, if there is a shortfall, it is another route to the tilted balance and also a major material consideration weighing in favour of the proposal.

211. In the light of the evidence of BP, AM, JS and JonS, the Appellant once again invites an Inspector to recommend approval of the proposal (as has been the

[40] Section 38(5) of the Planning and Compulsory Purchase Act 2004: *"(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan".*

case twice before) and invites the SoS to grant planning permission in a manner which is consistent with his own decision at Lydney.

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL[2]

Introduction

212. The Appellant has persistently referred to large numbers of other appeal decisions both of Inspectors and the SoS, pointed to the language used, particularly as regards the weighting of various factors used in that case, and invited others to agree that such language would be appropriate in this case. That is a simplistic and inappropriate approach.

213. It is the most basic principle of decision making that all cases must be addressed on their own merits. A decision maker's choice of language and of adjective to describe weighting is a classic example of a case-specific and a fact-specific assessment. For example, the Inspector's and the Secretary of State's findings about the weighting to be given to the "*local approach*" and to the completion of the scheme by small or medium builders in the Lydney appeal [CD 17/2] was no more than a product of the facts at play in that case. To lift the language from the decision letter, deprive it of context and then seek to insert it into the balancing exercise at play in this case is to make a basic and fundamental error.

Five-year housing land supply

214. The Council's position remains that there is a five-year supply of deliverable housing land. It is common ground that the five-year supply position is to be tested borough-wide and that the requirement figure for the Winsford area is not to be used to calculate the five-year supply.

215. It is notable that the Appellant's very best case only reduces the Council's supply to 4.69 years[41]. The Appellant only has to be slightly wrong in order for the Council to have a five-year supply. Indeed, if BP's approach to the requirement calculation is wrong, then even if he is right on every single point that he takes in relation to the supply side of the calculation, the Council would still have a 5-year supply[42].

The Housing Requirement

216. Part 1 of the LP provides that at least 22,000 net new dwellings should be provided over the twenty-year plan period. That is an annual rate of at least 1,100 dwellings. The dispute in calculating the requirement is limited to the question of whether past annual delivery over 1,100 dwellings per annum should be discounted from the minimum requirement calculated for future years. Provision could not sensibly be tested by reference to an unspecified, but higher, figure.

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[41] See the summary table on page 72 of BP's proof.
[42] Council 5-year requirement = 4814, Appellant supply = 5423, giving a supply of 5.63 years.

217. Even if some student accommodation completions were to be deducted from the Council's figure for completions, in the eight years of the plan period so far (10,992 units), provision well above the minimum requirement has been made. The minimum requirement to be met over the rest of the plan period can only be the 22,000 figure minus completions so far. On the Council's completions, that means that at least 22,000 – 10,992 = 11,008 units have to be provided over the remaining 12 years of the plan (at least 917.3 net new units per annum).

218. The five-year requirement should be a product of that residual figure. To do otherwise risks imposing a requirement figure upon the Council, which, if in relation to which there is not a five-year supply, imposes the tilted planning balance and a finding that important policies are not up to date, even though housing provision is well on track to meet needs over the plan period and is meeting needs in the plan period to date. Such an approach makes no sense.

219. It is no answer to say that the Framework, in all of its versions, implores us to boost significantly the supply of housing. The way in which the Framework sees that objective, as set out in para. 59, is by identifying and meeting needs as para 73 requires. The Council is doing so. Furthermore, as was pointed out in cross-examination of BS, CW&C is an authority where the plan's annual requirement figure of 1,100 net new dwellings was not a reduction from the OAN figure but is the full OAN.

220. Further, as BF sets out, to keep providing at a rate of 1,100 dwellings per annum, regardless of the plan's performance to date, risks having to provide houses in places which conflict with the plan's strategy and which therefore risks being unsustainable.

221. The Appellant refers to two decision letters which it says support its case. They are both markedly different from the position in this Borough:

a) In the Doncaster [CD 17/16] case, the Council was using a requirement figure from its SHMA, with a base date of 2015/2016 (para.8), which had been exceeded in the first year of the relevant period (para.37). That was hardly a firm foundation against which to test housing provision and it is not surprising that the Inspector took the approach she did in that case in those circumstances;

and

b) In the Wendover appeal [CD 17/15], the Council seems to have been making its case by reference to alleged oversupply which took into account delivery in years prior to the requirement's base date (para.118), which is odd to say the least, as BP accepted in cross-examination. Further, in asserting that delivery at higher rates would not be problematic (para.119), the Inspector does not address (and may not have had to address) the point made by BF about the risks of unsustainable development at much higher rates than the plan period minimum rate.

222. Instead, the Council can draw firm support from the report of the Cotswold LP Inspector [CD 18/10]. He concluded in that case at para 187 that:

"An approach that fails to take account of completions during the plan period would result in additional land being made available for development that is not required to meet identified needs. In a high demand area such as

Cotswold district such land would no doubt be developed. This would lead to the unnecessary loss of greenfield sites and be likely to lead to increased commuting out of the district."

223. This appeal is a manifestation of the risk that greenfield land could be unnecessarily lost if the housing land requirement is not calculated on a residual basis. There is every sense in using the residual basis to calculate the requirement here and no sense in using a flat annual rate, whatever past performance. With the agreed 5% buffer, the five-year requirement in this case is 4,814 units, net.

Supply issues

224. The Appellant complains about the way in which the Council's five-year supply assessment is carried out, particularly as regards consultation. However, there is no merit in its criticism, for the following reasons:

a) The Appellant points to NPPG[43] paragraph 3-030-20180913 *"How can an authority demonstrate a 5-year supply of deliverable housing sites?"*. That paragraph refers to consultation in the context of plan preparation and, even then, only refers to consultation as regards the assumptions being used. As is clear from the evidence, the Council has consulted upon the assumptions which are used in the absence of site-specific evidence, both in the SHMA and Housing and HELAA processes;

b) The Appellant also refers to NPPG paragraph 3-047-*20180913 "How can authorities review their five-year supply annually?"*. Again, the reference to consultation is in the context of formulating assumptions;

and

c) Paragraph 3-051-20180913 of the NPPG "*What engagement should the authority undertake to prepare an annual position statement?"* is wholly about the requirements relating to annual position statements. It is irrelevant.

225. The Council's forecasting has proven to be remarkably cautious. The graph/bar chart on page 34 in Appendix 3 of the 2018 Housing Land Monitor [CD 13/5] shows that for the numerous forecasting exercises made for a number of future years, only one forecast for one specific year proved too high. Every other forecast made produced a figure which is lower than the figure for completions, which was subsequently achieved for that year. This Council does not make over-optimistic and unrealistic forecasts for delivery.

226. The revised Framework does change the definition *of "deliverable"*, as regards the evidential requirements for demonstrating whether sites are deliverable or not. The Council does not accept that sites without planning permission, a plan allocation or sites which are not included in the brownfield register can never be included in a five-year supply. The basic definition of *"deliverable"* is still set out in the first part of the definition, and refers to sites which are available now, offer a suitable location for housing now, and which are achievable, with a realistic prospect that housing will be delivered on the site within 5 years.

[43] All of the NPPG paragraphs referred to in this paragraph can be found in CD12/2.

227. The rest of the definition sets out where the evidential burden lies for various sites. To read the rest of the definition as two *"closed lists"* as the Inspector did in para 30 of the Woolmer Green decision [CD 17/11], reads too much into the paragraph. If the SoS really meant to exclude greenfield sites (or brownfield sites which are not on the brownfield register) with no permission and no allocation from the possible five-year supply (even if, for example, they had a resolution to grant full planning permission), he could be expected to have said so in plain terms.

228. It is notable that the recent consultation on amendments to the Framework states that the SoS is contemplating clarifying the guidance on what weight can be given to sites with different levels of planning certainty[44]. That part of the consultation does not suggest that the SoS intends there to be a *"bright line"* between sites which can be included in the five-year supply and those which can never be included. The purpose of the two lists is to explain when sites need to be shown to be undeliverable and when they need to be shown to be deliverable. They are not exhaustive lists of the only types of site which can be included in the supply calculations.

229. Further, the Appellant is far too demanding as regards the *"clear evidence"* of delivery that the Framework and NPPG expects to see before a site can be included in the five-year supply. The NPPG at 3-036-20180913 [CD 12/2] sets out three bullets listing the types of material which could contribute towards demonstrating clear evidence *"may include"* and then gives two *"examples"*. It is self-evident that this paragraph does not provide an exhaustive list of the type of *"clear evidence"* which may be expected. Yet the Appellant's repeated position, during the round table discussion on supply, was to use these examples as though they were the only types of evidence which could be used. BP even went so far at one point as to claim that a site should be excluded from the supply simply because it was not the subject of a SoCG between the developer and the Council.

230. The Appellant also takes a point about post-base date information. The Council is not guilty of trying to shift a base date. No category shifting of sites is going on. No site which was not in the supply as of 1st April 2018 is now being included through the partial review of supply or BF's evidence. Where new information is being referred to, it is for the purpose of testing the judgments formed about a site and its categorisation at the base date and for showing that those judgments are correct. Inspector Dakeyne understood and properly concluded upon this issue in para 220 of his supplementary report on this appeal [CD 2/7], where he stated:

> *"So far as post-base date information is concerned, it is appropriate to take into account information received after 1 April 2015 if it affects events prior to, or predictions as to delivery beyond, that date. Moreover, I agree that information that supports a pre-base date judgement should not normally be ignored* [SR131]*. However, generally sites should not be added or taken out post-base date. They will be picked up in the next HLM equivalent."*

231. That is the precise and sole purpose for which post-base date information is being used by the Council now, as it was in 2015. The irony, of course, is that

[44] "Technical Consultation on Updates to National Guidance" Page 15, para 38 [CD 12/14].

the Appellant condemns the Council for not immediately responding to the Framework revision in July and the NPPG revisions in September with a whole new set of evidence to prove deliverability of sites at the base date. However, had it done so, the Appellant would have said that such information was an illegitimate attempt to use post-base date information.

232. Finally, the Appellant points to the risk of developers with sites in the five-year supply *"talking up"* forecast delivery in order to promote their sites at the expense of competitors' sites. There are two simple answers to that point:

a) The point can be met with the equal and opposite point that the Appellant has a very direct interest in *"talking down"* sites in the supply in order to promote its own position, so the point goes nowhere;

and

b) Rather more constructively, such a risk of sites being talked up has not manifested itself, given how cautiously robust the Council's forecasting has proven to be, as set out above.

Specific Categories of Site

Communal Establishments

233. There is no issue in this regard. Only C3 uses are counted towards the five-year supply. C2 uses appear in the monitoring information as DHCLG requires the information, but those units do not figure in completions against the five-year requirement or forward-looking supply calculations.

Demolitions and other losses

234. Every element of the Council's housing land supply assessment is done on a net basis. Paragraph 5.21 of the LP points out that an assessment needs to be done on a net basis. It is. Completions are assessed net. Every known site in the housing land supply is looked at net. Even the modest small sites windfall allowance for years 4 and 5 is done on a net basis. It is even the case that the future forecasts take into account future losses from residential use, which are not connected to a scheme creating new dwellings: see, for example, site HOO/0061, 5 Derby Place, Chester, on the sixth page of the tables in Appendix 4 of the HLM [CD 13/5], where net housing losses without any new housing creation are allowed for. The Council again points to Inspector Dakeyne's conclusions in paras 225 and 226 of his SR [CD 2/7], where he accepted the Council's submissions. There is no reason to take a different view at this Inquiry.

235. The Nether Peover Inspector at para 19 of his decision letter[45] expressly said he was discounting from a net figure. The purpose of a net figure is to account for demolitions and losses. One discounts from a gross figure of losses and demolitions to get to the net figure in the first place. To discount from a net figure to allow for demolitions is to perform the discounting process twice. Whilst the Inspector's decision at Hill Top Farm [CD 17/40] is not explicit, he does not appear to have discounted any figure from the Council's supply to allow for

[45] BP's App EP1D.

demolition or losses, because he noted that monitoring and forecasting was all done on a net basis.

236. There is no reason to discount from the Council's supply figure on this issue.

Student Accommodation

237. This is an issue which has been gone over on a number of previous occasions. The Council recognises that Inspectors have found for Appellants on this point, notably at Tattenhall [CD 17/3] and previously in this case. However, events have moved on since this issue was last considered by Inspectors.

238. CW&CLP P1 took into account the housing need generated by students in self-contained student accommodation. That is made clear by note ED112 which was submitted to the LP [CD 13/10][46]. A need which is accounted for in requirement ought to be taken into account when provided, as a contribution to supply. BP agreed with that principle. The two sides of the requirement and supply calculation need to be conducted on the same basis.

239. The nub of the Appellant's point is that self-contained student accommodation is not freeing up general market housing in Chester because the University is expanding to a degree which was unforeseen when CW&CLP P1's housing requirement was devised.

240. Whatever the position in front of previous Inspectors, the evidence at this inquiry does not support that contention. The Higher Education Statistics Authority (HESA) figures, to which the Appellant has had access via the weblink referred to in BF's evidence (but has not challenged) show that, overall, student numbers have not increased and the rise in full time students has been much more modest than predicted in the 2013 and 2014 reports appended to BP's evidence. The Appellant has totally failed to consider whether the evidence relied upon at previous inquiries is still up to date. It manifestly is not.

241. Further, on the evidence, it is impossible to conclude that any increase in full-time student numbers across the whole university manifests itself in increased need in Chester. The University of Chester has multiple sites – in Chester, Rease Heath (near Nantwich and out of the Borough), Warrington and Shrewsbury. The University cannot or will not release figures broken down by site. BP's assertion that the Shrewsbury campus is small turned out to be an erroneous reliance upon the entry into studies by one cohort of students in one year. Without more information about the number of years of study pursued by students and whether there are undergraduate courses, post-graduate courses or both available, makes his reliance on that simple figure meaningless.

242. The HESA data and the points about the existence of the Rease Heath, Warrington and Shrewsbury sites are new ones, to which the Council has not drawn attention before. There is thus a justifiable reason for the Council inviting a different conclusion on this issue now. The facts have changed, with important consequences.

243. Further, the NPPG makes it clear that all types of student accommodation can count: see NPPG ref 3-042-20180913 [CD 12/2]. The Council only includes self-

[46] See, especially, the table summarising the position.

contained accommodation and so takes a cautious approach. Further still, if it is not accepted that self-contained student accommodation can be counted towards meeting requirements, then BF has provided unchallenged evidence of the average student household size. By reference to table 6.2 on page 19 of BF's evidence, 442 units should be included in supply on the basis that all of those units go to meet identified needs. But, at the very least, 137 units should be included, as she sets out.

244. No deduction should be made to the supply or past completion figures on this issue.

Sites with Outline Planning Permission or subject of a development plan allocation

245. The November 2018 partial HLM review [ID 17] led to a narrowing of issues in relation to this category. The remaining sites that are in issue are listed in para. 3.09 of the HSoCG. Six sites that account for 300 dwellings are disputed.

246. These sites were discussed at the round table session. In very large measure, the Appellant's position is explained by what it regards as being necessary if the Council is to provide *"clear evidence"* of deliverability in five years. The Council's position is summarised in the entries in the tables at Appendix 1 of the November partial HLM review for all of these sites, save for Wrexham Road, which is dealt with in Table 2 in Appendix 2. In each case, for the reasons set out in the tables and expanded upon by BF, in the round table session, the Council's contribution to supply from these sites is supported by clear evidence on a site by site basis.

Non-Allocated Sites without planning permission

247. Again, the partial HLM review of November 2018 has narrowed the issues. The remaining sites that are at issue are listed in para. 3.11 of the HSoCG. Six sites that account for 222 dwellings are disputed.

248. The Council's position on each site is set out in table 3 of Appendix 3 of the November 2018 partial HLM review. In each case, there are sound reasons amounting to *"clear evidence"* for their inclusion. The Appellant's point largely rests on its contention that such sites can never be included in a five-year supply calculation, a point which is rejected for the reasons set out earlier.

Build-Out Rates and Lead-In Times

249. There are 5 disputed sites in this category, which are listed in para. 3.12 of the HSoCG. 505 dwellings are disputed. All of these sites were discussed at the round table session and the Council's position on the first, third and fourth of these sites are summarised on page 22 of BF's evidence at table 7.3.

250. This issue is not one where the Framework definition of deliverability puts the burden on any particular person. Site specific evidence of build out rates and lead in times are used when available. For Roften Works, standard lead-in times have been used by the Council. Further, BP's calculation for delivery at Ledsham Garden Village is unreliable because it applies, in part, to a build out rate for a part of a year and he turns that into an annual figure for the purpose of calculating average delivery, thus underplaying the delivery from the site. The Council's position on these sites is robust.

Small Sites Allowance

251. The Council only uses an allowance for small sites, namely those below 5 units in size, and then only in years 4 and 5. Small site delivery in years 1, 2 and 3 is forecast on a site by site basis, making a further allowance for a lapse rate unnecessary. Small sites have an estimated contribution of 115 units in each year, making a total contribution to supply of 230 units in years 4 and 5.

252. BF's evidence explains that such small sites have consistently been shown to be a reliable source of completions. The rate of completions has generally increased as time progresses: see para 6.47 of her evidence. The 115-unit rate of delivery in years 4 and 5 accords well with the rate of completions from this source in recent years: see table 5.1 in the 2017-2018 HLM [CD 13/5]. Comparing forecast delivery to past-completions means that it is, again, unnecessary to make a further allowance for a lapse rate as the completions are the reality of what number of units has been delivered from this source over time. Again, there is no reason to deduct from supply on this issue.

Housing Land Supply – Conclusion

253. The requirement figure for the five-year period is 4,814 units[47]. The Council's deliverable supply, taking the Framework revisions into account, stands at 7,277 units[48]. The supply is 7.56 years. As a result, the housing land supply position in CW&C does not engage the tilted planning balance.

Development Plan policies, the weight to be afforded to them and whether the appeal would accord with the Development Plan

Local Plan Policies

254. It is common ground that the proposals breach both Policy GS5 and Policy STRAT 9. Saved VRLP Policy GS5, has to be addressed in the light of Policy STRAT 9 of the CW&CLP P1. Policy GS5 performed two functions: it provided settlement boundary limits for, among other places, Winsford, and then applied a development control test to proposals for development beyond those settlement limits. The policy, along with its boundaries, has been saved.

255. CW&CLP P1 Policy STRAT 9 provides a new development management test, and is applied, at present, to the saved Policy GS5 boundaries. Policy GS5 was saved because, without it, Policy STRAT 9 would have no territorial application in the former Vale Royal part of the Borough[49]. The development management test in Policy STRAT 9 is more up to date than that in Policy GS5, has been found sound, and is to be preferred. The position is that Policy STRAT 9's test is to be preferred to that in Policy GS5 and Policy STRAT 9's test applies beyond the Policy GS5 boundaries, at least until CW&CLP P2 is adopted.

256. The Appellant's contention that Policy STRAT 9 only deserves modest weight because it is out of date by reason of being inconsistent with the Framework is not correct. Policy STRAT 9 was found sound in accordance with the 2012

[47] November 2018 partial HLM Review table 5.1, page 10.
[48] Ibid table 5.2 pages 10-11.
[49] And the same difficulty would have arisen in the former areas of Chester City Council and Ellesmere Port and Neston Borough Council.

version of the Framework. Nothing has changed in the 2018 Framework to mean that a formerly sound policy became out of date in July 2018. In para 161 of the Examination report, the Local Plan Examiner did take into account a contention that Policy STRAT 9 was inconsistent with the Framework because it referred to protecting the countryside [CD13/3a]. The Inspector still found the policy sound. Furthermore, Inspector Dakeyne found Policy STRAT 9 to be up to date and did not reduce the weight he would otherwise have given it (see SR para252 [CD 2/7]). The decision-making test in Policy STRAT 9 deserves full weight.

257. The Appellant makes the point that the boundaries to which Policy GS5 apply are out of date because they come from a time-expired Local Plan and planning permission has been granted for housing on land beyond those settlement limits. This is an argument which has been put to and comprehensively rejected by the Court of Appeal[50]. In that case, Gladman argued that as a five-year supply had been achieved by granting planning permission beyond settlement limits, those limits were out of date because development in accordance with them could not meet up to date needs, and that, in other words, the plan was *"broken"* in that regard. The Court held that the mere age of a policy does not deprive it of the statutory priority given to it by section 38(6) of the Planning and Compulsory Purchase Act 2004[51].

258. Further, because the Framework attaches importance to plan-led development, significant weight should be given to the general public interest in having plan-led planning decisions, even if particular policies in a DP might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all [para 40(iv)]. The Court expressly rejected the argument that the plan, or its settlement limits were *"broken"*, holding at paras 43 and 44 that such grants of permission were simply an illustration of section 38(6) at work. It characterised the argument as *"unsustainable"*. The argument put to JillS on this issue at this inquiry is just a repetition of Gladman's rejected case. It must fail for the same reasons as it failed in Daventry.

259. Inspector Dakeyne picked up on the point about the reasons for Policy GS5 being saved and its relationship to Policy STRAT 9. He observed that the decision-making test in GS5 had been effectively superseded by that in Policy STRAT 9. That meant that Policy GS5 should not be afforded full weight in terms of its general application [CD 2/7][52]. However, he also recognised that the position of GS5 as regards Winsford was different. He noted the allocation of sites for some 3,360 units in the NP and that PdI sites have been and will be found in accordance with its policies H1 and H2. He also noted that, although CW&CLP P2 will have to define new settlement boundaries, the NP allocations will form the main basis for the settlement boundary. As a result, sites which are not allocated by the NP and which lie beyond the GS5 boundaries do not comply with STRAT 9[53].

[50] Daventry BC v SoSCLG and Gladman Developments Limited (2016) EWCA Civ 1646 (ID 38).
[51] Judgment para 40(i).
[52] SR pg 47 para 251.
[53] Ibid pg 48 para 255.

260. That conclusion led to Inspector Dakeyne affording *"considerable weight"* to Policy GS5 *"in the context of Winsford"*[54]. The Council supports those conclusions and the reasoning which led to them. Indeed, the Council's position has, if anything strengthened since the 2015 inquiry because the Council is not proposing to amend the settlement boundary in P2 of the LP so as to include the appeal site. It is plain that the NP allocations have, as Inspector Dakeyne foresaw, been the dominant factor in the approach to the proposed settlement boundaries at Winsford.

261. Furthermore, Inspector Dakeyne is not alone as an Inspector in concluding that more weight can be afforded to Policies GS5 and STRAT 9 than the Appellant considers. The same conclusions were reached by the Inspectors in appeals at:

Shepherds Fold Drive, Winsford [CD 11/1][55];

Hill Top Farm [CD 17/40][56];

Fountain Lane, Davenham [CD 17/41][57];

and

West Winds, Winsford [CD 11/2][58].

262. Policy STRAT 1 embodies the requirement to provide sustainable development. It seeks to minimise the loss of greenfield land. Inspector Dakeyne was right to find that the appeal scheme involves *a "degree of conflict"* with Policy STRAT 1 because of the loss of a greenfield site[59] :- a conclusion which led him clearly to find that there was a breach of the policy overall [CD 11/1][60].

263. The Appellant relies upon the housing requirement figures for the Borough, as set out in Policy STRAT 2 and for the Winsford area, as set out in Policy STRAT 6, being minima as a reason to support the appeal scheme. But the plan has to be read as a whole. The plan does not advocate a free-for-all on housing numbers. Although the simple fact of provision over the minimum figures does not constitute harm, the plan's requirement figures are applied in relation to settlement boundaries. The Appellant's argument logically leads to the conclusion that a breach of Policies STRAT 9 and GS5 can be overlooked or downplayed. It cannot. Providing development within settlement limits, unless it falls within one of the types of acceptable development listed in Policy STRAT 9, is as much a component of the plan's strategy as the fact that the requirements figures are minima. The two issues go together.

264. Policy STRAT 6 sets out the indicative minimum requirement for the Winsford area. In re-examination (Re) of JonS, the point was made that the NP over-relied upon the Station Quarter. A mathematical exercise was undertaken, comparing the WNP allocations with those in CW&CLP P1. The exercise was a false one, because the policy provides approximate figures for the number of dwellings to

[54] Ibid pg 49 para 260.
[55] Paras 14 to 17.
[56] Para 8.
[57] Paras 18 and 25.
[58] Paras 15 to 23.
[59] Ibid page 48 para 253.
[60] Ibid page 52 para 282.

be provided at the Station Quarter of *"in the region of 1000 new dwellings"* and the reference to the 775 units to be provided in the plan period must be seen in that context. The LP cannot be interpreted in a way which properly admits to such mathematical precision. There is no reason to think that the allocations in Policy H1 of the WNP are inappropriately high.

Winsford Neighbourhood Plan

265. The WNP has been made. It is part of the DP. The appeal site was put forward as an allocation for the WNP by the Appellant in the preparation and examination processes for that plan but was rejected. It was rejected because the Town Council did not think that the allocation would accord with the plan's vision[61] – an argument which the Examiner regarded as a sound reason [CD 15/2][62].

266. The WNP says that it seeks to actively plan where development should go[63]. For housing development, the plan contains a clear strategy of locating development close to the town centre, creating a new quarter around the railway station and creating positive new "gateways" at key arrival points into the town [CD 15/1][64]. Developing the appeal site would not accord with any element of that vision.

267. The Appellant points to the key themes set out in the plan [CD 15/1][65]. As to those themes which are relevant to the appeal scheme[66]:

a) The Appellant says that the first theme would be served by the development providing new high-quality buildings. That point does not serve to justify a contention that the appeal site is a location for development which accords with the plan. Any development anywhere would be expected to be high quality;

b) The Appellant contends that the third theme would be served by residents of the scheme contributing to spend in the town centre. The same could be said of any site within reasonable proximity of the town centre and, again, this point cannot support the appeal site as a location for development within (or adjacent to) Winsford;

c) The reference in theme 4 to strengthening the employment base is obviously referring to employment development, not the employment provided by the construction of a housing estate. In any event, and once again, it does not support the appeal site in locational terms;

d) The reference to sustainable growth in theme 5 only makes sense if it is read alongside the plan's vision for locating development, as set out above, which the appeal site does nothing to support;

e) Theme 6 is about improving social, community and leisure facilities. The Appellant refers to the contributions to be made by the planning obligation. As those contributions comply with the requirements of Regulation 122 of the

[61] Para 3.52.
[62] Para 3.54.
[63] Page 4 para 1.1.3 and page 20 para 4.1.1.
[64] Page 44, shaded box in left hand column.
[65] Page 17: themes 1 to 7.
[66] Theme 2 is not really relevant to the appeal scheme.

CIL Regulations, they are necessary to make the development acceptable in planning terms by satisfactorily mitigating impacts which would otherwise occur. In any event, this matter does not point to the appeal site being acceptable as a location for development;

and

f) Theme 7 seeks the improvement of movement around the town and the region. The only improvements which the appeal scheme would bring would be to a short length of footway and the provision of cycling access into the site. These are very modest matters and do not support the appeal site as a location.

Overall, the appeal site draws no support as a location for development within Winsford from the themes of the plan.

268. Policy H1 (pg. 44) allocates sites to meet the vast majority of the need with which the plan deals [CD 15/1]. The appeal site is not allocated for development by that policy. The Appellant argues that the site's non-allocation does not weigh against the appeal proposal, as the housing requirement to which the plan relates is not a maximum or ceiling figure. However, as Inspector Dakeyne concluded [CD 2/7][67], *"such an interpretation would mean that policy H1 served no purpose in guiding and regulating development."* Further, the policy can derive no support from Policy H2 (pg. 46), which adopts a permissive approach to development on PDL land [CD 15/1].

269. Policy H1 of the WNP also requires proposals to accord with other policies of the NP and the LP. Development of the appeal site would not accord with Policies GS5 and STRAT 9, as is agreed. The appeal scheme conflicts with Policy H1 of the WNP, as Inspector Dakeyne accepted [CD 2/7][68]. The policies of the NP have not changed since Inspector Dakeyne reported and there is no justification for reaching a different conclusion on that matter now.

270. There is no policy of the WNP which provides support for the development of the appeal site in locational or any other terms. JonS could point to none in Xx. The appeal scheme would accord with CW&CLP P1 Policy SOC1 on affordable housing, as is set out in a little more detail below.

Breach of the Development Plan taken as a whole?

271. The Council's position is that VRBLP Saved Policy GS5, CW&CLP P1 Policies STRAT 1 and STRAT 9 and Policies H1 and H2 of the WNP are the dominant policies of the DP for the purposes of determining this appeal. Inspector Dakeyne also accepted that Policies GS5, STRAT 9 and H1 were the dominant policies for development outside of the settlement limits CD 2/7][69]. The Council contends that the breach of those policies of the DP which are breached in this case amounts to a breach of the DP overall. Again, Inspector Dakeyne agreed[70]. There is no reason to reach a different conclusion now. The appeal scheme is in conflict with the DP when taken as a whole.

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[67] Supp report pg 48 para 256.
[68] Supp report pg 49 para 260 and pg 52 para 282.
[69] Supp report pg 49 para 260.
[70] Ibid pg 49 paras 260 and 282.

272. None of the relevant DP policies, still less those which could be called the most important for determining the appeal, are out of date for reasons relating to a lack of consistency with the Framework. The second possible route into the tilted planning balance does not apply in this case. Given the housing land supply position, there is thus no route into the tilted planning balance available to the Appellant.

273. It follows that a decision in accordance with the DP would be a decision to dismiss the appeal. The issue is therefore whether there are material considerations which indicate that a decision otherwise than in accordance with the DP should be taken in this case.

Scheme Benefits

Market Housing

274. The appeal scheme would contribute more market housing. hat is a social benefit deserving of weight, but the weight is tempered by the presence of a five-year supply across the Borough. As set out earlier, the requirement of the Framework to boost significantly the supply of housing is one which is to be met by identifying and meeting the need for housing. As far as market housing is concerned, that is being done.

Affordable Housing

275. The appeal scheme would contribute affordable housing at a rate of 40%, as opposed to a policy requirement of a target of up to 30% on qualifying sites. JillS agrees that this is a social benefit which can be afforded substantial weight[71]. The issue is therefore limited to whether the word "very" should be added before the word "substantial", as JonS contends.

276. It should not. The position on affordable housing is not as bad as JonS would have us believe. Indeed, his written evidence calls the Council's delivery record as regards affordable housing *"abysmal"*, which is not fair, as he accepted in Xx.

277. The Council points to the following matters on affordable housing. If it were to be (wrongly) assumed that every site was a qualifying site for affordable housing provision and every site provided at the full 30% rate (which would never happen), then the delivery of 22,000 dwellings over the plan period would lead to the delivery of 6,600 affordable units. In fact, the Council has delivered 3,139 affordable units over the eight years of the 20-year plan period to date[72]. That is a useful benchmark for assessing its performance, especially given the unrealistic assumptions in the calculation.

278. JS points out that the Council has not delivered 714 units in any one year since 2013/2014, which is the base date for the affordable housing need figure for five years, assuming the backlog is eradicated in five years. However, the Council has never been required to provide that amount, as can be seen from an analysis of the LP Inspector's report [CD 13/3a]:

[71] Her oral evidence in chief.
[72] JillS proof, table on pg 21.

a) The content of para 23 of the report shows that the Inspector was alive to the need for the LP to meet the full OAN for market and affordable housing;

b) At para 31, he noted that affordable housing need contributed to the reasons for uplifting the objectively assessed need above purely demographically generated need;

c) At para 36 and footnote 2, he noted that the SHMA gave the annual figure of 714 units per annum for affordable housing need if the backlog were to be cleared over 5 years;

d) He concluded, at para 39, that an OAN above 1,100 dwellings per annum would require higher job growth, population growth and in-migration than the demography would suggest;

e) His judgment at para 46 was that an OAN of 1,100 dwellings per annum was optimistic and aspirational and would have a "significant positive effect upon the provision of affordable housing";

f) The requirement was 22,000 dwellings over the plan period, or 1,100 per annum (para 144);

and

g) The OAN constituted the full need for housing in the plan period (para 145).

279. Therefore, the Local Plan Inspector never concluded and never said that the LP had to deliver 714 affordable homes in each of the first five years from the SHMA base date. If, using a requirement for 1,100 dwellings per annum, 714 affordable homes per year would have to be provided, then 65% of all dwellings in the first five years of the plan would have to be affordable. That is plainly unrealistic. Alternatively, if 30% of dwellings were to be affordable, then providing 714 affordable homes each year would require 1,900 new homes to be delivered each year. That is plainly not realistic either.

280. In fact, JonS's own evidence shows that the Council's Borough-wide affordable housing delivery has been admirable. That is shown by the revised version of figure 4.6 of BS's evidence. Policy SOC1 of the CW&CLP applies the up to 30% target as a proportion of new homes permitted on qualifying sites. Using that approach, the new column in the revised figure 4.6 shows that the Council has been delivering at a rate of 26% across all sites, not just those on which affordable homes could be required by Policy SOC1. If student completions need to be removed, as BP insists, then the performance would rise to 27.9%.

281. The picture becomes even more favourable to the Council once the Winsford area is considered. Figure 4.9 of JS's proof tests delivery in Winsford against the need for 98 units. That 98 figure is the Winsford component of the Borough-wide 714 need figure. Even if the Council's performance were tested against that 98 figure, the Council has delivered just 25 units short of the 495 units that would have been required over the first five years of the Local Plan period. Again, that is not evidence of a Council which is seriously failing to deliver affordable homes.

282. Further, table D6 on pg.102 of the 2013 SHMA shows that the Winsford urban area has the lowest mean average house prices in the Borough [CD 13/8]. The

Council has also secured and accepted funding for affordable housing delivery on three Council-owned sites in Winsford at the 30% rate.

283. Ascribing substantial weight to the affordable housing provision on the appeal site is reasonable and generous to the Appellant's case.

Self-build and custom build

284. Since Inspector Dakeyne reported, the facts have changed on this issue. We now have available the statutory register which records the level of interest for self and custom-build in the Borough. The register is appended to JonS's supplementary proof. The register is important evidence of the level and type of interest, to which the NPPG refers.

285. As part of the register compilation process, the Council asks people to state any preferences they have for location and for site size. The register provides scant evidence of demand for self and custom build in Winsford and for such building on larger sites such as the appeal site. Indeed, when those two factors are combined, there is not a single person on the register who wants to self or custom build in Winsford on a larger site. The evidence of the register points unequivocally to the conclusion that the 18 plots on the appeal site would not be taken up for self or custom build housing.

286. The Appellant points to other sources of evidence, but:

a) The SHMA survey simply records aspirations for self-build. It does nothing to check the realism of those aspirations or the degree of commitment to self or custom build;

b) AM's report refers to alleged survey evidence *"consistently"* showing[73] that 1 in 50 of the population want to purchase a self or custom-built home, but the footnote designed to support this point refers only to one survey, with no details of its sample size, methodology, questions or degree of checking whether those aspirations are realistic;

c) The information garnered from the Custom Build register and Plot Search subscription database[74] is useless. Without knowing how one gets to become a subscriber, what, if any steps are taken to keep registrations/subscriptions up to date (by, for example, filleting out people who have lost interest or achieved their aim) and what testing, if any, is done to test the realism of their ambitions, one cannot sensibly ascribe any weight to the information set out in the email;

and

d) The letters and emails at JonS's Appendix 12, supplemented by him with a further clip of letters/responses when he gave evidence in chief, contain scant evidence of realistic support for self-build in Winsford and certainly not to the level of 18 plots on the appeal site.

287. JonS emphasised his client's commitment to promote self and custom-build housing. If that is so, it is all the more noteworthy that there is such a paucity of

[73] JonS at App 13
[74] Email from Tom Connor on 8 November 2018, Appendix 3 to AM's report

evidence of demand for self and custom build on the appeal site, given that the Appellant has had over 3 years to gather such evidence since the self and custom-build offer was first put before the SoS in August 2015.

288. The Appellant points to the absence of registered CIL exemptions as evidence of the lack of delivery of self-build. As JonS accepted, there is nothing to indicate on the face of a planning application whether it is or is not a self or custom-build proposal. It is no surprise that there is an absence of CIL exemptions in Winsford – there is no CIL in Winsford, as parts only of the Borough are levied for CIL for viability reasons. Self-evidently, self and custom-build can never show up in CIL exemption certificates in Winsford.

289. On the evidence, there is little to no prospect of the self and custom-build offer being taken up on the appeal site and no significant weight can be afforded to it in the decision-making process.

The use of small and medium size builders for the construction of the market housing

290. This is another point that the Appellant raised in 2015 for the first time. The point is inspired by the outcome of the Lydney appeal [CD 17/2]. However, the facts there were very different. The evidence at Lydney was that the action of a large housebuilder was keeping local small and medium size builders out of the market and the Inspector, saw the ability to develop that site by smaller builders as the key to unlocking housing delivery in Lydney[75].

291. The only evidence, to support that contention here, are the very late letters from three of the building companies who are apparently interested in developing the site. It was obviously not possible to ask about these letters at the inquiry, but the letters contain short, bald assertions about competition from large builders. Only one of them actually says that the competition causes difficulties, but even then, no details of the alleged difficulties are given. None of them, perhaps for understandable reasons, claims that such competition is threatening their business. Indeed, their earlier letters all boast of their success and track record.

292. There is still, despite those letters, no evidence that the position in Winsford is remotely similar to that in Lydney and no real evidence that local SME builders cannot already access the market in the Borough in general or in Winsford in particular (as opposed to facing competition). The second letter from Cruden, submitted during the inquiry, was said to provide evidence on this issue, but does not.

293. Again, no significant weight can be ascribed to this benefit.

Training and Employment

294. There is little evidence to support affording significant weight to this aspect of the Appellant's package of benefits. Winsford does not suffer from levels of deprivation or lack of skills which are close to those in Ellesmere Port, as the

[75] See the Appellant's case, reported at paras 2.2(a), 2.9, 2.62, 2.63, 2.64 and 2.70 of the Inspector's report and his conclusion at para 6.87. This was accepted by the Secretary of State at para 22 of the decision letter.

October 2018 claimant count information provided by the Appellant during the Inquiry shows. The weight to be afforded to training in relation to a 2,000-unit scheme in Ellesmere Port is not equivalent or even close to the weight to be afforded to this benefit in the context of a scheme of up to 184 units in Winsford. The condition is necessarily woolly to avoid offending against European Union freedom of movement. That means that the obligation to aim to encourage local employment can be afforded little weight.

Economic Benefits

295. These have been appropriately weighed by JillS. They are not site specific and do not provide a justification for developing the appeal site. The same benefits would come from developing a site of the same size anywhere in the Borough or in Winsford.

Ecological improvements

296. There would be minor positive ecological impacts through the creation of new GCN habitat [CD 5/12 at pg 24].

Other matters of mitigation (not benefits)

297. A number of matters set out by JonS are either statements of mitigation of harm to acceptable levels (such as matters to be dealt with through the planning obligation) or a statement that harm does not arise (such as the site being in flood zone 1, the absence of contamination, the lack of noise or air quality impacts and the lack of impacts upon the significance of heritage assets). These are not properly classified as benefits, as JonS accepted in cross-examination.

Scheme harm

298. The appeal scheme would cause harm. Chief amongst that is the harm caused by the breach of the DP which, of itself, is harm to be afforded significant weight. That is because of the general principle that weight is to be given to the need to determine proposals in accordance with the DP unless material considerations indicate otherwise. But it also has a case specific dimension because of the terms of Policy STRAT 1. Compliance with Policy STRAT 1 of the CW&CLP is a part of the assessment of overall sustainability.

299. In a plan-led system, the DP is not to be lightly set aside. Inspector Dakeyne in his SR at para 283 accepted that to allow the appeal would be to undermine the credibility of the plan-led system, and he weighed that matter in the balance [CD 2/7].

300. The Council also asks the Inspector and SoS to take full account of that part of the breach of the DP that in this case springs from the breach of the WNP. It would be unfortunate, to say the least, if local people were to be encouraged to prepare neighbourhood plans as a means of shaping the places where they live, only to see them not being upheld in an appeal.

301. There is also the harm caused by the loss of greenfield land to development. There does not need to be a specific landscape and visual case to make good that contention because Policy STRAT 9 operates by regulating development types and does not require a specific assessment of a proposal's effect upon the countryside. Additionally, Policy STRAT 1 expressly makes the minimisation of

the loss of greenfield land per se one of the sustainability principles used to determine planning applications.

The Planning Balance.

302. The Council's evidence shows why the appeal scheme would cause a serious and damaging breach of the DP, which deserves substantial weight. The benefits of the appeal scheme have been overplayed, especially those relating to local labour and training, self-build and the use of small and medium sized builders.

303. The material considerations in favour of the appeal scheme are insufficient to outweigh the breach of the DP and the identified harm caused by the scheme. It is accepted that the Council is inviting the Inspector and SoS to depart from the ultimate recommendation of Inspector Dakeyne, but the evidence and arguments relating to the scheme benefits are different now to what they were in 2015. There are sound reasons for reaching a different ultimate conclusion.

304. Furthermore, there would be a loss of a greenfield site in a location, beyond the settlement limits and in breach of the DP (both as regards its LP and WNP components). This would be in circumstances where the Council is meeting market housing needs and broadly making the level of contribution to easing affordability. It has also identified a deliverable housing supply which is well in excess of five years. This is a serious matter and weighs heavily against the grant of consent. Development in such circumstances would not be sustainable development overall.

305. If, for some reason, it were thought that the tilted planning balance was engaged in this case, then although the requirements of para 14 of the revised Framework cannot now be met (as the WNP is more than two years old and the transitional arrangement in respect of para 14(a) of the Framework has now ended), that does not mean that the application of the tilted planning balance cannot lead to the dismissal of the appeal. All that para 14 of the Framework does is to indicate that the SoS is likely to conclude that the harm caused by the breach of a NP would significantly and demonstrably outweigh the benefits of providing housing in breach of it. Para 14 does not say that the SoS will only ever find the tilted planning balance determinative against the proposal if the four criteria are met. Further, para 14 only weighs the breach of a NP against a proposal. In this case, the breach is accompanied by a serious breach of the LP.

The Case for Interested Parties

Councillor Stephen Burns

306. Councillor Burns represents a part of Winsford on CW&C Council. The WNP was overwhelmingly endorsed in a referendum after being passed by an examiner. It is about meeting the town's employment and leisure needs as well as housing. Local residents decided through consultation where they did and did not want residential and other new development. The site of this appeal was not selected, and it is opposed by Darnhall Parish Council and Winsford Town Council.

307. The WNP has balanced development across the town, including 3,500 residential properties by 2030. This development is therefore not needed. There has already been three major developments in the part of Winsford where the

appeal development is proposed. The local ward (Swanlow and Dene Ward) has already contributed more than its fair share and fulfilled its obligation. However, the application site is outside of the NP area and the development would reduce open countryside around Winsford and unnecessarily reduce biodiversity.

308. In response to questions, he accepted that the WNP had no cap on the amount of residential development, that ground and ownership constraints had meant that development in the Station Quarter had not yet come forward and that Winsford was lagging behind the other three main towns in its rate of housing delivery.

Robin Wood

309. Mr Wood lives next to the site and is Chairman of Darnhall Fighting Fund, a local resident's group that opposes the proposal. He pointed out that the proposal would have a disruptive impact on the community of Darnhall which comprises less than 90 dwellings. He considers the application to have been previously rejected on planning grounds and that the three grounds upheld at the Judicial Review were not planning grounds.

310. The application is in conflict with the WNP, which seeks to focus new development close to the centre of the town and within the Station Quarter. The plan is well on track for securing the completion of 3,500 new homes by 2030. Grants from Homes England are enabling at least 30% of the properties on three sites to be provided as affordable homes. The appeal site was considered unsuitable for inclusion in the WNP at various stages during its preparation and also during the preparation of the CW&CLP P1.

311. The Darnhall Neighbourhood Plan is now emerging and approaching draft form. CW&CLP P1 supports the retention of Darnhall as open countryside and the area has exceptional biodiversity. In answering questions, he agreed that WNP set no cap or upper limit for residential development.

Councillor Brian Clarke

312. Councillor Clarke represents a part of Winsford on CW&C Council. He was also chairman of the Winsford Neighbourhood Steering Group until the NP referendum. The development sites that emerged from the WNP were the result of a long period of community consultation. The chosen sites were picked because they were central to the plan and had good accessibility to shops, schools, employment and the railway station.

313. The plan also took into account a desire for Winsford not to grow into the neighbouring parishes and for them to maintain their individual identity. Allowing this appeal would be an affront to democracy and the principles of neighbourhood planning. The need for additional affordable housing is already being addressed.

Councillor Tony Hooton

314. Councillor Hooton is a member of Winsford Town Council. CW&CLP P1 required Winsford to allocate sites for the development of 3,500 houses by 2030. WNP identified sites upon which this could take place. However, whilst work has started on many of these, a number have not yet started. Government grant has recently been awarded to accelerate the construction of social housing at Winsford.

315. The Town Council welcomes the provision of affordable housing and the use of local builders and training opportunities but in this case, it does not consider that they outweigh the requirements of the WNP. He considers the amount of proposed new dwellings (3,500) to be a guide rather than a definitive number and points to the emergence of windfall sites from time to time to boost numbers.

Written Representations

316. In December 2017 the Council notified seventeen statutory consultees and about ninety local residents that the inquiry was to be reopened and advising them that they could make comments at the Planning Inspectorate's Appeals Casework Portal. A notice was subsequently posted at the site providing the same information and advising members of the public when the inquiry was to be reopened. Three written responses were received, one from the community Fire Protection Officer asking for access and facilities (including water for fire-fighting) on the site, one from Robin Wood who appeared and presented his case to the Inquiry [IR 309-311] and one from John and Gillian Higgs. They reiterated points that had been made in their previous representations, including concerns about wildlife, support for the adopted DP, which does not support the proposal and the continued opposition from local residents to the proposal.

Conditions and Obligations

317. The Appellant submitted a set of conditions shortly before the inquiry reopened [ID 40]. They are based on the conditions discussed at the original inquiry [OR122-126, 164-166] and at the supplementary inquiry [SR 204-208]. The Council was not in full agreement. These conditions were discussed further during this inquiry and further modified [ID 41]. At the conclusion of the inquiry further discussion led to the Appellant agreeing to the removal of the Local Procurement condition and changes to the other three Local Approach conditions. The finally agreed conditions are contained in ID 42 and appended to this report. However, to all intents and purposes they are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the following changes.

a) The time limits for the submission of reserved matters and the commencement of development in conditions 2 and 3 have been reduced;

b) Conditions 4 and 20 have been amended to include a reference to the additional access plan submitted by the Appellant;

c) The pre-commencement requirement in conditions 8 and 21 was changed to an occupation requirement;

d) Conditions 11, 17, 22, 23 and 24 have been amended to reflect the introduction of phasing into the proposed scheme;

e) Condition 12 has been amended to reflect the fact that because of the passage of time, an updated ecological assessment was required. Development should accord with the submitted updated assessment;

f) Additional conditions (now 13 and 14) have been inserted to deal with the presence of Great Crested Newts on the site. As a result, former condition 13 is now condition 15, 14 is now 16 etc;

g) Former condition 19 has been deleted because the highway improvement referred to has already been completed by another developer. As a result, former condition 20 is now condition 21, 21 is now 22 etc.

h) Condition 3 to the SR (Self-build Housing) has been extended to allow for the non-commencement of any of the self-build dwellings within five years of the grant of planning permission. In such circumstances the Appellant would now be required to submit a scheme for the construction of affordable dwellings on these plots.

i) It is agreed that the use of local builders, in the construction of the market housing, together with self-builders, would be likely to result in the objectives of the former SR condition 5 (Local Procurement) being met without the need for a condition. Former SR condition 5 has therefore been removed.

j) A new condition (No. 8) has replaced the provision in the S106 Agreement to secure the provision of on-site open space.

318. The Appellant now considers that the matters addressed by SR additional conditions 2, 3, 4 and 5 could be more appropriately covered in a legal agreement. The Council wished them to remain as conditions only.

319. The Appellant has nevertheless submitted a signed planning obligation by way of a Unilateral Undertaking under S106 to this Inquiry. This obligation commits the Appellant, if planning permission is granted, to restricting the construction of all dwellings that are not affordable housing units or self-build units to a builder or company that:

a) has its main office or registered office within CW&C, Cheshire East or Warrington Borough

and

b) has built a total of not more than 500 residential units in any one year within the 5 years prior to development commencing.

320. The owner also undertakes not to commence development until details of a Training Employment Management Plan has been submitted to and approved in writing by the Council. The plan will aim to promote training and employment opportunities during the construction phase for local people. A target of not less than 50% of the workforce being resident within CW&C and 20% in Winsford or adjacent parishes is set.

321. Finally, a scheme for the provision of self-build plots that would be approved under condition 6 is to be submitted to and approved in writing by the Council. The undertaking provides that if any of the 18 self-build plots have not commenced development within five years of the date of the planning permission, those plots that remain will be provided as additional affordable housing units.

322. The S106 obligation referred to in the original report [OR120-121,163] and the supplementary report [SR 203] has been revised. A new agreement covering only financial contributions to off-site leisure facilities has been signed by both parties.

CONCLUSIONS

323. The numbers in square brackets [IR…] refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

324. The main considerations arising from the reopened inquiry are:

a) Whether or not the Council can still demonstrate that there is a 5-year supply of deliverable housing sites;

b) Whether the proposal is in accordance with the DP;

c) Whether all of the DP's policies for the supply of housing are still up-to-date, having regard to paragraph 213 of the Framework and legal judgements;

d) Whether the emerging CW&CLP P2 has any implications for the determination of the appeal;

e) The implications of the consent order for the conditions that related to the revised housing offer;

and

f) Whether the proposal would accord with the presumption in favour of sustainable development, having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.

Five Year Housing Land Supply

Agreed Matters

325. The HSoCG agrees the following in relation to housing land supply:

a) a base date of 1 April 2018;

b) a 5-year period of 1 April 2018 to 31 March 2023;

c) an overall housing requirement of a minimum of 22,000 dwellings (net) 2010-30 or 1,100pa;

d) the buffer to be applied in accordance with paragraph 73 of the Framework is 5%.

326. I see no reason to come to a different view on these matters based on the evidence before me.

Requirement

327. The adopted CW&CLP sets out the minimum housing requirement per annum as 1,100 dwellings (net) in policy STRAT 2. The Council argues that since there was a surplus amounting to some 2,192ds. between 2010 and 2018 (about 25%), these should be subtracted from the total requirement for the reminder of the plan period. Rounding the figures to the nearest decimal place and including a 5% buffer results in a 5-year requirement of 4,816ds or 963pa [IR 54 & 219].

328. The Appellant disagrees and considers the requirement to be 5,775ds. (1,100x5+5%) [IR 55]. The Appellant also considers that the Council's completion figures are inflated by some 860 units through the inappropriate inclusion of some student self-contained accommodation and some C2 units [IR 60]. I deal with the student accommodation aspect later when considering supply from these sources [IR 350]. The C2 aspect is discussed in the next section [IR 336-338].

329. The Council argues that not to include such an over-provision risks a finding that there is not a five-years supply, even though the Council has created circumstances through which the annual requirement has been repeatedly exceeded since 2014. If the cumulative experience of the past eight years continues, then an overall supply during the plan period, which is noticeably above the minimum requirement (about 25%), is very likely. If the removal of the over-provision results in a finding that there is not a five-year supply, then the tilted balance would be triggered and relevant policies for the supply of housing found out of date in circumstances where such an outcome is not justified [IR 220].

330. The Appellant's response is that the Council's approach has no basis in current Government policy. If it was the Government's intention for past surpluses to be deducted from the requirement then it would have said so in the NPPG. It points out that each proposal should be judged on its merits and that in the context of the current housing crisis, government policy is to boost the supply of housing. It also refers to the Council's different approach in its AMR, which states that the net requirement in that document is 1,100 and that net completions were measured against that target [IR55-57].

331. The Framework is silent on the matter and although one of the Government's priorities is clearly to boost the supply of housing, that is written in the Framework in the context of ensuring that a sufficient amount and variety of land can come forward where it is needed. CW&C has clearly met that objective through its DP and the implementation of its planning management policies, otherwise it would not have significantly exceeded its annual target in all of the years since 2014. This is how the system is intended to work [IR 221 & 222].

332. The Appellant referred me to two appeal decisions at the Inquiry [CDs 17/15 & 17/16] and one subsequently [ID 47], where Inspectors had found that it was not appropriate to discount historic over-provision from the future requirement. The Council referred me to a contrary finding by an Inspector assessing the five-year requirement at a LP Examination [CD 18/10]. In the Doncaster case the surplus only related to the first year of the relevant period, which is hardly an indication of a trend of surpluses and in the Wendover case the over-supply included delivery in the years prior to the requirement's base date. The historic over-provision would have been accounted for when establishing the OAN. Neither of these scenarios reflect the position in CW&C, where there has been a surplus in every year since 2014, resulting in a net surplus of 2,192 (25%) over the first eight years of the plan period, according to the Council's calculation [CD 13/5 pg.15, IR 210 & 223].

333. The Highnam Inspector was referred to the Doncaster and Wendover decisions and noted that they "*did not support an approach whereby an over-supply could be used to reduce the annualised target in later years of the plan*

period", noting that "*this would run counter to the requirement to significantly boost the supply of housing".* His assessment was brief, and no reasons are given so it is not possible to judge the extent to which the situation was similar to the two other appeals referred to or to that at CW&C. Although agreeing with the Inspector's conclusions on the annual requirement, the SoS is silent on the discounting of past historic over-supply [ID 47].

334. I have already pointed out the problems of comparing the Doncaster and Wendover cases with CW&C [IR 332]. The evidence suggests that CW&C has already significantly boosted the supply of homes such that a sufficient amount and variety of land can come forward where it is needed. If it had not, then the large surplus would not have accumulated. I also note that the HMA, of which Tewekesbury District is a part, contains other local planning authorities and that there was past under delivery in that HMA when considered as a whole. The LP Examining Inspector considered that in the case of CW&C "*the HMA corresponds with the Borough boundary"* [ID 47, IR 221 & CD 13/3a para24].

335. In the Cotswold case the Inspector pointed out that *"an approach that fails to take account of completions during the plan period would result in additional land being made available for development to meet identified needs. This would lead to the unnecessary loss of greenfield sites"*. I agree with this conclusion and reject the Appellant's assertion that the Area of Outstanding Natural Beauty within Cotswold District was a factor. 20% of Cotswold District is a large area of land within which additional dwellings could have been located if the Inspector felt that there was a justifiable case to provide for them. I therefore conclude that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the on-going annual requirement for the five-year land supply [IR 59 & 224].

Communal Establishments

336. The Appellant alleges that 230 completions in respect of C2 communal care facilities were wrongly included in the Council's completion figures. As the Appellant points out, in its HLM report 2017-18 at para 3.4, the Council refers to the suggestion in the Framework revisions that communal accommodation be included in the calculation of the housing delivery test. However, it goes on to explain that whilst this type of accommodation will continue to be monitored through the HLM process, it will continue to be excluded from the housing completions figures. At paragraph 4.4 the document lists the sources of completions that the Council uses for the purpose of the five-year land supply. C2 accommodation is not listed [IR 60-64 & 234].

337. Of the two sites completed in 2018 and referred to in BP's evidence in his table 8.3, only 87 Heath Lane is listed as wholly C2. Without a forensic analysis of the entire completions table it is not possible to conclusively determine whether or not this site and the others listed as completed in previous years, have been inappropriately counted in the completions data, despite what is said in paragraph 4.3. The potential need for such an exercise should have been discussed during the round-table session and if necessary, the parties should have got together to check the arithmetic. That did not happen.

338. In cross examination BF explained that the C2 accommodation was included in the appendix to the HLM for information purposes but was not counted in the overall completions total. I have no reason to disbelieve her. In consequence I

have not discounted any non-student accommodation from the requirement [IR 63 & 234].

339. I have nevertheless found that 630 student units should be removed from the surplus [see IR 350]. Recalculating the figures, this would give a five-year requirement of about 5,150ds or 1018pa.

Supply

340. At 1 April 2018, the Council considered that it could demonstrate a 5-year supply of 7,277ds, a surplus of 2,462ds, whereas the Appellant claims that the 5-year supply should be no more than 5,423ds, a shortfall of 362ds. on its calculation of the net requirement [HSoCG pg.7]. These numbers translate into supplies of 7.56 years and 4.69 years respectively. The differences in supply stem from the contributions from the following sources – demolitions; communal establishments; student accommodation; sites with outline planning permission; sites allocated in the DP; non-allocated sites without planning permission; lead-in times and build-out rates and the windfall sites allowance. I will deal with each in turn.

Preliminary Points

341. The Appellant is critical of the consultation process that the Council undertook when assessing the five-year land supply, referring to a number of paragraphs in the Framework and NPPG that discuss consultation. However, the NPPG is only general advice and for the most part the paragraphs referenced are referring to annual position statements (3-051), the formulation of assumptions (3-047) and the demonstration of a five-year supply through the plan examination process (3-030), rather than the annual up-dating of the five-year supply calculation [IR 53, & 225].

342. Nevertheless, para 3-030 does discuss the transparency of judgements about the deliverability of sites and refers to the provision of robust up-to-date evidence and the consideration of the involvement of people with an interest in delivery in the process. Whilst para 3-030 discusses the work undertaken to establish a five-year supply at the plan making stage, it is clearly relevant at the annual review stage and particularly in the context of individual site delivery. Whilst benchmarks concerning delivery at different types of site can be established through consultation at the plan making stage, the assumptions nevertheless require periodic review and not all sites perform to the norm. In this context it is not unreasonable to expect some research, with or without consultation, on the progress of sites where large numbers of dwellings are involved. The recent changes to the definition of *"deliverable"* in the Framework makes such research more important. I refer to this later [IR 53 & 226].

343. In dealing with the various sources of supply I have considered the information and evidence put before me at face value. I note the numerous references by the Appellant to Inspector's assessments of five-year land supplies, when determining appeals in CW&C and elsewhere (CDs 17). However, for the most part the time period is not the same, the Framework and NPPG have both been reviewed and changed, the locational circumstances are mostly different and the evidence before other Inspectors may not have been the same as that before me. The Appellant refers to the Framework's assertion that every case should be determined on its own individual merits and that is what I have done when

assessing the five-year land supply put before this Inquiry. I have considered the 5-year supply evidence on its own merits whilst having due regard to what previous Inspectors have said [IR 56, 120, 212 & 213].

344. There is a dispute about the introduction of post-base date information by the Council in its review of the April 2018 assessment for the purpose of this Inquiry [ID 17]. Whilst I agree that it is not appropriate to introduce new sites at this stage, their insertion should await the next full review, it is nevertheless appropriate to take into account information received after 1 April 2018 if it affects sites that were in the last full assessment. Subsequent information that supports a pre-base date judgement should not normally be ignored [IR 85, 130 & 131].

Demolitions and other losses

345. The 1,100dpa. requirement in Policy STRAT 2 is a net figure. At the time of the Examination, losses of around 50dpa. were estimated and a gross figure of 1150dpa. established. The estimate was based on trends at the time the LP was prepared. More recent analysis undertaken by the Appellant and using the demolitions in the Council's HLM reports 2011-18 suggests that a figure of 39dpa. is more appropriate. The Council says that the calculations in its supply figures are based on a net assessment, with the actual number of housing losses, be they from housing development sites or other known sources, subtracted from the completions data. However, other than the 28ds. referred to by the Appellant and as identified in Ap.4, there is no evidence in the HLM that the Council actually knows how many losses there are likely to be during the next five years. Unlike Ap.2 Completions, which clearly identifies housing losses on a site by site basis, Ap.4 Housing delivery and forecasting, appears to do no such thing. Indeed, it is far from clear how the Council would know which properties are likely to be lost from residential use going forward unless their demolition was a part of an approved scheme. The Appellant has discounted the 28ds. that it identified in Ap.4 and suggested that the Council's five-year supply figure should be reduced by 167ds. to account for potential future demolitions. For the reasons discussed above I agree. [IR 102-106 & 235-236].

Student Accommodation

346. CW&CLP P1 assessed the anticipated student population expected to be residing in the District when the FOAHN was established. The accommodation needs of students was included within the overall housing target with the exception of those living in halls of residence (CD13.10). If the number of resident students overall, including those living in halls of residence, has remained approximately the same since 2011, then this is a reasonable approach to take [IR 238].

347. However, this does not appear to have happened. Whilst overall student numbers seem to have changed little (+75), the number of full-time students at the University of Chester appears to have grown (by about 25%), whilst there has been a similar numerical decline in part-time student numbers. It is a well-recognised fact, supported by research on behalf of the University of Chester[8] (pg.8) in this instance, that part-time students are more likely to be from the local area and to live at home than are full-time students, many of which will have moved from other parts of the country and require accommodation. If this has happened on a significant scale (the Appellant suggests an increase of 2,265

full-time students since 2010), then account of it should be taken in the calculations [IR 69, 108-109 & 238-40].

348. To count purpose built self-contained student accommodation, as a part of the supply, when such accommodation is likely to be meeting the needs of a growing number of full-time students, rather than the more constant numbers that were planned for, is not appropriate. In these circumstances, the dedicated student schemes [SR 144], whilst increasing the overall housing stock with self-contained units, would be unlikely to release accommodation into the wider housing market, such as freeing up some of that currently occupied by students in the Garden Quarter of Chester. Most of the units would be soaked up by some of the increasing numbers of students. Other students may also need to occupy open market homes such as HMOs [IR 107-111 & 243].

349. The Council refers to the multiplicity of University sites, some of which are outside of the district and to the opening of a new campus at Shrewsbury but there is no comprehensive assessment of the changes in student numbers and their locations since 2010. Given the attention paid to this at the previous Inquiries into this appeal and also at the Inquiries into the Nether Peover and Tattenhall Appeals and the findings of previous Inspectors against the Council, in this regard, I find this surprising. In the circumstances I agree with the Appellant that all of the 430 student units in the Council's supply should be removed [IR 107-112,238, 241 & 242].

350. 630 student units are included in the pre-2018 completion figures and have contributed to the surplus. Without a demonstration on the part of the Council that these were adding to overall housing supply, as envisaged in the LP and not simply meeting the needs of a growing student population, then they should also be discounted [IR 60-61 & 244].

Individual sites

351. In July 2018 the definition of *"deliverable"* contained in Annex 2 Glossary to the Framework was amended[76]. This had the effect of categorising sites from the perspective of demonstrating deliverability. Sites that are not major development and sites with detailed planning permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years. Other sites, including sites with outline planning permission, should only be considered deliverable where there is clear evidence that housing completions will begin within five years [IR 74, 75, 227, 229 & Framework Pg.66].

352. The implication of this change is to shift the requirement to demonstrate deliverability or not from the Appellant to the Council in the case of the other sites, whilst the onus is now firmly on the Appellant to demonstrate that sites with detailed planning permission will not be delivering houses to the extent advanced by the Council. The Appellant has not challenged the Council's assessment of sites with planning permission, although it does challenge the validity of the windfall allowance, which largely relates to small sites without planning permission. It has however extensively challenged the second category

[76] A further updating to assist with clarity was published in February 2019

of sites on the basis that the Council has not submitted sufficient evidence [IR 76-83].

353. The Council considers the Appellant to be too demanding in its search for *"clear evidence"* and points out that the three bullets in the NPPG that set out the types of material, which could contribute towards demonstrating clear evidence, are only examples and that the list is not exhaustive. I tend to agree. Additionally, as the Council pointed out in pre-Inquiry correspondence, there was only a limited amount of time between the publication of the changes in the Framework and the need to submit proofs of evidence. Again, I agree [IR 227 & 228].

354. In an ideal scenario the Appellant may be correct but the circumstances of the Council's review of the 2018 HLM were far from ideal. Whilst the Framework definition of deliverability undoubtedly changed in July, the advice in the PPG as to the sort of information that could be used to demonstrate deliverability was not published until September, a matter of weeks before proofs of evidence had to be submitted at the end of October. Discussions on the SOCG, prior to its submission, should also have been held before then. To expect the Council to have undertaken a comprehensive update of its information base for this appeal is not realistic. There was not sufficient time to undertake a forensic analysis of every site in the supply that does not have a detailed planning permission to the extent of consulting every builder and developer involved. Such an exercise is in any event a matter for the annual review, not a planning appeal. That will have to await the full review in 2019. Despite its case alleging insufficient evidence, the Appellant seems to acknowledge this. I have therefore taken a pragmatic approach to the analysis of the evidence that the Council has been able to assemble in the limited time available [IR 85].

355. The appellant makes the point that developers and builders can inflate the forecast contributions from their existing sites to stymie new development and refers to appeal decisions where this has been given some weight by Inspectors [BP 11.22-11.29]. However, as a corollary the Council argues that the appellant has, more than likely, downplayed the delivery from the sites that it has assessed. Both lines of argument are based on speculation rather than evidence. I therefore give the propositions little weight and deal with the disputed sites on the basis of all of the available factual evidence that is before me [IR232].

356. In considering individual sites, although the evidence about some of the principles at play was tested at the Inquiry, forensic examination of each and every site was not conducted. I have therefore based my findings on the documentary evidence provided to me by the 5-year land supply witnesses, BF and BP, including the tables within the HSoCG, together with some supplementary information contained in the Closing Submissions. However, whilst the Appellant's Closing Submissions do refer specifically to some sites, those from the Council do not [IR 88-93].

Sites with outline planning permission or allocated in the DP

357. A discussion between the parties, following the publication of the November 2018 partial HLMR [ID 17], led to a narrowing of the sites in dispute in this category. It was agreed that over 400ds. on ten sites would not be completed during the five-year period. The remaining six disputed sites, amounting to 300ds, are set out in para 3.9 of the HSoCG [IR 86 & 245].

358. The Appellant's complaint about the inclusion of these sites stems from its interpretation of the meaning of *"clear evidence"* of deliverability. In its opinion the Council has not provided sufficient information in relation to any of these sites to demonstrate the *"clear evidence"* that is now required. In effect the Council's case is based on a site-by-site update of the 2017-18 HLM contained in CD 13/5, with additional verbal updates presented to the Inquiry. The Appellant considers that they should all be supported by comprehensive documentary evidence laid before the Inquiry. I discussed the feasibility of the Council providing such evidence in the timescale in para 354 [87, 246].

359. The revisions to the Framework (13/09/2018) suggest that for these sites, evidence to demonstrate that housing completions will begin on site within five-years could include any progress being made towards the submission of an application, site assessment work or relevant information about site viability, ownership constraints or infrastructure provision.

360. In this context, Table 1 in the November 2018 HLM review indicates that all the sites have developers. There is also other information commensurate with that suggested in the NPPG in Appendix one to HLM review. Ledsham Garden Village is an ongoing site with five phases now having full planning permission and where 90 dwellings were completed in an earlier phase in 2017-18[77]. Buildings have been demolished and the sites are being cleared at Rossfield Road and Delamere Forest School; some conditions have been discharged at Lyndale Farm and a full application has been submitted at Wrexham Road [IR 88-93 & 246].

361. Four of the six sites involve the completion of fewer than 30 dwellings. In the circumstances of, a combination of a developer, clearance/site works and/or movement towards detailed planning permissions/discharge of conditions, my experience suggests that it is more than likely that such modest estimations of completions are likely to be achieved in the five-year period. The two larger sites at Rossfield Road and Wrexham Road again seem very likely to be delivered, given the face value of the information submitted. I therefore consider that further changes to this category are not justified.

362. In coming to this conclusion, I am also aware that following the discussion with the Appellant, more than half of the numbers in this category were removed by the Council. I am also aware of the excellent track record achieved by the Council in predicting future housing delivery. Since the CW&CLP base date (2010), with the exception of only one year (2012/13), when there was a small shortfall of completions when compared to the housing delivery forecasts, the Council's forecasts have under-estimated the subsequent completions. This does not suggest that the Council has been traditionally over-optimistic when making its housing completion forecasts [IR 225 & 246].

363. I note the Appellant's point about the timeliness of some conditions and that if reserved matters applications are submitted at the last possible moment and then development does not commence until that time period is about to expire, then there will be few if any completions on such sites where the combined time periods are in the region or four years or more. However, the purpose of time limits in conditions is not to establish a mechanism through which to forecast

[77] HLM 2017-18Appendix Two, Completions Report.

housing delivery. They are a vehicle to enable a review of (the) permission(s) already granted if circumstances have changed. My experience suggests that in situations where land with planning permission has been acquired by a builder/developer, as is the case here, rather than being owned by a land-owner or site promoter then conditions are discharged and works commenced on site at a date that is far sooner than the time limits in conditions [IR 86-93].

364. The Appellant refers to a case at Woolmer Green where an Inspector considered the Council's evidence to be *"well short"* of what was required. However, I do not have the evidence that led to that conclusion before me [IR 87 & 227].

Non-allocated sites without planning permission

365. There are six sites remaining that account for 222ds. remaining in dispute in this category. The Appellant's case rests on the contention that such sites can never be included in a five-year land supply calculation. However, nowhere in the definition of *"deliverable"* in the Glossary to the Framework or in the NPPG does it say that the sites referred to are an exclusive list. Nevertheless, I agree with the Appellant, that given the status of such sites in the planning system, there needs to be a credible justification for any such sites to be included. [IR 94, 95, 247 & 250].

366. The sites are contained in table 3 to Appendix 3 of the 2018 HLM review [ID 17]. Although not allocated or having outline planning permission at the time of the 2018 HLM there were applications, which have since been granted or approved subject to a legal agreement, submitted by builders at Trafford Street, Hartford Manor, Knutsford Road and Chester Road. None of these sites will provide more than the 42ds. at Hartford Manor. Given the progress that appears to have been made on all of these sites during the past year it seems to me very likely that they will all deliver dwellings in the five-year period.

367. Winnington Business Park is larger than the others (88d). The site appears to have made good progress since the outline application was received in April 2017, that application being approved, subject to a legal agreement in March 2018 and a decision issued in July 2018. A demolition application has been subsequently submitted and approved, along with an outline application for other parts of the site. Although there is now little more than four years to go, there appears to be no significant obstacles to overcome before housing delivery can commence. In the circumstance a forecast of 88 ds by March 2023 does not appear unattainable. The remaining site at Newhall Road is only expected to deliver 12ds. There is already a resolution to grant planning permission, a builder is driving the scheme and the building on the site is no longer in use. The construction of 12ds on this site in over four years does not seem an unreasonable expectation in my view. The Appellant once again refers to the time periods in conditions for the submission of reserved matters and commencement on site, the latter being potentially after 2023. However, there is no evidence to suggest that after the good progress to date, work to secure the implementation of 88 ds on this site by 2023 is about to stop. I therefore prefer the Council's assessment and consider the inclusion of the six non-allocated sites as of April 2018 to have been justified by the subsequent events [IR 96 & 97].

Build out rates and lead in time

368. The Appellant challenges the delivery rates applied to five sites (505ds.), based on the interpretation of the Council's standard build-out rates and lead in times [IR 113, 298]. It alleges that the Council has inflated its delivery rate assumptions. A comparison of the assumptions in table 2.9 of the HELAA (2017)[78] with the Council's forecasts (pg.6 of HDoCG) suggests in broad terms that this is correct [114 & 250].

369. Table 7.3 of BF PoE suggests that at Ledsham Garden Village, Station Quarter and Grange Farm the inflated figures are a response to delivery forecasts from developers. However, there are no copies of the correspondence with developers to confirm what they are saying and why. More fundamentally there is no independent assessment by the Council analysing why it should take on board the opinions of developers in preference to its own standard assessment. The delivery rate assumptions are presumably based on historic analysis of the performance at many sites, from which average rates will have been arrived at. Some of the sites that were assessed, will have performed better than the average whilst others will have performed worse than it. Even if the opinions of individual builders are correct and their sites perform better than the average, there will no doubt be other sites that do not. Unless the Council undertakes a forensic analysis of every site, which it has not done, then there is no justification for departing from its overall assumptions unless very special circumstances can be demonstrated.

370. The Appellant claims that the proposed delivery at Ledsham Garden Village is greater than what was actually achieved on an earlier phase. The evidence indicates that 41 dwellings were completed in 2016-2017 and 90 in 2017-18. To add these together and then divide by two to achieve an annual delivery rate of 66dpa as BP has done is far too simplistic. Building work only began in 2016 and there was not a full year's output during 2016-17. 2017-18 is only one year so a judgement as to whether or not the 90 dwellings constructed in that year was typical and likely to be repeated is not easy to make. Output from sites often peak in the first full year, if market conditions remain the same, so that the Council's estimate of that number being sustained for a further five years seems high, especially when it is wishing to count an additional 28d on a later phase into the supply. With two developers, the delivery rate assumptions would suggest an annual output from this site of not much above 70. The evidence does not suggest a different position with regard to Rossfield Road and Roften Works. I therefore accept the Appellant's analysis and reduce the supply by 505ds.

Small sites windfall allowance

371. The Framework says that an allowance can be made for windfall sites if there is compelling evidence. The Council's historic analysis of completions shows that there has been numerous completions delivered on sites with a capacity below five units on a consistent basis. On the basis of this evidence, the Council therefore makes an allowance for windfall dwellings in years four and five. It recognises that some windfall sites will have been granted planning permission

[78] CD 13.6.

before the base date and uses this information to assess the number of windfalls likely to be delivered in the first three years [IR 98, 251 & 252].

372. Whilst the Appellant notes that completions from this source have been steadily increasing since 2010 (as they have from the other sources), it points out that the 122dpa average from past trends would lead to the delivery of 610ds. over a five-year period. It then goes on to point out that the Council has assumed that 620d with planning permission would contribute to this source of supply in years one to three. It claims that the Council has not applied any lapse rate to these permissions. Whilst the Council acknowledges that some planning permissions will not be implemented, it is not clear how this has been discounted in years one to three. The number of dwellings completed on small sites increased from 70 in 2010-11 to 174 in 2017-18. If the 2017-18 output were to be delivered over the five-year period, then 870ds could be delivered from this source. The Council has assumed 830. To achieve this, dwellings on small sites would have to be delivered at a rate so far not experienced other than in 2017-18. I consider this to be too optimistic. There is not the evidence to enable me to make a different assessment and nor should I in any event. I have therefore taken the mid-point (115d) between the two parties' cases and subtracted that from the Council's figure [IR 99-101 & 252].

Housing land supply conclusions

373. Housing land supply assessment is not an exact science. It relies on objective judgement and some assumptions based on the available evidence. What is certain is that the assessed delivery from individual sites is unlikely to be correct. All one can hope for is that the over-estimations are corrected by under-estimations to a similar amount.

374. The Framework and the NPPGs guidance on this matter were changed some months after the Council undertook its 2018 HLM. The new guidance requires a better demonstration on the part of Councils of the deliverability of certain types of site. Whilst the Council has submitted additional evidence to address the changes, that evidence falls short of what might be expected in a full HLS assessment. However, that is not due to be undertaken before April 2019. Whilst not to the Appellant's satisfaction, I nevertheless consider the evidence that the Council submitted both in written form and verbally at the Inquiry does not lead to a conclusion that its assessment of dwellings to be delivered from sites with outline planning permission or allocated and non-allocated sites is fundamentally wrong. I have therefore not changed these assessments.

375. I have however, accepted the Appellants arguments with regard to demolitions, student accommodation, build-out rates and lead in times and in part the small site allowance. I have deducted 1,217d from the Council's supply. This gives a supply of 6,060 to meet a requirement of 5,150 or a supply of 5.41 years.

Development Plan

376. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the DP unless material considerations indicate otherwise. The statutory DP for the area still consists of the CW&CLP P1, adopted on 29 January 2015, the WNP, made on 19 November 2014 and the saved policies of the VRBLP First Review

Alteration, adopted in June 2006 (in the context of this appeal, specifically Policy GS5) [IR 122-124].

377. Para. 5.3 of the SoCG sets out the agreed relevant policies. The parties agree that the proposal breaches both Policies STRAT 9 and GS5, the latter being addressed in the context of STRAT 9. The Council also considers the proposal to be contrary to STRAT 1 of CW&CLP and to Policies H1 and H2 of the WNP. It also considers all of the above policies to be the dominant ones for determining the appeal. Inspector Dakeyne in his SR only considered STRAT 9, GS5 and H1 to be the dominant policies but also agreed with the Council that the proposal was contrary to STRAT 1 [IR 127, 155, 255 & 259, (SR 218)].

VRBLP

378. Of the VRBLP policies that have been saved, only GS5 has been referred to in substance. That policy seeks to protect the character and appearance of the countryside and to prevent new building therein, unless provided for through other policies. It also defines open countryside as all parts of the Borough which lie outside of defined settlement boundaries [ID 24]. In the context of this appeal, the countryside protection policies have been superseded by those in CW&CLP P1 Policy STRAT 9. Only the settlement limits are relevant because they define the area within which Policy STRAT 9 applies [IR 34, 149, 255 & 259].

379. However, these settlement limits are out of date but have not been replaced. They were defined in the context of the housing requirements established for the VRBLP before 2006. This plan had an end date in 2016. Not only is the boundary seeking to accommodate development needs from a previous plan period, those development needs have been superseded by new ones and the actual period for which the boundaries were meant to represent the land release requirement has now been over for nearly three years. During this period planning permission has been granted for residential development, outside of the settlement boundaries on a number of occasions. Even as early as 2013 and whilst the VRBLP as a whole was still a part of the DP for the area, the Council's officers gave GS5 reduced weight in the decision-making process. [149, 151, 152, 155 & 257].

380. Nevertheless, the Council still considers Policy GS5 to be one of the dominant policies for determining the appeal. Para. 11d of the Framework says that where policies which are most important for determining the application are out of date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I therefore conclude that what has become known as the tilted balance applies [IR 155d & 260].

381. Whilst Inspector Dakeyne did not come to this conclusion, indeed he afforded Policy GS5 "*Considerable weight in the context of Winsford*" that decision was arrived at in November 2015 when the VRBLP was still extant and the WNP had recently been made [IR 261, 260 & 261].

382. The Council refers to the findings of the Daventry BC v Gladman (2016) Court of Appeal decision to support its contention that GS5, in the context of its settlement boundaries, is up-to-date. However, that decision has been superseded by the Richborough Estates v Cheshire East DC (2017) case, where at para. 63 Lord Carnwath said in similar circumstances of an extant LP that *"on*

any view, quite apart from para. 49, the statutory development plan was out of date". He went on to confirm that *"the weight to be given to the restrictive policies was reduced to the extent that they derived from settlement boundaries that in turn reflect out-of-date housing requirements"* [IR 123, 150, 257 & 258].

CW&CLP

383. The appeal site is beyond the settlement limits of Winsford as defined by VRBLP Policy GS5. Until the CW&CLP P2 is adopted, these limits define the area to which Policy STRAT 9 applies. The proposal does not comprise one of the types of development that is acceptable in principle in the countryside under Policy STRAT 9 so there is a clear breach of the policy [IR 31, 126 & 255].

384. However, as the Appellant points out, the policy *"aims to protect the intrinsic character and beauty of the Cheshire countryside"* whereas the revised Framework at para. 170. which gives more clarification as to the government's position on this issue, seeks to only protect valued landscapes and only to recognise the intrinsic character and beauty of the countryside, not to protect it. Despite the interpretation of previous Inspectors, in the context of a now revised Framework, Policy STRAT 9 is not fully consistent with the wording of the Framework. Nevertheless, the Framework does recognise the overall intrinsic character and beauty of the countryside and the Cawrey judgement[79] confirms that the loss of undesignated countryside is capable of being harmful and attracting weight in the planning balance. In my judgement Policy STRAT 9 is consequently not out of date and is capable of attracting weight, depending upon the circumstances of the case. However, such weight cannot now be the full weight that Inspector Dakeyne gave to the Policy [IR 128-131, 255, & 256].

385. Whilst arguing that full weight should be given to the breach of STRAT 9, because the proposal is outside of the settlement limits, the Council has breached these same settlement limits on numerous occasions itself, granting planning permissions in order to maintain a five-year supply of housing land. In the context of the current settlement limits, Policy STRAT 9 is a policy for the supply of housing and in the context of a site immediately adjacent to one of the four urban areas where Policy STRAT 2 proposes to locate the majority of new development, it should also be given reduced weight in that context [IR 130].

386. I note that the Council, whilst referring to Inspector Dakeyne's SR, says that CW&CLP P2 will be defining new settlement boundaries and that the WNP allocations will form the main basis for the new boundary around Winsford. It also points out that the proposed boundary does not include the appeal site. However, this aspect of that plan is subject to outstanding objections so, at this point in time, it cannot be used in support of additional weight for the breach of Policy STRAT 9 [IR 36, 255, & 259-261].

387. Furthermore, a comparison of the boundaries shown in the VRBLP [ID 24] and that proposed in CW&CLP P2 [ID 25], with the WNP allocations (CD 5/1 pgs30-31) suggests that other land not allocated through that plan has been included in the proposed amendment to the Winsford settlement area on the Policies Map. There are also examples of development and the settlement boundary extending into adjacent parishes, such as further along School Green Lane from the appeal

[79] Cawrey Limited v SoS and Hinckley and Bosworth BC [2016] EWHC 1198

site. Repeating those at the appeal site would not be a new departure [IR 151 & 260].

388. By virtue of being outside of the settlement envelope the proposal is contrary to STRAT 9. However, the Council has not advanced an argument that the proposal would be harmful to the character and appearance of the countryside itself, only that by being within the Policy STRAT 9 considerations, it must in principle be contrary to that policy. Indeed, the Council's officers, when recommending members to approve the application that is now the subject of this appeal, back in 2013, said that

> *"the site is contained on two sides with residential development to the north and a main road along the eastern boundary, with the impact on landscape character not considered to be significant. The site is relatively well contained visually within the local landscape, with the topography and woodland vegetation to the south and west restricting long-distance views*" (CD 2/2 para. 7.32).

389. These observations are as relevant today as they were six years ago. There is also extensive residential development across the main road referred to and some further residential development in the form of individual dwellings and out-buildings on either side of the eastern end of the lane that abuts the southern boundary (SV). The proposed development would undoubtedly result in the loss of open countryside but its impact on the wider countryside and its landscape would be minimal. I therefore give the infringements against Policy SRAT 9 only minor weight [CD 2.2].

390. Policy STRAT 1 requires development to support eight sustainable development principles, following which it will be approved without delay, unless material considerations indicate otherwise. The sixth criterion requires proposals to minimise the loss of greenfield land. The Council quite rightly refers to the proposal's conflict with this but not to any of the others. Inspector Dakeyne found that *"a degree of conflict was involved"*. There is clearly conflict but with regard to the other seven criteria, the proposal is either neutral or contributes towards their requirements [IR 29, 133, 134, 155b, 262].

391. In particular the "Local Approach", which could be secured by conditions or a legal agreement, would help to support regeneration in one of the most deprived areas of the Borough and the parties agree that the new housing would have good accessibility to local shops, community facilities and a primary school. In the context of Winsford it has good connections to public transport. It is agreed that there would be improvements to biodiversity, particularly as a result of the measures proposed to improve the habitat and breeding ponds used by GCNs, a protected species. The proposal would not encourage the use and redevelopment of Pdl but then many of the sites proposed for housing development in the LP or granted planning permission by the Council would not. In the overall circumstances I can only give limited weight to the harm to Policy STRAT 1 [IR 158-170, 184-207 & 284-297].

392. Policy STRAT 2 sets a minimum target of 22,000d for the borough. Policy STRAT 6 Winsford requires provision to be made for at least 3,500 of these new dwellings at Winsford by 2030. The WNP makes provision for 3,362 and I was told that no further sites around Winsford have been identified in the CW&CLP P2. However, I agree with Inspector Dakeyne that the development of Pdl and other

windfalls over the next 11 years would be likely to more than make up for this shortfall of identified numbers. The Appellant refers to issues that are alleged to be undermining the delivery of land within the Station Quarter and suggests that this could lead to an overall under-provision at Winsford. However, the Station Quarter is only meant to deliver 775d during the plan period (about 22%). I have not been referred to any development phasing plan at Winsford and given that more than half the plan period has yet to come, I consider it premature to be suggesting that the requirement from the Station Quarter cannot be delivered over the next eleven years [IR 29, 30, 128, 139, 142, 147, 148, 263, 264 & 308].

393. In my judgement the Policy STRAT 6 requirement is likely to be achieved without the development of the appeal site. Whilst the policy does not offer any support for the appeal proposal, given that it sets a minimum requirement and there is no evidence to suggest that that number is already likely to be unsustainably exceeded, the proposal does not conflict with it either [IR 238 & 264].

394. Policy SOC 1 Delivering affordable housing seeks to maximise the provision of such accommodation on all larger schemes. A target of 30% is set. The proposal would achieve at least 40%, with a further 10% being set aside for self or custom-build housing in the first instance. The scheme clearly accords with this policy, even the Council considering that the benefit deserves substantial weight [IR 32, 175 & 280].

WNP

395. The Appellant points out that only about 2h of the appeal site (30%) falls within the remit of the WNP and that in any event 70% of the proposal cannot be considered to be in conflict with that plan. However, the development as a whole would be a clear extension to the town of Winsford, even though a part would be within another parish. Indeed, the Appellant put the site forward as a potential allocation for the WNP. The proposal would clearly be meeting the needs of Winsford, rather than the small village of Darnhall, in whose parish some of the site is located. Darnhall village is some distance from the appeal site. In addition, the high proportion of affordable housing and the "Local Approach" benefits are clearly there in a Winsford context and do not relate to Darnhall. I therefore consider the proposal as a whole would respect the objectives and policies of the WNP. [IR 135, 136 & 265].

396. The Council and some of the third parties suggests that the plan has a clear strategy for locating housing development, close to the town centre and the railway station as well as creating positive new "gateways" at key arrival points. However, whilst some of these may be contributing to the underlying themes of the plan, there are a number of sites proposed for development that clearly do not meet these descriptions. The appeal site could be considered to be a gateway, albeit only to a minor extent but nevertheless to a greater extent than some of the sites that are expected to deliver Winsford's contribution to the overall housing requirement [IR 147, 266 & 268].

397. The Council suggests that the proposal conflicts with the themes of the plan. There are seven of these. I agree with the Appellant (Para.s 143 &144) that it is difficult to see how the proposal actually offends any of them. However, at the same time many other sites proposed for development in Winsford would

contribute towards the delivery of the vision. Consequently, for the most part the Appellant's contribution to the vision through the seven themes is little different to many of the sites that are proposed for development or indeed others that are coming or could come forward. The training and employment proposals would nevertheless create a variety of employment opportunities, including skills training, which is an employment objective [IR 145, 203 & 267].

398. Policy H1 supports residential development on a range of sites at Winsford that in total would achieve the construction of around 3,362d. As discussed above I consider that to comply with the requirements of CW&CLP Policy STRAT 6. The appeal site is not one of the listed sites. Whilst there is no ceiling on development, I agree with Inspector Dakeyne's conclusion that to see Policy H1 other than as a policy that guides and regulates where new development in and around Winsford should be located would be to suggest that it serves no real purpose. The policy makes proposals as to where residential development in Winsford should be located up until 2030. The appeal proposal is not one of these and so it is contrary to the policy and contrary to the WNP. The policy also requires proposals to accord with other policies of the NP and LP. In this context there is clear support from Policy H3, which seeks to secure a sustainable and mixed community with different dwelling types, a range of tenures and including affordable housing. Consequently, in the overall circumstances of the minimal requirement that Policy H1 is expected to meet and the absence of significant conflict with the vision themes and objectives of the plan, I give Policy H1 no more than moderate weight [IR 33, 136, 268 & 269].

Development Plan Conclusions

399. The proposal would be in compliance with a number of relevant DP policies. These are set out in full in the PSoCG and include those used to assess the proposal against specific matters such as transport (STRAT 10), affordable housing (SOC 1), housing mix (SOC 3) and the environment (ENV 2, ENV 4 and ENV 6). I have found GS5 to be out of date and no real conflict with STRAT 2 because in the context of its minimum 21,000d target, an additional 184d would not be significant [PSoCG & IR 32 & 318].

400. Nevertheless, there would be minor conflict with CW&CLP P1 Policy STRAT 9 and to a limited extent with Policy STRAT 1. There would also be limited conflict with Policy H1 of the WNP, an additional 184d representing about a 6% increase in the context of its target of 3,400d. The housing supply policies STRAT 9 and H1 are the dominant policies for assessing proposals for development inside and immediately outside of the Winsford settlement boundary. The proposal does support Policy SOC1's objective of maximising the provision of affordable housing and given the circumstances, [see IR 408-411] this weighs in the proposal's favour. However, approving proposals that are contrary to dominant policies in the DP, particularly one that is within a NP, should not be undertaken lightly. To do so would undermine the public's trust and confidence in the DP system. I conclude that on balance the proposal would be contrary to the DP overall but only to a minor extent [IR 155 & 271].

CW&CLP P2

401. Apart from establishing new settlement boundaries, this plan when adopted should have no real bearing on the outcome of this appeal as it does not propose any land allocations at or adjacent to Winsford. The plan was submitted for

examination on 12 March 2018 and hearings closed on 27 September 2018. Agreement to Main Modifications are expected soon, with adoption anticipated later in 2019. There are outstanding objections to Policy W1, which establishes the new Winsford settlement boundary. Other objections relate to the plan's alleged failure to provide sufficient land allocations at Winsford through this policy. There are also outstanding objections to Policy DM 20, which relates to the mix and type of housing [PSoCG paras. 5.6-5.9 & IR 36-38].

402. The Appellant accepts that once this plan has been adopted, its route to the tilted balance will fall away and that in that context CW&CLP Policy STRAT 9 will be up-to-date [IR 151]

Sustainable development

Economic

403. The economic benefits set out in OR147 and SR 261-263 still apply. In addition, the housing offer whereby up to 92 new homes would be built by local SMEs, supports the Government's objective of boosting that sector. It would also add value to the local economy as would the self–build plots and elements of the proposed local training, employment and procurement proposals [SR80 & IR 205 & 295].

404. The weight to be given, to the benefit of the additional market housing, needs to be seen in the context of the Council's response to the need to boost significantly the supply of housing. That is what has been achieved by continuing to provide a 5-year supply of housing land [IR 174] and enabling a significant surplus in housing supply over requirement since 2014 [IR 380, 419]. Such a situation cannot justify giving the provision of more market housing significant weight, especially when the LP Inspector clearly said that an OAN of more than 1,100dpa. would require higher job growth than the forecasts suggest are likely to be achieved and necessitating more population growth from in-migration[80]. If job-growth doesn't match the growth in the economically active population then there would likely be an increase in out-commuting, which is not a sustainable outcome [IR 158, 159, 274 & 290-293].

405. However, the market housing would be delivered by SMEs so that in that context it should attract some weight. As Inspector Dakeyne said:

"this, along with the other elements of the housing offer, means that the economic benefits of the appeal proposal are likely to be able to be distinguished from many other housing proposals in the Borough or indeed other proposals on non-allocated sites on the edge of Winsford"

[SR 174, 175, 282 & IR 158-167, 278d & 290-293].

406. The agricultural land position has not changed since the original inquiry and should not weigh against the proposal [OR148].

407. Overall there are significant economic benefits from the proposal [SR 264 & IR 278d].

[80] CD 13/3 pgs. 9&10

Social

408. The proposal would deliver 40% of the dwellings as affordable housing, 10% more than the requirement. The facts surrounding the extent of the need for affordable housing are again in dispute. Notwithstanding that the Council accepts that the need for affordable housing in CW&C is such that the provision of 40%, which is 10% above the LP target of 30%, should be afforded substantial weight. The dispute is over the attachment of the pronoun "very" [IR 175, 182, 275 & 283].

409. Affordability appears to have got worse in CW&C and the numbers on its housing register have more than doubled since it was reviewed in 2014. At the same time, affordable homes have continually been lost from the stock as a result of the "right to buy". Nevertheless, in the context of the LP target of 30%, on past performance the Council appears to be capable of meeting this and achieving the delivery of 6,600 affordable units over the plan period [169, 172, 173, 188, 276 & 277].

410. The unachieved provision of 714dpa. and the corresponding shortfall of 1,503d, referred to by the Appellant, are in the context of the backlog being resolved within five-years. That was never going to be achieved, without a substantial increase in public funds, because it would involve 65% of all dwellings constructed over the five-year period being affordable. As the LP Inspector observed, the figure would still be reduced if the backlog was cleared over a longer period, such as the plan period. However, meeting all of the existing and future affordable housing needs by 2030 from the private sector contribution even if it were always 30%, is likely to be an impossible task [IR173, 174, 176, 178, 179 & 278-280].

411. Nevertheless, because of public investment, the evidence suggests that provision has fared better in Winsford, over the plan period to date, than in the Borough as a whole. Additionally, and despite this and its overall opposition to the proposal, the Town Council in its evidence considers that there is a need for more affordable homes and would welcome the provision on this site. Furthermore, the backlog represents people in housing need now, some of them acutely and so it should not be easily glossed over. I agree that at least substantial weight should be given to the provision of affordable housing on the site [IR 171, 177, 180, 182, 183, 281-283 & 315].

412. The self–build plots would help meet the government's objective expressed in the Housing White Paper and now included in the revised Framework, to support the growth of self and custom build homes. Whilst maintaining a register of those seeking to acquire serviced plots under Section 1 of the Self-Build and Custom Housebuilding Act 2015, to date there are no specific development permissions in CW&C to meet the identified demand. As identified through the Council's self-build register that amounts to 309 households. In Xx the Council confirmed that it did not know how many self-build plots it had granted planning permission for during the plan period. The extent to which the Council has supplemented this data with secondary information, as recommended by the Framework, was also not clear but despite Build Store's database identifying 443 registrants within ten miles of the appeal site, the Council maintained that there is no demand at all in Winsford for such housing on a large site [IR 184-196 & 284-288].

413. I do not share the Council's pessimism about the need for self and custom-build housing at Winsford. Its stance is largely based on conjecture rather than hard evidence and I also note that despite government advice, emerging Policy DM20 of the CW&CLP P2 sets no targets for self and custom-build housing nor allocates any specific sites. The twenty-six plots on adjacent Peacock Avenue, which were developed in such a way some years ago, suggests that such a development can be achieved at Winsford in the right circumstances. Furthermore, to counter the Council's pessimism during the Inquiry, the Appellant agreed to a fall-back position, whereby, if any of the eighteen self-build plots do not commence development within five years of the date of the planning permission, additional affordable housing plots will be built on those sites. [SR80, IR 197-202 & 289].

414. The self-build element would carry some social benefits in helping to respond to the needs of a particular group, identified by the SHMA [SR80] and the Government, who wish to build their own homes. The proposals do not follow the approach advocated by Policy SOC3 of the CW&CLP as a Community Land Trust is not involved[81]. Therefore, there are questions over the affordability of the plots [SR183]. That said the proposed condition that requires the submission of a scheme for the delivery of the self-build plots, would allow an input by the Council into the open market value of the plots. There would thus be social benefits from this element of the scheme. I consider that the self-build element of the scheme should attract substantial weight [IR 184-186].

415. The local training, employment and procurement elements would bring some social benefits to the Borough as a whole and Winsford in particular. There are relatively high levels of deprivation and joblessness, including in the ward adjacent to the appeal site, at Winsford. These considerations deserve significant weight [OR77 & IR203].

416. Overall there are substantial social benefits from the proposal [SR 273].

Environmental

417. There would be less than moderate harm from the loss of open fields but at some point in time there will be a requirement for some greenfield land to be developed around Winsford. The Council does not refer to any specific landscape, visual or ecological harm. The discovery of Great Crested Newts, which are a protected species, foraging on the site has resulted in proposals for off-site mitigation. It is agreed that the proposed improvements go beyond what is necessary to mitigate against the potential harm to the protected species on the site and that there would be minor overall benefits to its habitat and breeding opportunities. There is an acceptance that there would be other minor ecological improvements as a result of the scheme [IR 22, 23, 46, 47n, 204j, 296 & 301].

418. About 8,000 sqm of public open space would be landscaped. This is 3,000 sqm more than the revised standard now requires and would be of minor benefit to the wider community [IR22, 45, 47g & 204g].

419. It is agreed that the site is in an accessible location with sustainable access to bus, cycling and walking facilities. However, such advantages could be a part of

[81] CD 13/1 pg. 71

the credentials of many sites and attract no weight to support the proposal [IR 47k & 204j].

420. Overall I consider the impact on the environmental dimension of sustainable development, from the loss of three open fields, would be counter balanced by the ecological and recreational benefits that would occur so that the harm would be neutralised.

Sustainability Conclusions

421. The Framework considers the three overarching objectives of sustainability to be interdependent and says that they should be pursued in mutually supportive ways. In this case the proposal would achieve significant economic benefit and substantial social benefits along with having a better than neutral impact upon the environment[82]. However, that is not the end of the matter. The conflict with the up to date development plan is a key component of the final balancing exercise. I deal with this in my overall conclusions. In this respect Policy STRAT 1 of the CW&CLP indicates that sustainable development would not be achieved if a proposal would fundamentally conflict with the LP [IR 298-301].

Conditions and obligations

422. As referred to above, following discussions with the Council, the Appellant submitted a set of agreed conditions shortly before the inquiry reopened. I discussed some of these further during the inquiry when further minor modifications were agreed. Before the inquiry concluded it was further agreed that if a local builder was employed to build the market housing and 10% of the dwellings were constructed through self-build, then it was more than likely that the levels of local procurement sought in the draft condition would be achieved without the need for the condition. The procurement condition was therefore removed. With this exception, to all intents and purposes the conditions are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the changes outlined in IR 317. The finally agreed conditions and the ones that I recommend to the SoS are listed at the end of this report.

423. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG. The conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable, minimises the impact on the environment and complies with the other relevant DP Policies.

424. The SoS previously considered that the Training and Employment, Self-Build Housing and Local Builders conditions did not enable these considerations to outweigh his reasons for dismissing the appeal. The High Court found that the SoS had given inadequate reasoning for the rejection of the Training and Employment Measures and the Local Builders condition. It found that the SoS's reasoning that the Self Build Housing condition should not be attached to any permission was sufficient to support that conclusion.

[82] CD 12/1 Pg. 5

425. The Appellant now considers that the matters addressed by the conditions in ID 42 could be more appropriately covered in a legal agreement. It cites an example from Gloucestershire[83] where the SoS has granted planning permission for a residential development with a similar Agreement to secure similar benefits. The Council wished them all to remain as conditions only.

426. I am of the opinion that all of the conditions as now proposed meet the tests in the NPPG and its guidance suggests that that conditions are to be preferred to planning obligations if they meet the tests. Nevertheless, if the SoS agrees with my overall conclusion, it is a matter for him whether or not he imposes conditions to secure the implementation of the "local approach" matters or accepts the Unilateral Undertaking as a substitute means of securing the implementation of the benefits. If the former, then it may be necessary to ask the Appellant to withdraw its Unilateral Undertaking.

The Planning Balance

427. I have found VRBLP Policy GS5, considered to be one of the dominant policies for determining the application, to be out of date. At paragraph 11d the Framework says that where policies, which are the most important for determining the application, 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.

428. I have found that the development is sustainable development in the overall context of the Framework, with substantial weight being given to the benefits from the social dimension and significant weight given to the economic dimension. The adverse impacts from the loss of the green fields and on the confidence in the DP are not so great as to demonstrably outweigh the benefits. I consequently find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole and that planning permission should be granted.

429. If the SoS disagrees with my finding and considers that VRBLP Policy GS5 is not out of date and the tilted balance is not applied I would nevertheless, like Inspector Dakeyne, recommend in favour of allowing the appeal. In this instance it is a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of the new homes.

430. To a limited extent, the proposal is contrary to CW&CLP Policy STRAT 1. T here is also a degree of conflict with CW&CLP Policy STRAT 9 and Policy H1 of the WNP. Although a number of development plan policies support the proposal, particularly CW&CLP Policy SOC1, overall, I consider the proposal to be contrary to the DP when read as a whole but only to a minor extent. That conflict is by and large a technical one and a number of the relevant policies, particularly those of the WNP are not explicit in forming a basis to resist the development. Other than the loss of three green fields that do not easily relate to the wider

[83] Appeal ref: APP/P1615/A/3013622 Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire (CD 17/2).

landscape, I have only identified minor harm from the development in the context of the principles of sustainability. Nevertheless, the DP is not to be set aside lightly. A failure to comply with the DP, particularly in the context of Policy STRAT 1, could also give an indication that the development would not be sustainable overall.

431. Unless fully justified, permission would undermine the credibility of the plan-led system and the status of NPs promoted by the Framework, even though paragraph 198 of the Framework should not be interpreted as giving NPs enhanced status over other components of the DP. There are adverse impacts through the loss of open countryside and conflict with the DP overall. Together I conclude that these represent moderate harm. The Council has not alleged any other harm and agrees that the other material impacts could be made acceptable by the use of conditions. In this case there are substantial economic and social benefits arising, particularly the significant proportion of affordable homes and the other "Local Approach" benefits of the housing offer. Whilst this type of offer could be repeated, the circumstances are unlikely to be commonplace because of the position of the Appellant as landowner as set out in detail in the 'Local Approach'.

432. Development that conflicts with the DP should be refused unless other material considerations indicate otherwise. But it does not necessarily follow that a proposal which conflicts with the DP cannot comprise sustainable development as illustrated by many appeal decisions[84]. I conclude that the conflict with the DP, the starting point for decision making, including the relatively minor adverse impacts on the countryside are outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the self-build housing.

433. In arriving at this conclusion, I have taken into account that the Council, putting to one side the conflict with the DP and including the in-principle objection to the loss of countryside, have not suggested that the grant of planning permission will result in any site specific adverse impacts or that the site is not in a sustainable and accessible location. For these reasons, the proposal would accord with the presumption in favour of sustainable development, having regard to the DP and the economic, social and environmental dimensions of sustainable development considered in the round.

Recommendation

434. I recommend that the appeal be allowed, and outline planning permission be granted subject to the conditions set out in the next section. This recommendation is consistent with that contained in Inspector Dakeyne's two reports [OR168].

[84] For example those referred to in IR65 & IR159

Recommended conditions in the event that permission is granted

Reserved Matters

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of the development shall be submitted to, and approved in writing by, the local planning authority before any development of that relevant phase begins and the development of each phase shall be carried out in accordance with the details approved under that phase.

2. Application for approval of the reserved matters for Phase 1 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of one year from the date of this permission. Application for approval of the reserved matters for the Phase 2 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of two years from the date of this permission. Application(s) for the approval of reserved matters for each subsequent phase of development must be submitted to the local planning authority not later than the expiration of three years beginning with the date of this permission.

3. The development hereby permitted shall be begun either before the expiration of two years from the date of this permission or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. All reserved matters applications shall accord with principles set out in the following:

a) Parameters Plan HP/WIN/PP01 Rev B dated 4 July 2014;
b) Boundary Treatment Proposals Plan 1789/P07a dated September 2013;
c) Design and Access Statement dated July 2013;
d) Access Plan (Drawing No. CBO-0149-006).

5. No more than 184 dwellings shall be erected on the site.

Phasing

6. A Phasing Plan for the whole development shall be submitted to, and approved in writing by, the local planning authority as part of the first application for reserved matters within the application site. Full details of the phasing of the construction of the development hereby approved, including highway and pedestrian routings, shall be submitted as part of the Phasing Plan. The development shall be carried out in accordance with the Phasing Plan approved under this condition.

7. The details for each phase of the development required under condition no 1 of this permission shall include:

a) samples or the manufacturer's specification of the external materials to be used in the construction of the dwellings;

b) soft and hard landscaping works, including details of retained trees and hedges, areas to be landscaped including the numbers, size, locations and species of trees and shrubs to be planted, boundary treatments, hard surfaces, and an implementation programme;
c) existing levels and proposed finished floor (slab) and site (garden) levels;
d) street furniture/structures including proposed substations or other utility structures;
e) external lighting;
f) on-site open space/play space provision. The total amount of on-site open space shall amount to no less than 5,000 square metres;
g) parking for cars and cycles;
h) roads, footways and cycleways;
and,
i) provision for waste and recycling in connection with the dwellings.

The details for each phase shall include a implementation programme for the works.

Open Space

8. No dwelling in any phase of development shall be occupied until details of the management and maintenance regime for the open space within that phase, including any landscaping and planting buffers, shall be submitted to, and approved in writing by, the local planning authority. Following implementation in accordance with condition 7, the open space shall be managed and maintained in accordance with the approved details.

Trees, Hedges and Landscaping

9. Any trees or shrubs, forming part of the soft landscaping works, which die, become diseased or are damaged within the first five years after planting shall be replaced with a tree or shrub of the same species and size in the following planting season.

10. No trees or hedges shall be cut down, uprooted or destroyed nor shall any retained tree be topped or lopped unless the works are in accordance with the Management Recommendations within the Tree Quality Survey Report dated 9 July 2013 (Report No 1789_R05b_JB_JTF) or have been approved in writing by the local planning authority under condition 7 of this permission. Any lopping or topping shall be carried out in accordance with "British Standard BS3998:2010 recommendations for Tree Work". If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and the specification of the replacement tree or hedge shall be approved in writing by the local planning authority.

11. No works in any phase, including ground preparation, shall commence on the site until all existing trees and hedges to be retained in that phase, in accordance with condition 6, are fully safeguarded by protective fencing and ground protection in accordance with specifications to be submitted to, and approved in writing by, the local planning authority, following the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction". Such measures shall be retained for the duration of the construction works.

Biodiversity

12. The development shall be implemented in accordance with the mitigation measures detailed in the Tyler Grange Updated Ecological Assessment Report of 12 October 2018 and Drawing 11391/P09d.

13. Prior to the commencement of development, a detailed method statement of works with regards to Great Crested Newts shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved method statement.

14. The development shall be delivered in accordance with the Great Crested Newt mitigation and compensation proposals as detailed in Section 5 of the Tyler Grange Updated Ecological Assessment Report of 12h October 2018 and Drawing 11391/P09d hereby approved.

15. Prior to the commencement of development, details of the off-site pond creation, including a methodology and timetable, shall be submitted to, and approved in writing by, the local planning authority. The works shall be carried out in accordance with approved details, methodology and timetable.

16. A habitat creation and management plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The plan shall include:

a) Description and evaluation of the features to be created and managed;
b) Ecological trends and constraints on site that may influence management;
c) Aims and objectives of management;
d) Appropriate management options for achieving aims and objectives;
e) Prescriptions for management actions;
f) Preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually); and
g) Personnel responsible for implementation of the plan.

17. No on-site hedgerow/scrub/tree shall be removed between the 1 March and 31 August inclusive, unless the site is surveyed for breeding birds, and a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.

18. Prior to the commencement of each phase of the development a scheme and timetable for the provision of bat and bird boxes, including the numbers and locations for that phase of development, shall be submitted to and approved in writing by the local planning authority. The bat and bird boxes shall be installed in accordance with the approved scheme and timetable. Thereafter the bat and bird boxes shall be retained.

Construction Management

19. No development shall take place in any phase until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the

local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase. The Statement shall provide for:

a) details of access, including routing of construction traffic, and temporary pedestrian routes;
b) hours of construction and construction deliveries;
c) the parking of vehicles of site operatives and visitors;
d) loading and unloading of plant and materials;
e) storage of plant and materials used in constructing the development;
f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
g) wheel washing facilities;
h) measures to control the emission of dust and dirt during construction; and
i) a scheme for recycling/disposing of waste resulting from construction works.

Access and Highways

20. The proposed vehicular access, footways and dropped crossing on Darnhall School Lane as detailed on the Proposed Access Plan (Drawing Ref CBO-0149-006 dated 26 April 2013) shall be completed to binder-course level prior to the commencement of the construction of any dwellings on the site.

21. No dwelling shall be occupied until the part of the highway or footway which provides access to it has been constructed in accordance with the approved details up to binder-course level. The surface course shall then be completed within the approved timetable for the relevant phase as approved under condition 7.

Travel Plan

22. Prior to the occupation of each phase of the development, a travel plan for that phase shall be submitted to, and approved in writing by, the local planning authority. The submitted travel plan shall include the objectives, measures and targets set out in the Travel Plan Framework dated 8 July 2013. The approved travel plan shall be operated from first occupation.

Archaeological Work

23. Prior to the commencement of the development of each phase, a programme of archaeological work in accordance with a written methodology of investigation for that phase shall be submitted to, and approved in writing by, the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Drainage

24. No development shall take place in any phase until a scheme for the disposal of surface water and foul drainage for that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall be carried out in accordance with the approved details.

Affordable Housing

25. Prior to the commencement of each phase of development a scheme for the provision of affordable housing in that phase shall be submitted to, and approved in writing by, the local planning authority. The affordable housing shall be 40% of the total number of dwellings to be provided on site, be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

a) The numbers, tenure and location on the site of the affordable housing provision to be made;
b) The type and mix of affordable dwellings;
c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
d) The arrangements for the transfer or management of the affordable housing;
e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
f) 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.

All parts of the approved scheme for the provision of affordable housing shall be implemented in full.

Local Approach Conditions

Training and Employment

26. The development hereby permitted shall not commence until details of a Training and Employment Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall aim to promote training and employment opportunities during the construction phase for local people by undertaking to meet a target of not less than 50% of the total workforce on the site being resident within the Cheshire West and Chester Council area, of which not less than 20% is within the town of Winsford and the adjacent parishes:

Self-Build Housing

27. Prior to the commencement of the self-build phase of the development, as approved under condition 6, a scheme for the provision of self-build plots shall be submitted to, and approved in writing by the local planning authority. The self-build plots shall be 10% of the total number of the dwellings to be provided on the site and will not be an affordable unit. The self-build plots shall be provided in accordance with the approved scheme. The scheme shall specify:

(i) The number, location and size of the plots that would be reserved for self-build;
(ii) That the dwelling that is built is first occupied by the person or family that purchases the plot;

(iii) The period that the person or family that purchases the plot shall remain in occupation;
(iv) The roads and services to be provided to service each self-build plot and the phasing thereof;
and,
(v) A programme for the marketing of the self-build plots specifying the open market values at which they will be offered.

All parts of the approved scheme for the provision of the self-build plots shall be implemented in full.

28. Details of the self-build units shall be provided to the Council for approval in line with the reserved matters timeframes. In the event that none or any number of the 18 self-build plots are not commencement within 5 years of the date of this planning permission, those plots that remain will be provided as additional affordable housing dwellings over and above the 40% specified in condition 25 above. Within 6 years of the date of this planning permission, a scheme for the provision of these additional affordable housing dwellings shall be submitted to, and approved in writing by, the local planning authority. This affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

a) The numbers, tenure and location on the site of the affordable housing provision to be made;

b) The type and mix of affordable dwellings;

c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

d) The arrangements for the transfer or management of the affordable housing;

e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
and,
f) 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.

Local Builders

29. No dwelling which is not an affordable or a self-build unit shall be constructed other than by a builder or company that:

a) Has its main office or registered office within the Cheshire West and Chester, Chester East or Warrington Borough Council's areas at the date of this permission;
and
b) Builds a total of not more than 500 residential units in any one year in the last 5 years prior to development commencing.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel	instructed by Pamela Chesterman, Solicitor Legal Manager, CW&CC
He called	
Beth Fletcher BSc, MSc	Senior Planning Officer, CW&CC
Jill Stephens BA, Dip TP MRTPI	Senior Planning Officer, CW&CC

FOR THE APPELLANT:

Christopher Young, Queens Counsel	Instructed by Gary Halman of GVA HOW Planning
He called	
Ben Pycroft BA, Dip TP MRTPI	Emery Planning
James Stacey, BA, Dip TP, MRTPI	Tetlow King Planning
Jon Suckley, MTCP, MRTPI	GVA How Planning

INTERESTED PERSONS:

Councillor Stephen Burns	Councillor CW&CC
Robin Wood	Chairman Darnhall Fighting Fund and local resident
Brian Clark	Councillor CW&CC, Chair of Winsford Neighbourhood Steering Group
Tony Hooton	Councillor, Winsford Town Council

DOCUMENTS

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

1 2018 Planning Statement of Common Ground
2 Statement of Common Ground on Five Year Housing Land Supply
3 Proof of Evidence of Beth Fletcher with Appendices
4 Proof of Evidence of Jill Stephens with Appendices
5 Proof of Evidence of Ben Pycroft with Appendices
6 Supplemental Affordable Housing Evidence of James Stacey with Appendices
7 Rebuttal Affordable Housing Evidence of James Stacey
8 Proof of Evidence of Jon Suckley
9 Appendices to the Proof of Evidence of Jon Suckley
10 Rebuttal Proofs of Evidence of Ben Pycroft and Jon Suckley

DOCUMENTS SUBMITTED AT THE INQUIRY

11 Opening Statement of the Appellant
12 Opening Statement of the Local Planning Authority
13 Statement from Councillor Stephen Burns
14 Statement from Robin Wood
15 Statement from Councillor Brian Clarke
16 Statement from Councillor Tony Hooton
17 Housing Land Monitor Report 2017-18
18 Extracts from CE&C Economic Dashboard, submitted by the Appellant
19 CW&C Inequalities Report, submitted by the Appellant
20 WNP Sustainability Appraisal Scoping Report, submitted by the Appellant
21 Winsford, Index of Multiple Deprivation 2015, submitted by the Appellant
22 Plan of Electoral Wards in Winsford, submitted by the Appellant
23 Schedule of WNP Allocations and relevant planning history, submitted by the Appellant
24 Plan showing WNP boundary and VRBLP Town Policy Boundary for Winsford, submitted by the Council
25 Plan showing CW&CLP P2 proposals for a revised Winsford Settlement Area Boundary, submitted by the Council
26 Comparison of housing completions and annual delivery forecasts 2010/11-2017/18, submitted by the Council
27 Housing Completions in CW&C 2013/14-2017/18, submitted by the Appellant
28 CW&C Affordable Housing Completions 2010/11-2017/18, submitted by the Appellant
29 CW&C Report to Cabinet on the Accelerated Construction Fund (grant for Affordable Housing), submitted by the Council
30 Letter from "Cruden" to the Appellant expressing support for the use of local SME builders in the proposal's construction
31 Letter from "J Garratt" to the Appellant expressing support for the use of local SME builders in the proposal's construction
32 Letter from "Moorcroft" to the Appellant expressing support for the use of local SME builders in the proposal's construction
33 CW&C Self-build Register, submitted by the Council
34 Schedule of Planning Applications for the development of dwellings at Peacock Avenue, submitted by the Appellant

35 Schedule of Planning Applications for the development of dwellings at Harewood Close, submitted by the Appellant
36 Appeal decision ref: App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, Cheshire, submitted by the Appellant
37 SoCG between CW&CC and Redrow Homes, App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, submitted by the Appellant
38 Gladman Developments and Daventry District Council and SoS, Court of Appeal ref: C1/2015/4315, submitted by the Council
39 Amstel Group Corporation and SoS and North Norfolk District Council, Royal courts of Justice ref: CO/3750/2017, submitted by the Council
40 Draft conditions as agreed in principle by the parties prior to the commencement of the Inquiry
41 Draft conditions as agreed and amended during the Inquiry with tracked changes
42 Conditions as amended and agreed at the close of the Inquiry with tracked changes
43 Closing submissions of the Local Planning Authority
44 Closing submissions of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

45 Revised Planning Obligation by way of Agreement under S106 of the T&CPA 1990, (Financial contributions towards off-site leisure provision), submitted by the Appellant
46 Planning Obligation by way of Unilateral Obligation under S106 of the T&CPA 1990, (Local Approach), submitted by the Appellant
47 Appeal decision: App/A0665/W/14/2212671, Land south of Oakridge, Highnam, Gloucestershire, with supporting letter from the Appellant
48 Letters of 07 January 2019, to the main parties, informing them that the Inquiry is closed
49 Correspondence with the main parties about conditions and obligations
50 Correspondence with the main parties about pooled contributions, as set out in Regulation 123 of the CIL Regulations, in the context of the S106 Agreement
51 CW&C, Land at Darnhall School Lane, Winsford, Statement of compliance with CIL, submitted by the Council
52 Correspondence with the main parties about revisions to the NPPF

CORE DOCUMENTS

Core Document Reference	File Reference	Title	Document Reference
		Planning Application Form	
CD1/1	CD1 – CD3	Planning Application Form	-
		Decision Notice and Reporting	
CD2/1	CD1 – CD3	CWaC Decision Notice	13/03127/OUT
CD2/2		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (November 2013)	-
CD2/3		Planning Committee Transcript (January 2014)	-
CD2/4		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (18 June 2015)	-
CD2/5		CWaC Strategic Planning Board Minutes (18 June 2015	-
CD2/6		Officers Report for 13/03127/OUT to Planning Committee (4 September 2018)	-
CD2/7		Planning Inspectorate reference APP/A0665/A/2212671: SoS Decision Letter and Inspector's Reports (7 July 2016)	-
		Site Location Plan	
CD3/1	CD1 – CD3	Site Location Plan	HP/WIN/LP/01
		Original Submission Plans	
CD4/1	CD4 File 1	Access Plan [replicated by CBO-0149-010]	CBO-0149-006
CD4/2		Illustrative Sketch Masterplan	HP/WIN/SKMP01
CD4/3		Parameters Plan [Superseded by HP/WIN/PP01 Rev B]	HP/WIN/PP01
CD4/4		Topographical Land Survey	S13-199
		Original Submission Documents	
CD4/5	CD4 File 1	Application Covering Letter	-
CD4/6		Supporting Planning Statement (including Affordable Housing Statement and Section 106 Heads of Terms)	-
CD4/7		Statement of Community Involvement	-
CD4/8		Transport Assessment	-
CD4/9		Travel Plan Framework	-
CD4/10		Ecological Assessment [Superseded by August Version]	-
CD4/11		Landscape and Visual Impact Assessment	-
CD4/12		Tree Quality Survey, Root Protection Areas and Development Implications	-
CD4/13	CD4 File 2	Air Quality Assessment	-
CD4/14		Noise Impact Assessment	-
CD4/15	CD4 File 2	Flood Risk and Surface Water Drainage Assessment	-
CD4/16		Archaeological Desk-Based Assessment	-
CD4/17		Phase 1 Geo-Environmental Ground Investigation	-
CD4/18	CD4 File 3	Agricultural Land Classification Assessment	-
CD4/19		Proposed Waste Management Strategy	-
CD4/20		Outline Utilities Strategy	-
CD4/21		Socio-Economic Impact Assessment	-

Core Document Reference	File Reference	Title	Document Reference
		Additional Plans and Documents	
CD5/1	CD5	Proposed Highway Improvements: Swanlow Lane/ Townfields Road Signals Plan	CBO-0149-009
CD5/2		Walking & Cycling Catchment and Site Accessibility	Figure A
CD5/3		Boundary Treatment Proposals Plan	1789/P07a
CD5/4		Parameters Plan	HP/WIN/PP01 Rev B
CD5/5		EIA Screening Report, Covering Letter and Email	-
CD5/6		Ecological Assessment – 13 August 2013	-
CD5/7		CWaC EIA Screening Opinion Letter	-
CD5/8		National Planning Casework Unit EIA Letter	-
CD5/9		Addendum to Ecological Assessment	-
CD5/10		Technical Note: Review of Swanlow Lane / Townfields Road Signal Junction Improvement	-
		2018 Additional Plans and Documents	
CD5/11	CD5	Updated Transport Assessment	-
CD5/12		Updated Ecology Note	-
CD5/13		Indicative On-site Open Space Plan	HP/WIN/IOSP/01
CD5/14		Phasing Plan	HP/WIN/IPP/0
		Design and Access Statement	
CD6/1	CD6 – CD10	Design and Access Statement	-
		Correspondence (with DCLG/ PINS/ CwaC)	
CD7/1	CD6 – CD10	Communities and Local Government Letter to Reopen Inquiry 14 April 2015	-
CD7/2		Letter J Stephens 21 March 2014	-
		Statement of Common Ground	
CD8/1	CD6 – CD10	Copy Statement of Common Ground 2015	-
		Grounds of Appeal	
CD9/1	CD6 – CD10	Grounds of Appeal	-
		Statement of Case	
CD10/1a	CD6 – CD10	Statement of Case (January 2014)	-
CD10/1b		Statement of Case (July 2015))	
CD10/2		Statement of Case (December 2017)	-
CD10/3		CwaC Statement of Case (December 2017)	-
		Additional Council Core Documents	
CD11/1	CD11	Appeal decisions: APP/A0665/A/15/3129628. Land adjacent to Shepherds Fold Drive, Winsford	-
CD11/2	CD11	Appeal decisions: APP/A0665/W/16/3151068. West Winds, Chester Lane, Winsford.	-
CD11/3		High Court Decision: Cawrey Limited v SoSCLG (2016) EWHC 1198	-
CD11/4		High Court Decision: De Souza v SoSCLG EWHC 2245	-
CD11/5		Land Allocations Background Paper (2017)	-
CD11/6		Brownfield Register	-

Core Document Reference	File Reference	Title	Document Reference
CD11/7		Appeal decision Land South of Watlington Road, Benson	-
CD11/8		CWaC Self-build Register	-
		National Planning Policy and Ministerial Statements	
CD12/1	CD12 File 1	National Planning Policy Framework (July 2018)	-
CD12/2		National Planning Practice Guidance: Housing and economic land availability assessment (September 2018)	-
CD12/3		(Superseded) National Planning Practice Guidance: Delivering a wide choice of quality homes (March 2012)	-
CD12/4		Sajid Javid's speech to the Federation of Master Builders 12 December 2017	-
CD12/5		Autumn Budget (November 2017 by Philip Hammond MP)	-
CD12/6	CD12 File 2	House of Commons Briefing Paper: Self-Build and Custom Build Housing (March 2017)	-
CD12/7		Housing White Paper – Fixing our Broken Housing Market (February 2017)	-
CD12/8		Support for small scale developers, custom and self-builders – Housing and Growth Ministerial Statement by The Minister of State for Housing and Planning (Brandon Lewis on 28 November 2014)	-
CD12/9		Lyons Housing Review: Mobilising across the nation to build the homes our children need (October 2014)	-
CD12/10		Announcement – Government investment to build thousands of new homes (Eric Pickles on 26 June 2014)	-
CD12/11		Laying the Foundations: A Housing Strategy for England (November 2011)	-
CD12/12		Homes England Strategic Plan 2018/19 – 2022/23	-
CD12/13		Housing delivery test measurement rule book (July 2018)	-
CD12/14		Technical consultation on updates to national planning policy guidance (26 October 2018)	-
		Local Plan Policy and Guidance	
CD13/1	CD13 File 1	Cheshire West and Chester Local Plan (Part One) (adopted January 2015)	-
CD13/2	CD13 File 1	Vale Royal Borough Local Plan – Policies saved after 29 Jan 2015	-
CD13/3a		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014)	-
CD13/3b		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014) - Appendices Main Modifications	
CD13/4		Council's Annual Monitoring Report 2018	-
CD13/5	CD13 File 2	Housing Land Monitor 2017-18	-

Core Document Reference	File Reference	Title	Document Reference
CD13/6		Housing and Economic Land Availability Assessment (2017)	-
CD13/7		Council Plan (2016-2020)	-
CD13/8		Strategic Housing Market Assessment (2013)	-
CD13/9		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 8: the supply and delivery of housing land	-
CD13/10		ED112: Council note to the Inspector on communal establishments and housing requirement	-
		Emerging Development Plan Background Documents	
CD14/1	CD14 – CD16	Local Plan (Part Two) Land Allocations and Detailed Policies – Submission Plan	-
CD14/2		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 3: the supply and delivery of housing	-
		Neighbourhood Guidance	
CD15/1	CD14 – CD16	Winsford Neighbourhood Plan (Made 19 November 2014)	-
CD15/2		Winsford Neighbourhood Plan Examiner's Report (30 July 2014)	-
		Court Cases	
CD16/1	CD14 – CD16	Verdin (T/A The Darnhall Estate) v The Secretary of State for Communities and Local Government and Others (Neutral Citation Number: [2017] EWHC 2079 (admin))	-
CD16/2		Woodcock Holdings Ltd v The Secretary of State for Communities and Local Government (Neutral Citation Number: [2015] EWHC 1173 (Admin))	-
CD16/3		Ivan Crane vs Secretary of State and Harborough District Council (Neutral Citation Number: [2015] EWHC 425 (Admin))	-
CD16/4	CD14 – CD16	R (Cherkley Campaign Limited) v Mole Valley District Council (Neutral Citation Number: [2014] EWCA Civ 567)	-
CD16/5	CD14 – CD16	Coleman v Secretary of State (Neutral Citation Number: [2013] EWHC 1138 (Admin))	-
CD16/6		R v Rochdale MBC ex parte Milne (Neutral Citation Number: [2000] EWHC 650 (Admin))	-
CD16/7		Allaston Developments Limited v Secretary of State and Others (Claim No. CO/476/2016)	-
CD16/8		Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) (Neutral Citation Number: [2017] UKSC 37)	-

Core Document Reference	File Reference	Title	Document Reference
		Appeal Decisions	
CD17/1	CD17 File 1	Planning Inspectorate appeal reference APP/A0665/V/15/3013622: Land At Clifton Drive, Sealand Road, Chester; Secretary of State Decision (27 February 2018)	-
CD17/2		Planning Inspectorate appeal reference APP/P1615/A/14/2218921RD: Land Off Driffield Road, Allaston Road, and Court Road, Lydney, Gloucestershire; Secretary of State Decision (7 November 2017)	-
CD17/3		Planning Inspectorate appeal reference APP/A0665/A/12/2188464: Land Opposite Brook Hall Cottages, Chester Road, Tattenhall; Secretary of State Decision (21 April 2017)	-
CD17/4	CD17 File 2	Planning Inspectorate appeal reference APP/A0665/A/12/2185667: Land To The Rear Of 15-38 Greenlands, Tattenhall, Cheshire; Secretary of State Decision (21 April 2017)	-
CD17/5		Planning Inspectorate appeal reference APP/A0665/A/12/2180958: Land Adjacent To Adari, Chester Road, Tattenhall, Cheshire; Secretary of State Decision (21 April 2017)	-
CD17/6	CD17 File 3	Planning Inspectorate appeal reference APP/F2415/A/14/2213765: Land Off Dunton Road, Broughton Astley, Leicestershire; Secretary of State Decision (20 March 2015)	-
CD17/7		Planning Inspectorate appeal reference APP/K2420/A/13/2208318: At Land Surrounding Sketchley House, Watling Street, Burbage, Leicestershire; Secretary of State Decision (18 November 2014)	-
CD17/8	CD17 File 3	Planning Inspectorate appeal reference APP/H1840/A/13/2199426: Pulley Lane, Droitwich Spa; Secretary of State Decision (2 July 2014)	-
CD17/9		Planning Inspectorate appeal reference APP/F2415/A/12/2183653: Site At Land South Of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire; Secretary of State Decision (17 April 2014)	-
CD17/10		Planning Inspectorate appeal reference APP/P3040/A/07/2050213: Land at Gotham Road, East Leake, Nottinghamshire, LE12 6JG; Secretary of State Decision (3 March 2008)	-
CD17/11		Planning Inspectorate appeal reference APP/C1950/W/17/3190821: Entech House, London Road, Woolmer Green SG3 6JE; Inspector Appeal Decision (26 October 2018)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/12		Planning Inspectorate appeal reference APP/W3520/W/18/3194926: Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF; Inspector Appeal Decision (28 September 2018)	-
CD17/13		Planning Inspectorate appeal reference APP/P0119/W/17/3191477: Land east of Park Lane, Coalpit Heath, South Gloucestershire; Inspector Appeal Decision (6 September 2018)	-
CD17/14		Planning Inspectorate appeal reference APP/N1730/W/17/3185513: Broden Stables, Redlands Lane, Crondall, Farnham GU10 5RF; Inspector Appeal Decision (23 August 2018)	-
CD17/15		Planning Inspectorate appeal reference APP/J0405/W/16/3158833: Land north of Aylesbury Road, Wendover, Buckinghamshire; Inspector Appeal Decision (9 October 2017)	-
CD17/16		Planning Inspectorate appeal reference APP/F4410/W/16/3158500: Land off Westminster Drive, Dunsville, Doncaster, South Yorkshire DN7 4QF; Inspector Appeal Decision (12 July 2017)	-
CD17/17		Planning Inspectorate appeal reference APP/V4250/A/14/2226998: Land South West of Bee Lane, Atherton, Wigan; Inspector Appeal Decision (17 July 2015)	-
CD17/18	CD17 File 3	Planning Inspectorate appeal reference APP/A0665/W/14/3001859: Land off Boundary Park, Parkgate, Neston, Cheshire CH64 6TN; Inspector Appeal Decision (7 July 2015)	-
CD17/19		Planning Inspectorate appeal reference APP/Y2810/A/14/2225722: Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton; Inspector Appeal Decision (18 June 2015)	-
CD17/20		Planning Inspectorate appeal reference APP/A2470/A/14/2222210: Greetham Garden Centre, Oakham Road, Greetham, Oakham; Inspector Appeal Decision (26 May 2015)	-
CD17/21		Planning Inspectorate appeal reference APP/N1350/A/14/2217552: Land off Sadberge Road, Middleton St George, Darlington; Inspector Appeal Decision (12 January 2015)	-
CD17/22		Planning Inspectorate appeal reference APP/Z2830/A/14/2216712: Land off Grays Lane, Paulerspury, Towcester NN12 7NW; Inspector Appeal Decision (9 January 2015)	-
CD17/23		Planning Inspectorate appeal reference APP/D0840/A/13/2209757: Land north of Upper Chapel, Launceston; Inspector Appeal Decision (11 April 2014)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/24		Planning Inspectorate appeal reference APP/F2360/W/18/3198822: Land off Brindle Road, Bamber Bridge, Preston, PR5 6YP; Inspector Appeal Decision (31 August 2018)	-
CD17/25		Planning Inspectorate appeal reference APP/X0415/W/18/3202026: Land to the rear of the Old Red Lion, High Street, Great Missenden, HP16 0AU; Inspector Appeal Decision (4 September 2018)	-
CD17/26	CD17 File 4	Planning Inspectorate appeal reference APP/U3935/W/17/3192234: Land at Hill Cottage, Ermin Street/Blunsdon Hill, Broad Blunsdon, Swindon; Inspector Appeal Decision (18 October 2018)	-
CD17/27		Planning Inspectorate appeal reference APP/C1760/W/17/3170081: Abbotsford, Braishfield Road, Romsey, Hampshire SO51 0PB; Inspector Appeal Decision (24 November 2017)	-
CD17/28		Planning Inspectorate appeal reference APP/F1610/W/16/3165805: Land at The Leasows, Chipping Campden GL55 6EB; Inspector Appeal Decision (2 November 2017)	-
CD17/29	CD17 File 4	Planning Inspectorate appeal reference APP/D0840/W/16/3142806: Land off Tregenna Lane, Camborne TR14 7QU; Inspector Appeal Decision (09 February 2017)	-
CD17/30		Planning Inspectorate appeal reference APP/R3705/W/16/3155070: Land North of Manor Barns, Newton Lane, Austrey, Warwickshire CV9 3EP; Inspector Appeal Decision (14 November 2016)	-
CD17/31		Planning Inspectorate appeal reference APP/W3005/W/16/3150467: Land between Pleasley Road and North of Mansfield Road, Skegby, Sutton in Ashfield, NG17 3BS; Inspector Appeal Decision (5 October 2016)	-
CD17/32		Planning Inspectorate appeal reference APP/C1625/W/15/3133335: Land rear of Canonbury Street, Berkeley, Gloucestershire; Inspector Appeal Decision (21 November 2016)	-
CD17/33		Planning Inspectorate appeal reference APP/L3245/W/15/3137161: Land at Foldgate Lane, Ludlow, Shropshire; Inspector Appeal Decision (10 November 2016)	-
CD17/34		Planning Inspectorate appeal reference APP/A0665/W/15/3140241: Land at Park Farm, Rudheath, Northwich, Cheshire CW9 7HF; Inspector Appeal Decision (12 May 2016)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/35		Planning Inspectorate appeal reference APP/H1840/W/15/3008340: Land off Worcester Road, Drakes Broughton, Worcestershire; Inspector Appeal Decision (14 January 2016)	-
CD17/36		Planning Inspectorate appeal reference APP/H1840/W/15/3005494: Walcot Meadow, Walcot Lane, Drakes Broughton, Pershore, Worcestershire; Inspector Appeal Decision (4 August 2015)	-
CD17/37		Planning Inspectorate appeal reference APP/A0665/A/14/2227851: Land to the rear of 32 and 32A High Street, Tarporley, Cheshire; Inspector Appeal Decision (25 February 2016)	-
CD17/38		Planning Inspectorate appeal reference APP/K3415/A/14/2225799: At Land To The North Of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire; Secretary of State Decision (13 February 2017)	-
CD17/39	CD17 File 4	Planning Inspectorate appeal reference APP/K3415/A/14/2224354: Land And Buildings Off Watery Lane, Curborough, Lichfield WS13 8ES; Secretary of State Decision (13 February 2017)	-
CD17/40		Planning Inspectorate appeal reference APP/A0665/W/14/3000528: Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire CW9 8JU; Inspector Appeal Decision (3 September 2015)	-
CD17/41		Planning Inspectorate appeal reference APP/A0665/A/14/2226994: Land at Fountain Lane, Davenham, Cheshire; Inspector Appeal Decision (3 September 2015)	-
CD17/42		Planning Inspectorate appeal reference APP/C3105/A/14/2226552: Land At Sibford Road, Hook Norton, Banbury, Oxfordshire; Secretary of State Decision (7 September 2015)	-
CD17/43		Planning Inspectorate appeal reference APP/G1630/W/14/3001706: Land adjacent to Cornerways, High Street, Twyning, Tewkesbury GL20 6DE; Inspector Appeal Decision (13 July 2015)	-
CD17/44		Planning Inspectorate appeal reference APP/A0665/A/14/2214400: Land at Well Meadow, Well Street, Malpas, Cheshire, STY14 8DE; Secretary of State decision (7 January 2015)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/45		Planning Inspectorate appeal reference APP/K0235/W/16/3147287: Land to the south and west of Whitworth Way, Wilstead, Bedfordshire; ; Inspector Appeal Decision (29 March 2017)	-
CD17/46		Planning Inspectorate appeal reference APP/X1545/W/15/3009772: Southminster Road, Burnham-On-Crouch, Essex; Secretary of State Decision (20 April 2017)	-
		Other Documents	
CD18/1	CD18	Federation of Master Builders, House Builders Survey (September 2018)	-
CD18/2		House Builder Federation, Reversing the Decline and Small House Builders Report (March 2017)	-
CD18/3		Torbay Local Plan 2012 to 2030	-
CD18/4		Federation of Master Builders, Improving public procurement for construction SME(June 2013)	-
CD18/5		Planning for Custom Build Housing – A Practice Guide, National Self Build Association (November 2012)	-
CD18/6	CD18	The City of London Corporation, Local Procurement Charter For City Developers (February 2011)	-
CD18/7		HOW Planning Representations to CwaC Local Plan (Part Two) 29 January 2018	-
CD18/8		An introduction to the Home Building Fund	-
CD18/9		HBF Chairman's Update – November 2017	-
CD18/10		Report to Cotswold District Council	-

Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

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

SECTION 2: ENFORCEMENT APPEALS

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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

The Planning Inspectorate

Appeal Decision

Inquiry Held on 11-13 and 17-19 July 2018

Site visit made on 10 and 18 July 2018

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 6th September 2018

Appeal Ref: APP/P0119/W/17/3191477
Land east of Park Lane, Coalpit Heath, South Gloucestershire BS36 1AT

- 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 Barratt Homes (Bristol) Limited and David Wilson Homes (South West) Ltd against the decision of South Gloucestershire Council.
- The application Ref PT17/0215/O, dated 17 January 2017, was refused by notice dated 24 August 2017.
- The development proposed is the construction of up to 215 homes, public open space and associated infrastructure with all matters reserved except access.

Decision

1. The appeal is allowed and planning permission is granted for the construction of up to 215 homes, public open space and associated infrastructure with all matters reserved except access at land east of Park Lane, Coalpit Heath, South Gloucestershire BS36 1AT in accordance with the terms of the application, Ref PT17/0215/O, dated 17 January 2017, subject to the conditions in the Schedule below.

Applications for Costs

2. At the Inquiry an application for costs was made by the appellants against the Council, and by the Council against the appellants. These applications are the subjects of separate Decisions.

Procedural Matters

3. In terms of access, it is only the proposed access into the site from Park Lane that is being applied for here. The access roads and paths within the development site itself are merely illustrative. The scheme's layout as set out in the Design and Access Statement is also simply illustrative, but because the appellants seek to rely on it in advancing their argument that the proposal is acceptable I have taken it into account as indicating their intentions in regard to layout.

4. Late evidence was submitted by both main parties by way of rebuttal proofs, including and principally in terms of housing land supply. This led to progress during the presentation and cross-examination of the evidence being slower than anticipated, which in turn led to the submission of the main parties' closing statements and costs applications and relevant comments on them being dealt with in writing following the Inquiry's last sitting day. I have taken

these submissions fully into account in this appeal decision and in the costs decisions.

5. After the last sitting day but before the Inquiry closed the Government published the updated version of the National Planning Policy Framework (NPPF). The main parties were given a period of two weeks to provide any comments arising from the revised NPPF on the issues raised in the appeal. Both parties did so and I have taken their comments into account accordingly. Evidence was provided by both main parties referencing various paragraph numbers in the previous version of the NPPF, which was in force at the time. Any reference to paragraph numbers in the NPPF below refers to the paragraph numbers in the new revised version, which is now extant national planning policy, the previous version having been superseded.

6. The Council also submitted a copy of the Court of Appeal (CoA) judgement in the Hallam Land case published following the last sitting day of the Inquiry.[1] The appellants also submitted a copy of the Wotton Road, Charfield appeal decision, which also post-dated the Inquiry's last sitting day.[2] The original High Court judgement in Hallam Land, the impending CoA judgement and the Charfield appeal decision were the subject of evidence at the Inquiry and consequently I have taken the CoA judgement and that appeal decision into account in my decision.

7. A signed legal agreement[3] dated 19 July 2018 was submitted on the last sitting day of the Inquiry. I address this in more detail below.

Main Issues

8. The following are the main issues in this appeal:

   (a) Whether the proposed development would harm the landscape to the extent that it would fail to accord with the development plan and whether the site is a 'valued landscape' in the context of the National Planning Policy Framework (NPPF).

   (b) Whether the appeal site would be located beyond appropriate distances to key services and facilities such as to fail to accord with the development plan and the NPPF.

   (c) The weight to be given to the loss of agricultural land (Best and Most Versatile or otherwise) and whether the development would fail to accord with the development plan and NPPF.

   (d) If harm is identified in issues (a) to (c) above, would these adverse impacts significantly and demonstrably outweigh the benefits including the provision of new market and affordable homes in an authority that cannot currently demonstrate a five year housing land supply?

[1] *Hallam Land v SSCLG [2018] EWCA Civ 1808*
[2] APP/P0119/W/17/3179643
[3] Under s106 of the Town & Country Planning Act1990, s278 of the Highways Act 1980 and s111 &120 of the Local Government Act 1972 and other statutory provisions

Reasons

Landscape and Visual Impact

Is the Site a Valued Landscape?

9. NPPF paragraph 170 states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan. The appeal site does not lie within a statutorily designated landscape. It lies within Local Character Area 13: Frome Valley (LCA13) of the South Gloucestershire Landscape Character Assessment[4], which is summarised as *"a diverse, enclosed, intricate combination of agriculture and settlement, divided by major roads."*

10. The 15.23 hectare site comprises a dry valley whose ridges form its eastern and western boundaries along which run a public footpath (PROW) and Park Lane respectively. Park Lane is a road linking the A432 Badminton Road to the west side of Coalpit Heath and Frampton Cotterell containing ribbon residential development on its western side. To the north is suburban residential estate development on the southern edge of the settlement built within the last 20 years or so bounded by a substantial tree and hedge screen (the earlier Park Farm development to the north east and the more recent Meads development to the north west). To the east is Blackberry Brake, an area of ancient woodland and Woodlands Farm and its surrounding agricultural fields. To the south is the railway embankment carrying the main London-Bristol railway line, which at approximately 25m in height is a dominant feature in the landscape and severs the dry valley landform, which continues southwards beyond it. The valley of the River Frome itself lies to the west of Park Lane and cannot be seen from the site.

11. The dry valley landform is mentioned several times in LCA13. In particular in the Section headed Landscape Character on page 185 it states: *"Despite the extensive areas of settlement and urban edges, there are areas of the landscape and pockets within settlements which retain, or largely retain, a distinct rural character."* It then goes on (top of page186) to describe both the Frome Valley and the dry valley as comprising *"an undulating rural valley landscape which is visually contained by adjacent ridgelines, the 'horseshoe' shaped pattern of Winterbourne, Frampton Cotterell and Coalpit Heath and the railway embankment to the south."*

12. LCA13 notes that the linear housing pattern along Park Lane and ridgeline to the south of Frampton Cotterell is visually evident from the dry valley but that that part of Coalpit Heath to the east of Blackberry Brake is screened from it by the woodland. It states that recent housing development along the northern section of the valley has encroached onto the open land making its edge more prominent in local views, *"which in turn increases the significance of the remaining rural dry valley landscape."* It is also noted that away from the settlement edges there is a strong rural character to the Frome Valley and the dry valley and a degree of tranquillity which contrasts strongly with the surrounding settlement, and that these characteristics are sensitive to further encroachment by development (pages 186 and 191).

[4] NE Appendix F

13. The above description of the site and its context within LCA13 is accurate and sets the basis for an assessment as to whether the site is, or forms part of, a 'valued landscape' in terms of NPPF paragraph 170. In making this assessment it is important to highlight four principles, which are agreed between the main parties as follows:

    i) There is no requirement for the site to be statutorily designated;

    ii) Mere popularity alone is insufficient;

    iii) The landscape should exhibit some demonstrable characteristics which takes it out of the ordinary; and

    iv) Mitigation is irrelevant to consideration of whether a landscape should be regarded as 'valued' in the first place.

14. It is also agreed that the criteria in Box 5.1 of GLVIA3[5] can assist with such an assessment since it provides an objective framework in which to consider the landscape's value, albeit that this should not be used as a checklist and judgement is required.[6] I address these criteria in turn below, but before I do so I note that the appellants criticise the Council's landscape witness for being unclear as to what area of land he considers to be a 'valued landscape'.[7] From NE's evidence I took this to be the dry valley as far south as the railway embankment including the south west field controlled by the appellants but which lies outside the appeal site, although I acknowledge that the Council's evidence vacillated on this point.

15. *Representativeness*. As set out above, the undulating landform and degree of tranquillity exhibited by the site is representative of LCA13. The site contains a mix of medium sized arable fields whose boundaries are formed by hedges, it contains a large number of mature trees and abuts the semi-natural ancient woodland of Blackberry Brake and is surrounded by the horseshoe shaped settlements around it all of which are listed as characteristics of LCA13, and so it is also representative in these respects. As set out above, the dry valley within which the site lies is mentioned several times in the LCA13 text. The site is therefore representative of LCA13.

16. *Landscape Quality*. The Council's key point here is that the severance of the dry valley by the railway embankment has created an intimate landscape that retains a sense of tranquillity contrasting strongly with the surrounding settlement especially when compared with the more degraded landscape to the south of the railway line. It also argues that the influence of the surrounding settlement has been overstated by the appellants because: the hedgerow on the northern boundary of the site forms a clear break between it and the existing adjacent housing development as recognised by the Inspector in granting permission for The Meads in 2009[8] ; and because the Park Lane dwellings are set back behind substantial front gardens and are of a fairly low density.

17. I acknowledge that parts of the site are relatively tranquil compared to the built-up areas of the adjoining settlements and that its dry valley form creates

[5] CD-OD3: Landscape Institute – Guidelines for Landscape and Visual Impact Assessment, 3rd Edition, April 2013
[6] As set out in the Council's Closing Submissions #7-9
[7] Summarised in the Appellants' Closing Submissions #75
[8] CD-RA1 #12

areas of intimacy when walking through it, especially from those parts of the PROW furthest away from its north, south and west boundaries. But it nonetheless is heavily impacted on by the existing residential development beyond its northern boundary and on Park Lane because that development can be seen from the majority of the site in the summer and would be more visible in the winter. Anyone walking along the PROW cannot fail to notice that this land lies on the edge of a built-up area. The south of the site is heavily affected by the dominant man-made feature of the high railway embankment, whose slopes contain no trees to screen its effect. The gantries and wires of the impending electrification of the line will only heighten its dominant effect on the landscape of the site. As such I consider that the site does not exhibit a particularly high landscape quality, albeit parts of it have an intimate and tranquil feel as recognised in the LCA13 description.

18. *Scenic Quality and Rarity*. There is no doubt that the site and dry valley as a whole exhibits scenic quality, which is recognised by many local residents. But such scenic quality is common to many areas of undeveloped countryside and there is nothing unique about this particular dry valley or the fields within it. It does not in my judgement possess any demonstrable characteristics which take it out of the ordinary, pleasant though it undoubtedly is.

19. *Recreational Value*. I have heard evidence that the PROW is well used and have seen this is so during my site visits. I also acknowledge that it links to other rural footpaths including the Frome Valley Walkway via the footway on Badminton Road at its southern end. Whilst its overall aspect would be altered by the development it would nonetheless be retained in its present location and would continue to have aspects across open fields within the site at its northern and southern ends. Its recreational value would consequently not be seriously reduced.

20. *Perceptual Aspects*. I have already addressed the perception of the site's relative remoteness and tranquillity. The proposed development would obviously detract from these qualities but, as indicated, there is also a clear perception of the settlement edge and the railway embankment from the site.

21. *Cultural Associations*. I heard from the Council, local residents and from Juliet King-Smith about her father Dick King-Smith's (DKS) ownership of Woodlands Farm between 1948 and 1962. DKS was the author of The Sheep Pig (the story behind the film Babe) and many other well-known children's books including The Fox Busters and took inspiration for these books from the farm and the local area. Whilst DKS may not have the allure or national renown of, for instance Thomas Hardy in respect of Dorset or William Wordsworth in respect of the Lake District as mentioned by the appellants, I still consider DKS's associations with the area including the site to be an important cultural association because he is a well-known and well-read children's author.

22. In summary though, whilst there are clearly aspects of the undeveloped dry valley north of the railway line that give it value, especially to local people and former residents, these are not sufficient in my opinion for it to be classified as a 'valued landscape' in terms of NPPF paragraph 170 because there are insufficient demonstrable characteristics which take it out of the ordinary. This is especially so when it is looked at relative to the range/quality of landscapes in the country as a whole. However, that does not mean that it has no value in landscape or visual terms and I now assess these aspects in more detail.

Landscape Character

23. I acknowledge the Council's point that the dry valley is listed as a specific and important example of a particular landscape feature of LCA13 that is referred to several times in the descriptive text as outlined above, rather than the site containing all the key characteristics of LCA13 as set out on pages 179 and 180. I have concluded above that the site is representative of LCA13.

24. However, I have also explained that the dry valley is heavily influenced by the settlement edge of the Park Farm and Meads housing estates to the north and the ribbon development on Park Lane, which continues southwards nearly as far as the railway embankment. It is not a dry valley in the middle of the open countryside. Whilst the significance of the dry valley may have increased as a result of the Park Farm and Meads housing in the sense that it is more valued by local people I consider that its landscape quality is considerably affected by that housing, by the dwellings on Park Lane and by the railway embankment, all of which detract from its landscape quality.

25. The proposal would introduce blocks of suburban housing development, which themselves would be of a similar albeit lesser density than the neighbouring estates to the north. Due to the topography this would have to step down the slopes of the dry valley, which would obviously harm its rural landscape character. But it would have many mitigating features. Most of the hedgerows and nearly all the TPO trees would be retained and enhanced as ecological corridors for wildlife. The lower part of the valley would be kept clear of built development. The field to the north east of the site next to Blackberry Break and the two southern fields would be kept entirely free of built development and planted as wildflower meadows to be used as public open space (POS). There would also be considerable additional planting and other open space.

26. In summary I agree with the Council that the proposed development would harm the landscape character of the dry valley. But such harm would to some extent be tempered by its landscape-led nature for the reasons explained above.

Visual Effects

27. There is agreement between the main parties that the site is visually well contained as illustrated in the photographs in their landscape proofs of evidence and in the appellants' Landscape and Visual Impact Assessment (LVIA) submitted with the application[9]. I was able to confirm as much during my visits to the site and surroundings.

28. As a result there is no doubt that views of the valley sides will change considerably for residents living in the dwellings to the north of the site and looking across it from Park Lane. This will also be the case for people walking or driving up Park Lane and for walkers on the PROW. The view will no longer be one of undeveloped land. The change would clearly be detrimental to existing residents and walkers but, again, this would to some extent be tempered by the design of the proposed scheme. The visual containment of the site would prevent more than local views of the new urban development.

[9] CD-A29

LVIA Methodology

29. The Council has raised what it considers to be a number of failings and inconsistencies in the appellant's LVIA methodology.[10] The appellants were partly able to explain these. For example, their landscape witness (RMW) produced the full methodology on which he had arrived at his conclusions on the significance of landscape and visual effects in the LVIA in Appendix 1 of his rebuttal proof of evidence. I am confident that this is the methodology which he used albeit that this was unclear from the LVIA text and tables. However, many of the Council's criticisms regarding inconsistencies in the LVIA's assessment of individual landscape and visual effects went unexplained.[11]

30. Nonetheless, it is the overall effect of the development on the landscape character and the visual effect as expressed in the narrative that is the important issue here, as agreed by the appellants and the Council and as recommended in GLVIA3. It is natural that the two parties have drawn different conclusions on these effects because, ultimately, the assessment of individual landscape character and visual elements is a matter of professional judgement. I have not sought to delve in this decision into the detail of each individual element of landscape character or each visual receptor and assess whether the Council or the appellants are correct because that is unnecessary. Rather, taking into account the LVIA, both parties' evidence and the evidence of my own eyes during the site visits I have come to a reasoned conclusion as set out below, in the light of my reasoning above.

Conclusion on Landscape and Visual Impact

31. The dry valley would be substantially altered by the development and this would impact on sensitive visual receptors (i.e. people), in particular the residents on the southern edge of the Park Farm and Meads dwellings facing the site and those in the homes along Park Lane as well walkers using the PROW. Consequently the development would harm the landscape of the dry valley, which is a notable landscape feature of LCA13.

32. However, the dry valley north of the railway line is not a 'valued landscape' for the reasons set out above. Its visual containment would mean that wider views within LCA13 would not be affected. The harm would be tempered or mitigated to some extent by the landscape-led nature of the scheme, which keeps the lower part of the dry valley free of built development as well as retaining the southern and north eastern fields as wildflower meadows, and by retaining the majority of the mature trees and hedges and increasing and strengthening the planting on the site.

33. The relevant development plan policies regarding landscape are Policies CS9 (Managing the Environment and Heritage) and CS34 (Rural Areas) of the South Gloucestershire Local Plan: Core Strategy 2006-2027 (CS) and Policy PSP2 (Landscape) of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (PSP) adopted in November 2017 following the Council's refusal of the application.

34. Subsection 3 of Policy CS9 states that new development will be expected to conserve and enhance the character, distinctiveness and amenity of South

[10] As summarised in its Closing Submissions#4 iii-vi and in NE Appendix C
[11] Especially in regard to Ibid v & vi above

Gloucestershire. For the above reasons the proposed development would not do so and hence would fail to accord with Policy CS9.

35. Policy CS34 has three subsections that are particularly relevant to landscape. Subsection 1 requires development proposals to protect, conserve and enhance the rural areas' distinctive character, beauty, wildlife, landscape, biodiversity and heritage. I disagree with the appellants' contention that this requirement exceeds the NPPF requirement (now in paragraph 170) to recognise the intrinsic character and beauty of the countryside because the CS was adopted in December 2013, post-dating the original NPPF. Subsection 1 takes this into account precisely by seeking to protect, conserve and enhance rural landscapes. The development would not protect or conserve, let alone enhance the local landscape despite its mitigating elements.

36. Subsection 3 of Policy CS34 states that development proposals will protect the unique and valuable setting provided by the rural areas to the urban areas and other settlements in South Gloucestershire, which contributes to the district's distinctive sense of place and identity. Subsection 5 states that such proposals will maintain the settlement boundaries defined on the Policies Map around rural settlements until they are reviewed through a relevant replacement Local Plan. The proposed development would be outside the settlement boundary of Coalpit Heath/Frampton Cotterell and would not protect its setting for the above reasons. It would not comply with Policy CS34.

37. Policy PSP2 states that development proposals will be acceptable where they conserve and where appropriate enhance the landscape including its tranquillity, sense of place and setting, trees and hedgerows and topography and landforms. Where harm would result it must be clearly demonstrated that this would be outweighed by the proposal's benefits and minimised and mitigated through the form of the development and landscape enhancements. In my opinion the mitigating elements of the scheme would not sufficiently mitigate its harm on the landscape character of the dry valley for the above reasons. Consequently, the proposed development would fail to comply with Policy PSP2, irrespective of its wider benefits, which I deal with below in terms of the substantive overall planning balance.

38. Despite not being a 'valued landscape' as defined by NPPF paragraph 170 a), the dry valley including the site clearly has an intrinsic character and beauty especially in terms of its landform. The proposed development would harm this landform and so would not in my opinion recognise the intrinsic beauty of this part of the countryside, and so would fail to comply with paragraph 170 b). Overall I consider that significant weight should be given to the conflict with DP Policies CS9, CS34 and PSP2 and to NPPF paragraph 170.

Accessibility to Key Services and Facilities

39. The distance of the appeal site to key local services and facilities is set out in the Transport Assessment and in evidence.[12] This includes convenience shops, schools, doctors and dental surgeries and bus stops. There are minor differences between the parties in the calculation of the distances between the site and the some of these local facilities. But, in essence, it is agreed that only the Nisa convenience store and the schools would be within the walking

[12] For instance in BR Appendix 10, ID20 & ID21

and cycling guidance distances in the explanatory text to Policy PSP11[13], the most relevant current policy.

40. The Officer's Committee Report[14] (OR) stated that the distance from the proposed development to local facilities was *"on the edge of acceptability and that this could encourage some residents to make additional trips by private car".* The Highway Officer's conclusion was that he did not believe that these distances would result in the development being car dependent contrary to CS Policy CS8, especially when comparing the general proximity of the site to higher level facilities and employment areas at Yate and Emersons Green on the edge of Bristol. On that basis the OR considered that, on balance, the distance of the site from services and facilities was acceptable.

41. The Council argued at appeal that the PSP had not been adopted at the time the application was refused and so the failure to comply with the appropriate walking and cycling distances set out in the explanatory text to Policy PSP11 (Transport Impact Management) held limited weight, whereas now they hold full weight as part of the development plan (DP). I agree that is what the OR said and can therefore understand why the Council is arguing this point, although the OR did assess this issue on the basis of these PSP11 distances anyway, which somewhat weakens the argument.

42. Subsection 3 of PSP11 states that development proposals which generate a demand for travel will be acceptable where they are located on safe, useable walking or cycling routes that are an appropriate distance to key services and facilities, or where 'some' key services are accessible by bus where the bus stop is similarly accessible by walking. These latter key services are exampled in the explanatory text (CS paragraph 5.22) rather than the Policy wording as *"e.g. just major employment opportunities or supermarket facilities, rather than the majority or all of the key services and facilities."*

43. CS paragraph 5.20 states that a failure to meet subsection 3 will be considered on balance with other objectives in the DP and NPPF, along with the degree of harm arising such as number of car dependent journeys that might arise and residents that would be without sustainable access to facilities and services. Paragraph 5.25 states that the larger the proposal and/or the larger the reliance on public transport to access key facilities and services, the more frequent and extensive a bus service will be required, in order to avoid a reliance on private car journeys.

44. The development would obviously generate a significant number of car dependent journeys, which the Highway Authority accepts can be accommodated onto the local road system subject to improvements at certain junctions that would be achieved via S106/S278 contributions. The site is located on the edge of a peripheral settlement to Bristol with no railway station, rather than within the heart of the city where much better public transport would be available. It is inevitable that many if not the majority of people choosing to live on the site would own and regularly use a car including for commuting trips to work in and around the Bristol conurbation, as no doubt many of the residents of Coalpit Heath, Frampton Cotterell and Whitchurch already do.

[13] The Table under CS #5.23 on page 36 – CD-LP3. The Council's Closing Statement #35 refers to these as 'guidance'.
[14] CD-PB2

45. Any assessment of the failing of the scheme to meet the guidance distances in PSP11 should in my view be assessed on the basis that many residents of new residential development in the village would be likely to own cars irrespective of how close to shops and other facilities the site was. Many car trips would also involve combined journeys, such as commuting and shopping, either near commuters' place of work or in the village or between them. In this context NPPF paragraph 103 states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in both plan-making and decision-taking.

46. The nearest bus stops are 560m from the site, which exceeds the recommended distance of 400m in CS paragraph 5.24. The bus stops on Badminton Road, which benefit from more frequent services, are more than double that distance. Yet the nearest bus stops (in Heather Avenue and Beesmoor Road) benefit from the level of service described in CS paragraph 5.24 and a distance of 560m is clearly walkable; Manual for Streets (MfS) states that 800m (about 10 minutes' walk) is typically a walkable distance.[15] I acknowledge that many of the dwellings in the development would be more than 560m from these bus stops but most of them would be within a walkable distance.

47. Most of the local facilities and services are more than the typically 800m walkable distance as set out in MfS and the guidance distances in the explanatory text to PLP11including the doctor's surgery and the Sainsbury's Local on Badminton Road. I agree with the Council that many residents in the proposed development would be unlikely to walk there. But a proportion of those would be likely to make a combined car trip as set out above.

48. The same paragraph in MfS also states that 800m is not an upper limit and that walking offers the greatest potential to replace short car trips, particularly those under 2km. CS paragraph 5.23 says that the walking or cycling route to facilities should be taken into account. The walking route to local services and facilities is generally good (level, paved, lit, flat and safe) and fairly direct.[16] I walked from the edge of the site to the nearest primary school and the facilities in Lower Stone Close in 15 minutes and consider this to be reasonably walkable. I am confident that at least some averagely fit residents would be content to make this walk on a regular basis.

49. Given the distances involved I am confident that some residents would choose to cycle to these facilities. I am also confident that a proportion of residents could and would cycle to work and facilities within a 5.6km cyclable distance because, as the Council's Sustainable Access Profiles for Frampton Cotterell and Coalpit Heath show[17], there are two Designated Town Centres, twenty major employers and twelve safeguarded employment areas within this distance accessible on suitable cycle routes – in Yate and Emersons Green.

50. In summary I acknowledge that most of the local services and facilities are further away from the site than the guidance distance in the explanatory text of Policy PLP11 and certainly further than 800m. But there are a good range of facilities accessible by safe useable walking routes including bus stops providing regular and frequent services to Yate and Emersons Green and I am

[15] CD-OD1, page 45 #4.4
[16] Ibid ID20
[17] BR Appendices 5 & 6

confident that a proportion of fit residents would walk to them nonetheless, including to the two local primary schools. They are also clearly within cyclable distance, as are the two Town Centres and the majority of employers in the area. A proportion of car trips to the local facilities would be likely to be combined trips.

51. For these reasons I conclude that, on balance, the proposed development would be located within appropriate distances of key services and facilities sufficient to comply with subsection 3 of Policy PSP11. Subsection 1 of CS Policy CS8 (Improving Accessibility) states that new development proposals which generate significant demand for travel will be favourably considered the nearer they are located to existing and proposed public transport infrastructure and existing facilities and services. For the above reasons I conclude that the site would be located close enough to such facilities sufficient to comply with Policy CS8.

Loss of Agricultural Land

52. The proposal would result in the loss of 4.9ha of Best and Most Versatile (BMV) agricultural land. The Council argues that if the site is developed only the south-west field of 4.2ha abutting it would be left as productive farmland out of the current 19.4ha currently being farmed as one single agricultural holding and that its size, isolation and separation from a wider holding may affect's its viability as productive agricultural land.

53. I accept the principle of this argument but it would have more merit if the field required access through the appeal site. However, it has its own access through the existing farm gate onto Park Lane, which means it could be independently farmed. It is not uncommon for farm holdings to be made up of a series of non-contiguous fields and it is not necessary for them all to be owned by the farmer. I have been presented with no evidence from the Council to suggest that the continued productive farming of this field would not continue for the foreseeable future. There is contrary evidence from the appellants to suggest that it would, which the Council do not challenge. Any prospective application for residential development on this remaining field is not being mooted by the appellants and any such application would in any case have to be assessed on its own merits.

54. NPPF paragraph 170 b) states that the intrinsic beauty and character of the countryside should be recognised including the economic and other benefits of BMV. The wording of this part of the NPPF has changed and the new wording now omits reference to 'significant development of agricultural land' in the former NPPF's paragraph 112, which was a point of some discussion at the Inquiry. Nonetheless, it is clear that the 4.9ha of BMV that would be lost only comprises 32% of the site, the appellants' undisputed evidence is that the Council's allocated and emerging housing sites contain land of BMV quality, and it is inevitable that the Council will need to develop on such land in order to meet its future housing requirements.

55. The Council also objects to the loss and cumulative erosion of a large area of productive arable land irrespective of the fact that most of it is not BMV. This would result in the loss of the fields of the site for food production in the district, either for arable crops or pasture land for raising animals. But the suggestion that the site should be considered as part of a wider block of 43.3ha is simply wrong because that holding dated back to 1997 and has not been an

agricultural holding for over 20 years. Its entire northern half has since been developed for housing.

56. Subsection 9 of CS Policy CS9 and subsection 2 of Policy CS34 seek to protect BMV and maximise opportunities for local food production. So looking purely at the face of this wording, the development would not comply with these Policies. The appellants consider limited weight should be given to the loss of BMV whereas the Council considers moderate weight should be given to it.

57. In my judgement, given the amount of agricultural land including BMV land that will be needed for development in the future, the loss of the site and its 4.9ha of BMV land would be insignificant and would result in only a limited loss of local food production. Whilst Policies CS9 and CS34 seek to protect or retain BMV and maximise such local food production this is not what the new NPPF says in paragraph 170 b). The Policies do not accord with the NPPF and I conclude that less than full weight should be given to the proposed development's conflict with them. I conclude for the above reasons that limited weight should be given to the loss of BMV and other agricultural land.

The Planning Balance

58. The Council agrees that the 'tilted balance' applies in this case, in other words with the presumption in favour of sustainable development in paragraph 11 of the NPPF, which is also essentially contained in CS Policy CS4A. This states that where DP policies which are the most relevant for determining the application 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 NPPF taken as a whole. NPPF Footnote 7 makes clear that out-of-date DP policies include, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (5YHLS). That is agreed to be the case here.

59. I heard extensive evidence on both the housing requirement and the supply at the Inquiry. The Council argues that the housing requirement is that set out in the adopted Core Strategy, whereas the appellants argue that this is out-of-date and should be replaced by a higher figure. The Council maintains that it can demonstrate a housing supply of 4.52 years, whereas the appellants argue that this is a considerable over-estimate and that the supply is realistically no greater than 3.78 years at best and as low as 2.68 years at worst. I consider the under-supply, even if it is only 4.52 years, to be significant because it amounts to 1,000 homes.[18]

60. The Hallam Land CoA judgement confirms that the degree of precision required when calculating the shortfall is a matter of planning judgement for the decision-taker. In a case like this, where the shortfall is significant and triggers the tilted balance, I cannot see the need to agree a specific figure or even a range of figures. The 215 homes that the development would be likely to deliver would make a sizeable contribution to increasing the supply of housing in the district irrespective of whether the HLS is currently 2.68 years or 4.52 years.

[18] ID15

61. It must accordingly be given substantial weight in the planning balance. There are three different components of the housing that would be delivered: market housing, affordable housing (AH) and custom-build housing (CBH). They are all important and substantial weight should be attached to each component for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply. The fact that the much needed AH and CBH are elements that are no more than that required by policy is irrelevant – they would still comprise significant social benefits that merit substantial weight.

62. There would be environmental benefits from the provision of substantial areas of green open space, and this would also comprise a social benefit to the extent that the amount of POS exceeds policy-compliant levels because it would benefit the wider community. This benefit should carry substantial weight. There are also the economic benefits that the scheme would generate in terms of construction and related jobs during the building of the homes and the benefits of expenditure by future residents on the services and facilities in the village, to which I attach moderate weight.

63. Set against this is the landscape harm and its conflict with DP policies and the NPPF, to which I attribute significant weight and the limited weight which I attach to the loss of agricultural including BMV land.

64. There is also the conflict with the Council's spatial strategy. CS Policies CS5 (Location of Development) and CS15 (Distribution of Housing) set out the Council's current adopted spatial strategy. CS5 states that outside the Green Belt defined settlement boundaries will be maintained around rural settlements (including Coalpit Heath) subject to review in a subsequent Plan. Policy CS15 explains the indicative phasing and distribution of a minimum of 28,355 new homes within the district within the period of the CS. The proposed development would conflict with the Council's current spatial strategy because it would be located outside the current settlement boundary.

65. However, I attach little weight to this policy conflict because Policies CS5 and CS15 are clearly policies that affect the supply of housing and the Council lacks a 5YHLS. The emerging *West of England Joint Spatial Plan*[19] identifies several Strategic Development Locations one of which is for around 1,800 dwellings and other uses on the eastern edge of Coalpit Heath within the Green Belt. This indicates that the Council accepts the need for new housing in the area even if that means needing to alter the Green Belt boundary. In this context the fact that the appeal site is not in the Green Belt adds to its suitability for development.

66. There would be harm to the local landscape and conflict with relevant DP policies, to which I give significant weight. There has been a meaningful attempt by the appellants to mitigate such harm, albeit that harm would still exist. The proposal would also result in the loss of agricultural land including BMV. However, such harms would not outweigh the benefits of up to 215 new homes 35% of which would be AH in a district that cannot currently demonstrate a 5YHLS and which has an acute need for AH. The site would be reasonably accessible to local and wider services and in this respect would be likely to be comparable with the proposed SDL at Coalpit Heath. Additionally it lies outside the Green Belt, which otherwise surrounds the village.

[19] CD-EP3, especially pages 44 & 51

67. For these reasons I conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. Planning permission should therefore be granted in accordance with the presumption of favourable development set out in the NPPF.

Planning Obligations

68. The legal agreement obliges the appellant to deliver: 35% of the dwellings as affordable housing based on a tenure split of 73% social rent, 5% affordable rent and 22% intermediate housing; implementation and management of a Travel Plan, various contributions for improvements to PROWs, bus stop upgrades, new footpath/cycle links, the site access arrangements and contributions to other junction improvements; the provision of various types of new POS on-site as well as contributions towards outdoor sports facilities in the absence of such facilities being proposed on-site.

69. Regulation 122 of the *Community Infrastructure Regulations 2010* states that a planning obligation may only constitute a reason for granting planning permission where the obligation is:

    (a) Necessary to make the development acceptable in planning terms;

    (b) Directly related to the development; and

    (c) Fairly and reasonably related in scale and kind to the development.

    Regulation 123 prevents the pooling of more than 5 contributions towards a specific project.

70. The Council has provided a Compliance Statement[20] in which it sets out how these legal and policy tests are met. The appellants do not dispute that. I am satisfied that it successfully demonstrates compliance with these tests for the reasons given in that Statement.

Conditions

71. The Statement of Common Ground (SoCG) (at paragraph 6.1) includes a list of 25 conditions agreed between the main parties. I agree that most of these are necessary and meet the other tests for conditions in Planning Practice Guidance. The reasons for the individual conditions are set out in the Schedule below. However, three of the suggested conditions, Conditions 3, 14 and 15 (SoCG pages 18 and 22), are unnecessary because they relate purely to matters that are reserved so there is no need for them at this outline stage.

Conclusion

72. For the reasons given above I conclude that the appeal should be allowed.

Nick Fagan

INSPECTOR

[20] ID12

Schedule of Conditions

1. The development must take place in accordance with the following plans and reports:
Received by the Council on 17th July 2017:
Design and Access Statement 19294/A5 11
Received by the Council in May 2017:
Scale Parameter Plan 19294 9602 E
Green Infrastructure Parameter Plan 19294 F
Land Use & Access Parameter Plan 19294 9601 F
Site Location Plan 19294 9001 A
Received by the Council on 25th January 2017:
Proposed Site Access General Arrangement in Transport Assessment Appendix I 04255-HYD-XX-XX-DR-TP-2000P2
Received by the Council on 17th January 2017:
Density Plan 19294 9603 D

Reason:
In order to define the planning permission. To ensure a satisfactory external appearance of individual buildings and the wider development in the interests of the visual amenity of the area and to accord with Policies CS1, CS2 and CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013 and policy L13 of the South Gloucestershire Local Plan (adopted) January 2006.

2. Approval of the details of the layout, scale and appearance of the buildings to be erected, and the landscaping of the site (hereinafter called "the reserved matters") for each phase shall be submitted to and approved in writing by the Local Planning Authority in writing before any development is commenced.

Reason:
This is an outline permission only and the reserved matters shall be made to the Local Planning Authority.

3. Applications for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.

Reason:
To comply with the requirements of Sections 91 and 92 of the Town & Country Planning Act 1990 (as amended and the ensure that housing is delivered as quickly as possible on the site.

4. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:
To comply with the requirements of Sections 91 and 92 of the Town & Country Planning Act 1990 (as amended).

5. The first reserved matters submitted pursuant to condition 2 shall include a site

wide phasing plan to indicate the scale and sequence of build out including the relationship of dwellings to the delivery of infrastructure. The development shall be carried out in accordance with the agreed details.

Reason:
To ensure that the development is comprehensively planned, designed and phased to ensure that the provision of the different land uses within the site are delivered and protected in order to comply with the relevant policies in the Development Plan.

6. The reserved matters applications submitted pursuant to condition 2 shall include a detailed delivery framework for the self-build housing. The development shall be carried out in accordance with the approved strategy.

Reason:
To ensure that self-build units are delivered at the site to an acceptable standard and in the interests of the character and visual amenity of the area and to accord with policy CS1 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013; and policy L13 of the South Gloucestershire Local Plan (adopted) January 2006.

7. A site specific Construction Environmental Management Plan (CEMP), shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of development. The CEMP as approved by the Council shall be fully complied with at all times.
The CEMP shall address the following matters:
(i) Measures to control the tracking of mud off-site from vehicles.
(ii) Measures to control dust from the demolition and construction works approved.
(iii) Adequate provision of fuel oil storage, landing, delivery and use, and how any spillage can be dealt with and contained.
(iv) Adequate provision for the delivery and storage of materials.
(v) Adequate provision for contractor parking.
(vi) A lorry routing schedule.
(vii) Temporary access arrangements for construction traffic.
(viii) Details of Main Contractor including membership of Considerate Constructors scheme.
(ix) Site Manager contact details.
(x) Processes for keeping local residents informed of works being carried out and dealing with complaints.

Reason:
In the interests of highway safety and residential amenity and to accord with Policies T12 and EP1 of the adopted South Gloucestershire Local Plan.

8. No dwelling shall be occupied until the highway linking that dwelling to the existing public highway has been provided with street lighting, completed to base course level for the carriageway and surface course level for the footway or shared surface, all in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason:
In the interests of highway safety, to ensure all dwellings are provided with a safe

and suitable access and to accord with Local Plan Policy T12.

9. No dwelling shall be occupied until car and cycle parking has been provided for that dwelling in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason:
In the interest of highway safety and to accord with South Gloucestershire Council's Supplementary Planning Document residential car parking and Local Plan Policy T7.

10. The plans and particulars submitted as part of condition 2 for the relevant Reserved Matters shall include a scheme of vehicular access for the allotments. Car parking for the allotments shall be provided in accordance with the agreed details prior to the first use of the allotments.

Reason:
In the interests of highway safety and the amenities of the area and to accord with policy T12 of the South Gloucestershire Local Plan (adopted) January 2006.

11. The plans and particulars to be submitted in accordance with condition 2 shall include:
1. An Arboricultural Implications Assessment
2. An Arboricultural Method Statement
3. A Tree Protection Plan
4. An engineering plan showing all services outside the RPAs of retained trees. All fencing to be in accordance with BS5837 2012 Trees in Relation to Construction and shall be erected before any works commence and retained and maintained for the duration of the construction period.

Reason:
In the interests of the health of trees in the interests of the character and visual amenity of the area and to accord with policy L1 of the South Gloucestershire Local Plan (adopted) January 2006 (saved policy); and policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

12. No development shall take place on land to which the reserved matters relates until full details of both hard and soft landscaping works shall be submitted in writing to the Local Planning Authority for approval and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines indicating lines, manhole); retained landscape features, including trees and hedgerows and proposals for restoration where relevant. Soft landscaping works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

Reason:
To protect the character and appearance of the area and to accord with policy L1 of the South Gloucestershire Local Plan (adopted) January 2006 (saved policy); and policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

13. Prior to the construction of the dwellings hereby approved, a public art plan for a unique site specific integrated scheme of Public Art (including timescales and triggers) to be implemented within the development site shall be submitted to the Local Planning Authority for approval in writing with detailed designs to be submitted and approved as part of the reserved matters. For the avoidance of doubt the submission shall be prepared in line with recommendations in the Council's Art and Design in the Public Realm - Planning Advice Note. Thereafter the artwork/s shall be installed in accordance with the details so agreed and retained as such.

Reason:
To ensure public art is appropriately included within the scheme in the interests of the visual amenity of the development and to accord with policy CS1 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

14. The hours of working on site during the period of construction shall be restricted to 07.30am-18.00pm Mondays to Fridays; and 08.00am-13.00pm on Saturdays and no working shall take place on Sundays or Public Holidays. The term working shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the site. Any working outside these hours shall have the prior written consent of the Local Planning Authority.

Reason:
To protect the residential amenity of residential occupiers and to accord with policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

15. The development shall be carried out in accordance with the energy efficient measures identified in the Sustainability Statement dated 13th July 2017. Reserved matters applications submitted pursuant to condition 2 shall include details of how the objectives of the Sustainability Statement will be achieved. All development shall be carried out exactly in accordance with the details so agreed.

Reason:
To achieve improved energy conservation, and protect natural environmental resources and to accord with policy CS1 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

16. Prior to the commencement of development a soil handling and mitigation strategy inline with best practice measures to prevent damage to soils and allow their reuse shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the agreed details.

Reason:
To ensure appropriate treatment of Best and Most Versatile (BMV) soils to safeguard the potential for local food cultivation and to accord with policy CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013. This is a pre-commencement condition to protect BMV soils.

17. No areas designated as public open space shall at any time be used as a site compound unless otherwise agreed in writing by the Local Planning Authority. For the avoidance of doubt, "site compound" for the purposes of this condition shall mean any area used for siting offices, toilets, fuel tanks, cabins, storage containers, the storage of materials, and the construction of temporary roads and hardstandings.

Reason:
In the interests of Best and Most Versatile (BMV) soils to safeguard the potential for local food cultivation and to accord with policy CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013.

18. Prior to the commencement of any groundworks, including any exempt infrastructure, geotechnical or remediation works, and prior to the submission of any reserved matters application, a programme of archaeological work and subsequent detailed mitigation, outreach and publication strategy, including a timetable for the mitigation strategy, must be submitted to and approved by the Local Planning Authority. Thereafter the approved programme of mitigated measures and method of outreach and publication shall be implemented in all respects.

Reason:
In the interest of archaeological investigation or recording and to accord with policy CS9 of the South Gloucestershire Local Plan Core Strategy (adopted) December 2013. This must be a pre-commencement condition as archaeology cannot be preserved retrospectively.

19. The development shall be carried out in exact accordance with the Desk Study and Initial Ground Investigation submitted in support of the application. Prior to the commencement of development on site the exact form of proposed intrusive site investigation works shall be submitted to the Council, and if acceptable, agreed in writing. The intrusive site investigations shall then take place exactly in accordance with the details so agreed. The findings arising from the intrusive site investigations (including the result of any gas monitoring) shall be submitted in the from of a report and shall include a scheme of any necessary remedial works. If acceptable, the LPA will give written approval to the report and proposed remedial works. The remedial works must be fully implemented in accordance with the submitted report.

Reason:
To ensure that the site is or can be made safe and stable for the proposed development and to prevent environmental pollution in accordance with Policy CS9 of the adopted South Gloucestershire Local Plan: Core Strategy (December 2013).

20. Prior to the commencement of development drainage detail proposals incorporating Sustainable Drainage Systems SUDS and confirmation of hydrological conditions e.g. soil permeability, watercourses, mining culverts)

within the development shall be submitted for approval in writing to the Local Planning Authority. Development shall be carried out in accordance with the approved details. For the avoidance of doubt, the details submitted shall include the following:
o A clearly labelled drainage layout plan showing the pipe networks and any attenuation ponds.
o Updated drainage calculations to show there is no flooding on site in 1 in 30 year storm events; and no flooding of buildings or off site in 1 in 100 year plus an allowance climate change storm event.
o Where attenuation forms part of the Surface Water Network, calculations showing the volume of attenuation provided, demonstrating how the system operates during a 1 in 100 year plus an allowance for climate change storm event.
o Where infiltration forms part of the proposed Surface Water Network such as Soakaways, percolation / soakage test results and test locations are to be submitted in accordance with BRE 365.
o An updated plan showing the cross sections and design of the attenuation pond and its components (to include an all-around access track for maintenance).
o The drainage layout plan should also show exceedance / overland flood flow routes if flooding occurs and the likely depths of any flooding.
o The plan should also show any pipe node numbers referred to within the drainage calculations.
o A manhole / inspection chamber schedule to include cover and invert levels.
o Ownership and responsibility, along with details of the maintenance regime in relation to the Surface Water Network and any components such as, Existing Ditches, Attenuation/Infiltration features, and Flow Control Devices where applicable.

Reason:
To ensure that a satisfactory means of drainage is provided, and to accord with policy CS9 of the South Gloucestershire Local Plan: Core Strategy (Adopted) December 2013 and the National Planning Policy Framework. This must be a pre-commencement condition to ensure that the whole scheme is adequately drained.

21. Prior to the commencement of any on-site drainage works, an updated CCTV survey of the railway culvert condition shall be conducted and the results submitted to the local planning authority. Any debris within the railway culvert referred to in the original FRA & Drainage Strategy dated November 2016 page 16, along with any new evidence of debris which may be revealed as a result of a new survey, is to be removed prior to commencement of any site drainage works.

Reason:
To ensure that a satisfactory means of drainage is provided, and to accord with policy CS9 of the South Gloucestershire Local Plan: Core Strategy (Adopted) December 2013 and the National Planning Policy Framework.

22. No development shall commence until both a Landscape and Ecological Management Plan (LEMP) and an Ecological Mitigation Strategy (both to be in accordance with the Ecological Assessment submitted in support of the application) have been submitted to and approved in writing by the Local Planning Authority. The management plan shall include the results of an ecological survey of the site, and a detailed scheme of protection, mitigation and

compensation measures to be incorporated within the development, including a timetable for the implementation of the scheme and for the monitoring of the impact of the development on the ecological features. The development shall subsequently be carried out exactly in accordance with the approved details.

Reason:
To ensure the works are carried out in an appropriate manner to protect the ecological integrity of the site, and to accord with Policy CS9 of the South Gloucestershire Local Plan: Core Strategy (Adopted) December 2013 and the National Planning Policy Framework.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: *Alexander Greaves* of Francis Taylor Buildings

	Nigel Evers, Viridian – Landscape
He called	Donna Whinham, South Gloucestershire Council – Housing Requirement & Supply
	Ben Read, Rapleys – Planning, Policy, Agricultural land Classification, Accessibility

FOR THE APPELLANT: *Christopher Young QC* of No5 Chambers

	Richard McWilliam, Barton Willmore – Landscape
	Tony Kernon, Kernon Countryside Consultants Ltd – Agricultural Land Classification
He called	James Donagh, Barton Willmore – Housing Requirement
	Peter Roberts, Barton Willmore – Housing Land Supply
	James Stacey, Tetlow King – Affordable Housing
	Simon Prescott, Barton Willmore – Planning, Policy, Accessibility

INTERESTED PERSONS:

Juliet King-Smith	Daughter of Dick King-Smith & former resident
Andrew Beecher	Local resident
Rachel Trudgian	On behalf of VALID & local resident
Jen Dunford	Chair of Frampton Cotterell Parish Plan (aka Village Action)
Jean Butler	Westerleigh Parish Council
Cllr Claire Young	Ward Councillor, South Gloucestershire Council
Tristan Clark	Local resident and Cllr on Westerleigh Parish Council
Brian Holloway	Local resident

DOCUMENTS

All the documents below are Inquiry Documents (IDs). Documents 30-39 below were submitted following the last sitting day of the Inquiry.

1 Opening submissions on behalf of the appellants
2 Opening submissions on behalf of the Council
3 *Hallam Land Management Ltd v SSCLG & Eastleigh Borough Council [2017] EWHC 2865 (Admin)*
4 Objection by Juliet King-Smith
5 Objection by Andrew Beecher
6 Objection by Rachel Trudgian on behalf of VALID
7 Objection by Jen Dunford on behalf of Village Action
8 Objection by Jean Butler on behalf of Westerleigh Parish Council
9 Objection by Ward Cllr Claire Young
10 Current position in respect of West of England Joint Spatial Plan and South Gloucestershire New Local Plan
11 N/A
12 The Council's CIL Regulations 122 & 123 Compliance Statement
13 A3 table of disputed sites re Housing Land Supply (HLS)
14 Housing Trajectory
15 HLS – Council's and Appellants' figures set out in table
16 Suggested route for accompanied site visit
17 Press cutting regarding the proposed development
18 Email to Mrs Whinham re housing delivery on airfield site
19 Addition to NE's Appendix F from South Gloucestershire Landscape Character Assessment SPD
20 A3 map of facilities in the village
21 Mr Prescott's updated Accessibility tables
22 *Suffolk Coastal District Council v Hopkins Homes & Richborough Estates v Cheshire East Borough Council [2017] UKSC 37*
23 Objection by Brian Holloway
24 Barratt's Great Places booklet
25 Building for Life 12
26 Objection by Tristan Clark
27 Summary of South Oxon case below
28 *South Oxfordshire District Council v SSCLG & Cemex Properties UK Limited [2016] EWHC 1173 (Admin)*
29 The S106/S278 etc legal agreement
30 Closing submissions on behalf of the Council
31 Closing submissions on behalf of the Appellants
32 Costs application on behalf of the Council
33 Costs application on behalf of the Applicants
34 Council's response to Appellants' costs application
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The Planning Inspectorate

Appeal Decisions

Site visit made on 4 June 2019

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2019

Appeal Ref: APP/G2435/W/18/3214451 (Appeal A)
Land off Hepworth Road, Woodville DE11 7DW

- 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 Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The application Ref 16/01191/OUTM, dated 11 October 2016, was refused by notice dated 16 May 2018.
- The development proposed is self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote.

Appeal Ref: APP/G2435/Q/18/3214498 (Appeal B)
Land off Hepworth Road, Woodville DE11 7DW

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
- The appeal is made by Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The development to which the planning obligation relates is Part Three of the Schedule to the 2004 Section 106 Agreement (dated 3 June 2004) relating to application 02/01416/OUT.
- The planning obligation, dated 3 June 2004, was made between South Derbyshire District Council, North West Leicestershire District Council, Derbyshire County Council, Leicestershire County Council, Tapton Properties Limited, the Governor and Company of the Bank of Scotland and George Wimpey North Midlands Limited.
- The application Ref 16/01191/106A, dated 11 October 2016, was refused by notice dated 7 August 2018.
- The application sought to have the planning obligation discharged.

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Decisions

1. **Appeal A** is allowed and planning permission is granted for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote in accordance with the terms of the application, Ref 16/01191/OUTM, dated 11 October 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

2. **Appeal B** is allowed. The planning obligation, dated 3 June 2004, relating to Part Three of the Schedule to the 2004 Section 106 Agreement, no longer serves a useful purpose and is discharged.

Background and Planning History

3. Appeal A and Appeal B both relate to the same site. There is a close relationship between the two proposals. For the purposes of clarity I shall refer to the S78 appeal against the refusal of outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure (outline -access and layout included) on land off Hepworth Road, Woodville as Appeal A and the Section 106B appeal against the refusal of the Section 106A application to discharge the application site from the obligations in Part Three of the Schedule to the 2004 Section 106 Agreement as Appeal B.

4. A Planning Obligation in the form of a S.106 Agreement dated 24 April 2019 was submitted in support of the appeal proposals. A Deed of Variation dated 7 June 2019 was also submitted in response to Leicestershire County Council's (LCC) revised request for education contributions, in accordance with its Statement of Case dated 23 April 2019 and its subsequent e-mail dated 13 May 2019 to the Planning Inspectorate. These documents address all of the matters sought by the North West Leicestershire District Council (NWLDC) and LCC in connection with the provision of community and other services arising from the development. The Planning Obligation, including the Deed of Variation, is a material consideration in these cases. I return to the Planning Obligation later in these decisions.

5. The appeal site measures about 1.9 hectares in extent, is broadly triangular in shape and is situated to the south east of Woodville. It is bounded to the north and west by the recently constructed Taylor Wimpey residential development. The eastern boundary comprises a mature hedgerow and public footpath. Beyond this to the east of the site lies open grassland. The site is bounded to the south by Hepworth Road. The appeal site is currently undeveloped and is predominantly occupied with areas of scrubland and grassland along with several patches of marsh and some small ephemeral ponds. The appeal site is located outside the Limits to Development as defined in the adopted Local Plan.

6. Although there is no relevant planning history on the appeal site it is noteworthy that the appeal site forms part of the 48.77 hectares Woodville Woodlands development which encompasses land within the administrative areas of both South Derbyshire District Council (SDDC) and NWLDC. Following the grant of outline planning permission for the various aspects of the Woodville Woodlands development on 3 June 2004[1] and 11 June 2004[2], the residential development of the scheme has come forward in several distinct phases.

7. The appeal site was not included in any phase of the residential development because the plan annexed at Appendix 1 of the 2004 S.106 Agreement for the Woodville Woodlands scheme identifies several areas of the site for `Forest Planting'. As a result, some of the appeal site is included within the 9.85

[1] SDDC planning application 9/2001/0050
[2] NWLDC planning application 02/01416/OUT

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hectares of 'Dedicated Forestry Land' associated with the Woodville Woodlands development.

8. Clauses 2-7 of Part Three of the Schedule to the 2004 S.106 Agreement provide further details about the covenants the owner of the land entered into with NWLDC in respect of the `Dedicated Forestry Land'. Clause 5 requires that upon the completion of the Approved Forestry Scheme, the `Dedicated Forestry Land' *must be maintained in perpetuity as a forestry area for use by the general public* to the reasonable satisfaction of NWLDC. Clause 7 goes on to establish that the `Dedicated Forestry Land' must not be used *for any purpose other than woodland/shrubland.*

9. The Woodville Woodlands Phase 4 Strategic Composite Planting Plan,[3] which formed part of the reserved matters application for the outline planning consent 02/01416/OUT is understood to be the Approved Forestry Scheme referred to in the 2004 S.106 Agreement. This plan indicates that 4,275 sq. m of mixed woodland planting was originally planned for the appeal site. From the evidence that is before me the appeal site is believed to incorporate 4,275 sq. m of the 9.85 hectares of `Dedicated Forestry Land' that is identified in the 2004 S.106 Agreement.

10. With this background information in mind I now turn to deal with Appeal A.

Appeal A

Appeal proposal

11. The appeal proposal seeks outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure. All matters except access and layout were reserved for subsequent approval. It is proposed that the serviced plots would range in size from 290 sq. m to 597sq. m. The position and size of each plot would be fixed. However, the siting of the dwellings on each plot would be subject to separate reserved matters applications.

12. A new vehicular and pedestrian access would be provided to the site from Hepworth Road. In addition, several new pedestrian and cycle links would be created between the appeal site and the adjoining housing developments. One of these would connect the site to South Street to the north and the other would link to Dovedale Park residential development to the north west. There would be sufficient space on every plot to provide a minimum of two off-street parking spaces per dwelling. The Design Code, submitted with the application, also sets out that every dwelling must provide at least two secure and covered cycle parking spaces. Informal open space, a landscape buffer, boulevard planting strips together with hedge and tree planting would also be provided.

13. The subsequent reserved matters applications would be required to adhere to the Design Code for the scheme. The Design Code sets out the broad parameters and design principles that would guide the development in relation to layout; scale; design and appearance; landscaping; sustainability and drainage; parking; external storage; amenity space and ecology. A number of plans, drawings and documents were submitted in support of the proposal. These are listed at paragraph 4.11 of the Appellant's proof and

[3] Drawing No: Plan/624/Strat/Ph4/PP(C)1c

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where these were revised and superseded during the planning process they have been clearly marked as superseded.

Planning Policy

14. The statutory development plan for the area includes the North West Leicestershire Local Plan (LP) (2017). Both parties refer to a number of policies in the LP as being relevant to the determination of the appeal. These include: S1 - Future Housing and Economic Development Needs; S2 - Settlement Hierarchy; S3 – Countryside; D1 - Design of New Development; D2 – Amenity; H4 - Affordable Housing; If1- Development and Infrastructure; IF4 - Transport Infrastructure and New Development; IF7 - Parking Provision and New Development; En1 - Nature Conservation; En3 - The National Forest; Cc2 - Water - Flood Risk; Cc3 - Water - Sustainable Drainage Systems.

15. Other relevant policies and guidance which are material in this case include: the National Planning Policy Framework (NPPF); the National Planning Practice Guidance (NPPG); the Written Ministerial Statement (WMS), 28 November 2014; the Housing White Paper, February 2017; the North West Leicestershire District Council - Good Design Guide SPD; and the Leicestershire Highway Design Guidance.

16. I am also aware of the Self-build and Custom Housebuilding Act 2015 (as amended) and the associated Self-build and Custom Housebuilding Regulations 2016. Amongst other matters the purpose of the Act is to allow individuals wishing to build their own home to register their interest in acquiring a suitable plot of land with the relevant authority. Specifically, the Act makes provision for Local Authorities to maintain a register of people who are seeking to acquire a serviced plot in their area in order that they may build houses for them to occupy as homes; and for Local Authorities to have regard to the demand for custom build housing as evidenced by the registers when exercising certain functions including those relating to planning and housing.

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Main Issue

17. The main issue in this case is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

18. There is no dispute that the appeal site is located outside the defined Limits to Development as outlined on the Policies Map in the adopted LP. Land outside the Limits to Development is identified as countryside where development will be considered in the context of Policy S3. Only certain specified uses, listed (a) to (s) in the policy, will be supported. New residential development is not identified as a form of development permitted in the countryside under Policy S3 of the LP and therefore the appeal proposal is plainly in conflict with the development plan.

19. For the Council it is argued that the appeal proposal would introduce residential development and extend the existing edge of the settlement of Woodville. It is stated that the proposal would result in unnecessary development of greenfield land and encroach into an area of countryside which would be in conflict with Policy S3 in the LP. It is further contended that such proposed development would be harmful in terms of protection of the

countryside and would result in the development of open undeveloped land that forms an important separation between Woodville and Blackfordby. It is claimed that the proposal would be contrary to paragraph 170 of the NPPF 2019 as well as Policy S3 of the LP.

20. At my visit I saw that the proposed development would involve development of greenfield land on the fringe of the settlement of Woodville. However, the appeal site lies adjacent to the existing built form of Woodville and is bounded by Hepworth Road to the south and east and is well contained within its setting. In my view, it does not form an important area of separation between Woodville and Blackfordby. Development of the appeal site would not extend beyond the southern confines of the existing built form of Woodville and would be considerably set in from the eastern boundary of Woodville's developed footprint along Hepworth Road.

21. I also saw several existing clusters of development situated in the area of countryside between the south east boundary of Woodville and the north western boundary of Blackfordby. I note that these clusters are situated in a considerably more isolated location in relation to these settlements compared to the appeal site. Consequently, they have a greater impact on the perceived and physical separation between Woodville and Blackfordby than the appeal site. These clusters include development at Thorn Street, Butt Lane and the well-established manufacturing facility, Wavin UK (Forest Works), at Butt Lane. The siting of these clusters of development highlights that the countryside in between Woodville and Blackfordby is not undeveloped. In my view, development of the appeal site would not undermine the physical and perceived separation between Woodville and Blackfordby.

22. The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District.[4] However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).

23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District.

[4] See details in Appendix 3 to the Council's Statement

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24. Moreover, the Council refers to the Buildstore.co.uk website which was, at March 2019, advertising 9 self-build plots sites as being available within the District and that all of these have been granted planning permission since 31 October 2016.[5] However, one of these (17/01860/FUL) is also listed in Figure 4 of the Council's Statement of Case as an approved self-build site. From the evidence that is before me none of the 8 remaining sites is subject to a planning condition or a planning obligation requiring a self-build or custom-build house to be built on the site that accords with the statutory definition.

25. In summary, it is only the 4 plots listed in Figure 4 of the Council's Statement of Case that appear to comply with the definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended). It follows that the Council has not yet granted planning permission for enough serviced plots to meet the demand arising for base period 1 let alone any of the subsequent base periods (2, 3 and 4).[6] Although the Council maintains it is already making progress towards granting planning permission for enough serviced plots to meet the demand arising in base period 1, the Council has provided no information to suggest that there are any applications pending determination for serviced plots in the District at present.

26. The deadline for granting planning permission for enough serviced plots to meet the demand arising for base period 1 is 30 October 2019. As such there remains a residual requirement to grant consent for at least 5 serviced plots by 30 October 2019. Consequently, the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3[7], in a comprehensively planned manner, is a material consideration that weighs strongly in favour of the appeal proposal. The appeal proposal would meet the majority of the current demand by delivering 30 serviced self-build or custom-build plots and this would accord with advice in paragraphs 59 and 61 of the NPPF and other Government guidance.

27. I accept that the NPPG on Self-Build and Custom Housebuilding states that relevant authorities *could* include policies in their local plans for self and custom housebuilding, but this is not a requirement.[8] It also states that relevant authorities could seek to meet demand by engaging with landowners who own sites that are suitable for housing. The only requirement is that the Council has a duty to grant planning permission for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.[9] The Council is considering how best to address the issue of self-build and custom housebuilding in the Local Plan Review.

28. Nevertheless, the Council is required by the provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period. I consider the appeal proposal is necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended), given that there

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[5] See details in Appendix 4 to the Council's Statement
[6] Base Period 4 runs from 31/10/2018-30/10/2019 and is therefore ongoing.
[7] Based on the information provided by NWLDP in paragraph 6.5 of its Statement of Case
[8] NPPG Paragraph: 025 Reference ID: 57-025-201760728
[9] NPPG Paragraph: 023 Reference ID: 57-023-201760728

appears to be an inadequate supply of serviced plots coming forward for development in the District.

29. The Council refers to the need for the planning system to protect and enhance valued landscapes. However, the Council has provided no evidence to demonstrate there are physical attributes associated with the appeal site and its immediate setting that elevate it above ordinary countryside. From the evidence that is before me and from my site visit, the appeal site and its immediate setting do not represent a valued landscape in the context of paragraph 170 of the NPPF.

30. The Council and others have raised concerns that the appeal site forms part of National Forest planting and landscaping which was secured by the adjacent Woodville Woodlands development. From the evidence before me it appears that the appeal site is identified on the approved plans as a combination of forest planting and grassland. Aerial photography suggests that the appeal site was a greenfield element of the Woodville Woodlands scheme and consists of grassland and scrub. It appears as though these habitats have been left to develop and for woodland planting to naturally regenerate rather than being re-planted as plantation woodland which was the approach adopted on brownfield areas of the wider site. Overgrown brambles and hawthorns were cleared from the appeal site in 2015 but no protected trees have been removed.

31. The National Forest Company (NFC) has raised no objection to the proposal provided that an equal amount of landscaping is provided elsewhere. The NFC has requested a contribution of £38,000 which would be secured by the S.106 Agreement. The Council has agreed to and signed the S.106 Agreement which sets out details relating to the NFC contribution and has confirmed that it considers the £38,000 NFC contribution to adequately mitigate the impacts of the appeal proposal in respect of tree planting. I agree that the £38,000 NFC contribution would provide adequate mitigation for the proposed scheme.

32. On the main issue I conclude that the proposal would not adversely impact upon the character and appearance of the surrounding area.

Planning Obligation

33. The S.106 Agreement and Deed of Variation provide a legal mechanism to secure developer contributions towards local schools. LCC originally requested an education contribution of £195, 806.86 and this figure was referred to in the signed S.106 Agreement. However, in an email dated 13 May 2019, the LCC sought a revised education contribution which amounts to £184,956.51. The revised contribution is made up of a primary school contribution of £131,328.00 and a high school contribution of £53, 628.51. The primary school contribution is for the provision of pupil places at St Margaret's C of E Primary School or such other primary school as will provide additional facilities to accommodate pupil growth from the development. The high school contribution is for the provision of pupil places at Ivanhoe High School or such other high school as will provide additional facilities to accommodate pupil growth from the development.

34. Given that the S.106 Agreement had already been agreed and signed, the Appellant had to arrange for a Deed of Variation to be prepared and signed to ensure that the S.106 Agreement correlates with the amounts requested by

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LCC in respect of the primary sector and high school sector contributions. The Deed of Variation has the effect of varying the submitted S.106 Agreement so the total value of the education contribution and its apportionment between primary and high school sectors accords with the LCC's revised request. Additionally, given that the education contribution would be paid in instalments, as per Schedule 3 of the S.106 Agreement, the Deed of Variation amends the value of each instalment to correctly reflect the revised value of the education contribution. I consider there are adequate provisions in place to mitigate the impact of the development on local schools.

35. The NFC has requested that a £38,000 contribution towards off-site National Forest tree planting and the S.106 Agreement sets out where the compensatory tree planting would take place. It is the current intention that such funds would be used for tree planting at Ashby Woulds which the NFC has recently acquired and which is around 1.39kms to the south of the appeal site. The S.106 Agreement includes some flexibility for the provision of tree planting and development works at an alternative site in the vicinity of the development to be agreed between the NWLDC and the owner. I consider that the proposal would comply with Policy En3 of the LP and the impact on trees and the National Forest would be acceptable.

36. The appeal proposal does not include provision for affordable housing. A viability report was submitted with the proposal and this indicates that the scheme would not be viable with the inclusion of affordable housing (either on-site or off-site). The District Valuer is satisfied that the scheme is not viable with the inclusion of affordable housing. There is no reason for me to disagree with that analysis.

37. From the evidence that is before me all of the obligations in the S106 Agreement, as varied by the Deed of Variation, are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They all meet the tests in CIL Regulations 122 and 123 and the guidance in paragraph 54 and 56 of the NPPF 2019. I have taken them into account in these decisions.

Other Matters

38. I have taken into account all other matters raised including the representations from interested persons and parties. Local residents have expressed concerns about the design of the new houses. The appeal proposal seeks approval of the layout of plots, the internal access roads and the point of access from Hepworth Road. The precise location of the dwelling within each plot, its appearance, scale and landscaping would be subject to separate reserved matters applications. A Design Code has been submitted as part of the proposal to guide future reserved matters applications and covers landscaping, sustainable technologies, drainage, scale, design and layout.

39. I note that the layout shows that a main route would run through the site that would be planted, that there would be significant planting to the boundaries of the site, public open space and spacious plots at a density of 15.7 dwellings per hectare. I consider that it has been demonstrated, in principle, that an appropriate scheme for 30 dwellings could be satisfactorily developed on the site and would comply with Policy D1 of the LP, the NWLDC Good Design Guide SPD and the advice in the NPPF.

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40. With regard to traffic and highway safety the proposed development would provide a new vehicular access point from Hepworth Road. The access would be located about 170 m to the west of Hepworth Road/Forest Road roundabout and would take the form of a priority junction with a right turn ghost lane and appropriate visibility splays in each direction. The proposal is accompanied by a Transport Statement which concludes that the development would not materially increase traffic flows on the surrounding highway network. The County Highway Authority raises no highway safety objections to the proposed scheme. I consider the proposal would comply with Policy IF4 of the LP, the advice in the NPPF and the Leicestershire Highway Design Guidance.

41. With regard to ecological impacts I note that the proposal was supported by an initial ecological assessment. Following comments by the County Ecologist a Greater Crested Newt Mitigation Strategy and a further Botanical Survey were submitted to the Council. The County Ecologist has reviewed the updated information and was satisfied with the mitigation strategy put forward in respect of Greater Crested Newts and recommends that a planning condition be attached to any planning permission. The County ecologist considers that the loss of species rich grassland can be offset by the creation of a new wet grassland of around 0.25 ha. There is sufficient space along the site frontage and within the south eastern corner of the site for this to be created but it is recommended that the precise species and management be subject to planning conditions. There is no reason for me to disagree with that analysis.

42. A Flood Risk Assessment and Surface Water Drainage Strategy has been submitted in support of the proposal. This confirms that the site is located within Flood Zone 1 and thus has a low probability of fluvial or tidal flooding. However, it is noted that there is a small area located centrally within the site which has resulted in a high level of risk of surface water flooding. It is proposed to manage surface water run-off from the development through the implementation of a sustainable drainage system, limiting the proposed maximum discharge rate to the site specific greenfield rate, providing on-site attenuation in the form of ponds or open water features with controlled discharge rates. The precise location and design of the open water features would be subject to a planning condition. Foul drainage would be connected to the existing mains sewer.

43. Some local residents are concerned about the impact of the proposal on the living conditions of existing residential occupiers. I consider that the impacts on neighbouring occupiers arising from the proposed development would need to be assessed in more detail at the reserved matters stage(s) when more precise details as to the layout, scale and appearance of the dwellings are submitted for consideration. Notwithstanding the details shown on the submitted layout there would appear to be no reason in principle why 30 units could not be provided on the site in a manner which would not significantly adversely impact upon neighbours' amenities.

44. I have considered and taken into account the planning appeal decisions referred to by the Council. I consider that the circumstances of those appeals are materially different to the appeal proposal. The appeal proposal should be considered on its own merits in the context of the development plan and other material considerations.

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Planning Balance

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The Reason for Refusal cites only Policy S3 which is said to be breached but it also indicates that the proposal would not constitute sustainable development. The site is outside the defined limits to development and is not a form of development permitted by Policy S3. I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.

46. However, balanced against the identified conflict with the development plan, I consider there are a number of factors that need to be considered. Paragraph 8 of the NPPF 2019 states *"Achieving sustainable development means that the planning system has three overarching objectives"*, which are identified as economic, social and environmental. In my view the appeal proposal would make a positive contribution towards achieving all three of these.

47. I attach substantial weight in terms of the economic benefits that would arise from the provision of 30 dwellings in Woodville. The new residents that would live in these homes are likely to use and support local services, local facilities and local businesses. Therefore, the proposal is likely to make a positive contribution to the local economy. The development of each property should create opportunities for local builders, tradesmen and builder's merchants. This has the potential to create local employment and training opportunities.

48. In terms of the social benefits, the proposal would be able to meet most of the current demand for self and custom-build plots in the District. The appeal proposal does not represent unnecessary development because it would greatly assist NWLDC to meet its statutory obligations with respect to providing serviced plots for self-build and custom-build housing. This would ensure that the proposed development plays a major role in meeting an evidenced housing need in North West Leicestershire. Moreover, the mix of housing types that come forward on the site would respond to the needs of local residents in accordance with Policy H6 of the LP and paragraph 59 of the NPPF. The overall layout of the site has been designed to ensure that a high standard of amenity can be provided for existing and future residents in line with Policy D2 and paragraph 127f of the NPPF. This comprises a substantial social benefit.

49. The proposal would not impact upon any physical separation between Woodville and Blackfordby or the character and appearance of the surrounding area. The site is well located in relation to the local transport infrastructure and would have good pedestrian and cycle links to local services, facilities and open space. The Design Code establishes that each dwelling must incorporate ecological enhancements, which include a minimum of one bat or one bird box. Furthermore, landscaping on each plot would help to promote biodiversity enhancements across the site. With regard to the performance and energy efficiency of the homes, the Design Code establishes that each dwelling must exceed the energy and carbon requirements in Part L of the Building Regulations. All of these factors would provide environmental benefits. I apportion moderate weight in terms of the environment. Taking all of these matters into account, I consider that the proposal would represent sustainable development as defined by the NPPF 2019.

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50. In summary, the appeal proposal provides an opportunity to comprehensively meet the majority of the current demand for self and custom-build plots in the District on a sustainably located site. On balance I consider that the economic, social and environmental benefits of the proposal significantly and demonstrably outweigh the conflict with the development plan. It is therefore concluded that there are material considerations in this case to justify a departure from the development plan in accordance with the statutory provisions outlined under Section 38(6) of the Planning and Compulsory Purchase Act 2004.

51. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. Appeal A is allowed subject to the conditions set out in the attached Schedule.

Appeal B

Background

52. I have already set out the background and planning history of the site at paragraphs 3-9 above and there is no need for me to repeat that here. The Section 106B Appeal seeks to discharge the appeal site from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement. The proposed discharge would result in the 1.9 hectares appeal site being excluded from the definition of `Dedicated Forestry Land' in the 2004 S.106 Agreement. As a result, it would allow the self or custom-build scheme (Appeal A) to come forward on the site. The S.106 Agreement and Deed of Variation submitted with the appeal proposals provide the legal mechanism to achieve this. Amongst other matters this S.106 Agreement includes a clause to secure the £38,000 financial contribution towards off-site National Forest planting in accordance with the request from the NFC.

Main Issue

53. The main issue in this appeal is whether the planning obligation continues to serve a useful planning purpose.

Reasons

54. Section 106A (6) of the Town and Country Planning Act 1990 (as amended) provides that on an application for modification, the determination may be that the obligation shall continue to have effect without modification; if the obligation no longer serves a useful purpose, that it should be discharged; or if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications requested.

55. The judgment in *Batchelor Enterprises Limited v North Dorset District Council [2003] EWHC 3006 (Admin)*[10] provides clarity on how to assess whether a planning obligation stills serves a useful purpose, in paragraph 26 of the judgment, Mr Justice Sullivan established that

> *"paragraph (b) in sub-section 106A (6) should be read as providing that a local planning authority may determine "if the obligation no longer serves a useful (planning) purpose that it shall be discharged.""*

[10] Appendix 12 of the Appellant's Statement of Case

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56. The Council's reason for refusal is premised on the fact that the application 16/01191/OUTM was refused partly due to its perceived impact upon the separation and undeveloped character between Woodville and Blackfordby. I have already comprehensively addressed this matter under Appeal A and concluded that the appeal site is well contained within its setting and does not form part of an important area of separation between Woodville and Blackfordby. It follows therefore that the 4,275 sq. m of Dedicated Forestry Land on the site does not serve a useful planning purpose by protecting an important separation between the two settlements.

57. Furthermore, as noted in paragraph 31 above, the NFC has confirmed that it does not object to the proposal, subject to the self or custom-build scheme (Appeal A) making a £38,000 contribution towards compensatory off-site tree planting. This financial contribution would be secured by the S.106 Agreement submitted alongside both appeals.

58. I note that the primary reason for designating 4,275 sq. m of the appeal site as Dedicated Forestry Land in 2004 was to enable a National Forest tree planting scheme to take place on the site. However, the NFC has confirmed that the appeal site was not re-planted as plantation woodland as part of the National Forest Planting that took place for the Woodville Woodlands development.[11]

59. In addition, clause 5 of Part Three of the Schedule to the 2004 S.106 Agreement stipulated that upon completion of the Approved Forestry Scheme the Dedicated Forestry Land should be maintained *…"in perpetuity as a forestry area for use by the general public."* In 2010 the NWLDC stated that the Approved Forestry Scheme was complete.[12] Therefore, had the appeal site formed part of the Approved Forestry Scheme, the appeal site should now be accessible to the public. However, the appeal site has not been made publicly accessible. This provides further evidence to suggest that no forestry planting took place on the site and therefore designating part of it as Dedicated Forestry Land does not serve a useful planning purpose.

60. Moreover, from the evidence that is before me, it appears that neither NWLDC nor SDDC has adopted the appeal site as a forestry area. Had the appeal site formed part of the Approved Forestry Scheme, one of these Councils would have been obliged to adopt it under clause 3.2 of Part Two of the Schedule to the 2004 S.106 Agreement. Therefore, the fact that the appeal site has not been adopted by one of the District Councils provides further confirmation that the National Forest tree planting scheme did not take place on the site and was not implemented in the manner originally intended. This signals that there has been a material change in circumstances for the obligations in Part Three of the Schedule to the 2004 S.106 Agreement since it was originally signed. Ultimately, this means that designating part of the appeal site for Dedicated Forestry Land no longer serves a useful planning purpose because it protects the site for a tree planting scheme that did not materialise.

61. I consider that designating part of the site as Dedicated Forestry Land does not make a positive contribution towards the three overarching objectives of the planning system set out in paragraph 8 of the NPPF 2019. If the appeal site was not discharged from the obligations in Part Three of the Schedule to the 2004

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[11] Appendix 7 of the Appellant's Statement of Case
[12] Appendices 13 and 14 of the Appellant's Statement of Case

S.106 Agreement this would prevent it from being used for any purpose other than as woodland/scrubland and the proposed self or custom-build plots would not come forward. There is clear evidence from the Council's self-build and custom housebuilding register which confirms that there is a need for the type of residential development that is being proposed for the appeal site. The Dedicated Forestry Land on the appeal site would be contrary to the economic, social and environmental objectives of the planning system. Accordingly, it does not fulfil a useful planning purpose.

62. On the other hand, discharging the appeal site from the planning obligations in Part Three of the Schedule to the 2004 S.106 Agreement would enable the proposed self or custom-build development, subject to Appeal A, to come forward. This scheme would deliver a number of social, economic and environmental objectives and thus would make a positive contribution towards achieving all three of the planning system's overarching objectives. As a result, the proposed discharge would represent a significant improvement on the current circumstances.

63. In conclusion, for all of the above reasons, I consider that the 4,275 sq.m of Dedicated Forestry Land on the appeal site no longer serves a useful planning purpose. None of the other matters raised alter the balance of my conclusions. Therefore, the proposed discharge conforms with the test in Section 106A (6) of the Town and Country Planning Act 1990 (as amended). As such Appeal B is allowed and the appeal site is discharged from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement.

Harold Stephens

INSPECTOR

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SCHEDULE OF PLANNING CONDITIONS (1-16) (APPEAL A)

1) Application for approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

2) Approval of the details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

3) The development shall be carried out in accordance with the following approved plans:

- Drg No. P0877.20160420.SK001 Rev B - Site access arrangement;
- Drg No 10 3008-10-Rev E - Site Block Plan; and
- Drg No 11 Rev A - Site location plan.

4) No more than 30 dwellings shall be constructed on the site.

5) No development or submission of any reserved matters shall be undertaken until a Risk Based Land Contamination Assessment for the entire site has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
- BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs); and
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall commence on site until a Remedial Scheme and a Verification Plan is prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
- BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by The Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

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If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.

6) Prior to occupation of any part of the completed development, either

(i) If no remediation was required by Condition 5 a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development is received and approved in writing by the Local Planning Authority, or

(ii) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

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7) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:

a) the parking of vehicles of site operatives and visitors;
b) loading and unloading of plant and materials;
c) storage of plant and materials used in constructing the development;
d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
e) wheel washing facilities;
f) measures to control the emission of dust and dirt during construction;
g) a scheme for recycling/disposing of waste resulting from demolition and construction works;

h) delivery, demolition and construction working hours.

The approved construction method statement shall be adhered to throughout the construction period for the development.

8) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 x 65 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

9) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on Drg No. P0877.20160420.SK001 Rev B have been implemented in full.

10) Notwithstanding the submitted plans, no development shall commence until details of parking and turning have been submitted to and approved in writing by the Local Planning Authority. Thereafter the onsite parking provision shall be so maintained in perpetuity.

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11) No development shall take place until a scheme for foul drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

12) No development approved by this planning permission shall take place until such time as infiltration testing has been carried out to confirm or discount the suitability of the site for the use of infiltration as a drainage element, and the Flood Risk Assessment (FRA) has been updated accordingly to reflect this in the drainage strategy.

The results should conform to BRE Digest 365, details should also be submitted demonstrating that sufficient surface water storage can be provided on-site. Alternatively, the Lead Local Flood Authority would accept the proposal of an alternative drainage strategy that could be used should infiltration prove not to be feasible during the detailed design stage.

13) No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to, and approved in writing by, the Local Planning Authority.

The scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality; the limitation of surface water run-off to equivalent greenfield rates; the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

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Full details for the drainage proposal should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenarios for the 1 in 1, 1 in 30 and 1 in 100 year + climate change. Where discharging to a sewer, this should be modelled as surcharged for all events above the 1 in 30 year, to account for the design standards of the public sewers.

14) No reserved matters applications shall be submitted until such time as a Design Code for the entirety of the site has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement (including addendum) and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council or any successor organisation). The development shall thereafter be carried out in accordance with the agreed details.

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15) No demolition/development shall take place/commence until a programme of archaeological work, commencing with an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation, submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:

- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
- The programme for post-investigation assessment
- Provision to be made for analysis of the site investigation and recording
- Provision to be made for publication and dissemination of the analysis and records of the site investigation
- Provision to be made for archive deposition of the analysis and records of the site investigation
- Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the approved Written Scheme of Investigation.

16) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (15) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

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The Planning Inspectorate

Appeal Decision

Inquiry Held on 22-26 June and 1-2 July 2020
Site visit made on 30 June 2020

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2020

Appeal Ref: APP/D2320/W/20/3247136
Land at Pear Tree Lane, Euxton, Chorley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Limited against the decision of Chorley Borough Council.
- The application Ref 19/00654/OUTMAJ, dated 26 June 2019, was refused by notice dated 13 November 2019.
- The development proposed is the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane on land at Pear Tree Lane, Euxton, Chorley in accordance with the terms of the application, Ref 19/00654/OUTMAJ, dated 26 June 2019, subject to the conditions set out in the schedule at the end of this Decision.

Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Limited against Chorley Borough Council, which is the subject of a separate Decision.

Procedural Matters

3. The planning application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis.

4. A development framework plan[1] was submitted with the appeal, which the appellant confirmed was for illustrative purposes. I have taken this plan into account in so far as it indicates the broad extent of the proposed built development, public open space and landscaping and informs my assessment of the visual, landscape and heritage impacts of the appeal proposal.

[1] Plan no. 5219-L-02 Rev W

5. A unilateral undertaking (UU) under Section 106 of the 1990 Act was submitted by the appellant. It comprises obligations to secure the provision of affordable housing, self-build and custom housebuilding plots, amenity greenspace and play space and a sustainable drainage system on site, plus financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The UU was discussed with the main parties at the inquiry and amended to clarify affordable housing eligibility criteria. The signed and executed Deed was submitted after the close of the inquiry. I have had regard to the UU in my determination of this appeal.

Development Plan Context and Main Issues

6. The development plan for this appeal consists of the Central Lancashire Core Strategy (CLCS), a joint strategic plan covering the local authority areas of Chorley, Preston and South Ribble, which was adopted in July 2012; and the Chorley Local Plan Site Allocations and Development Management Policies Development Plan Document (CLP), adopted in July 2015.

7. The appeal site comprises 7.34 hectares of agricultural land to the east of Euxton, which is defined as an urban local service centre in Policy 1 of the CLCS. Most of the land outside of the urban areas in Chorley borough is designated as Green Belt in the CLCS and CLP, where there is a general presumption against inappropriate development. However, the appeal site is designated in Policy BNE3 of the CLP, as land between the current urban edge of Euxton along School Lane and the inner boundary of the Green Belt along Pear Tree Lane, to be safeguarded for future development needs beyond the plan period, which runs to 2026. Paragraph 139 of the National Planning Policy Framework (the Framework) states that planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development.

8. There is an emerging update to the development plan, the Central Lancashire Local Plan (CLLP), which is being prepared jointly by the Council, Preston City Council (PCC) and South Ribble Borough Council (SRBC), for the period 2021 to 2036. On adoption it will replace the CLCS and the authorities' local plans, including the CLP. The appeal site has been identified as a potential allocation for housing in the Issues and Options consultation draft of the CLLP. However, the emerging plan is at an early stage, with further consultation under Regulations 18 and 19 required before it can be submitted for examination. Furthermore, there are unresolved objections to the quantum, distribution and location of housing development, which would need to be considered as part of the examination process. Although paragraph 48 of the Framework allows weight to be given to relevant policies in emerging plans, given the early stage of preparation and the unresolved objections, the emerging CLLP can be afforded limited weight in this appeal.

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. It is evident that the proposed development would conflict with the appeal site's designation as safeguarded land under Policy BNE3 of the CLP, a point accepted by the appellant[2]. However, the Framework provides other material considerations which are relevant in this case.

[2] Paragraph 8.4.1 of Christien Lee's proof of evidence (PoE)

10. The presumption in favour of sustainable development in paragraph 11(d) of the Framework directs that, where the policies which are most important for determining the application are out-of-date, the 'tilted balance' applies, whereby permission should be granted unless the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 73 of the Framework also requires local planning authorities (LPAs) to maintain a supply of deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement or local housing need. Where an LPA cannot demonstrate a 5 year supply of deliverable sites, Footnote 7 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date.

11. In this case the main parties dispute whether or not the Council can demonstrate a deliverable 5 year supply of housing land, in terms of the appropriate housing requirement for Chorley and the deliverability of the land supply. Consequently, whether the most important policies of the development plan for determining the appeal, including Policy BNE3, are out-of-date is also in dispute. These are important material considerations to be assessed in this appeal in order for me to reach a determination under Section 38(6).

12. In view of this and having regard to the Council's reason for refusal and everything else I have read, heard and seen, the main issues in this appeal are:

    a) Whether or not the Council can demonstrate a 5 year supply of deliverable housing land in Chorley borough, having particular regard to the development plan, relevant national policy and guidance, the housing need or requirement in Chorley and the deliverability of the housing land supply;

    b) Whether or not the most important policies of the development plan for determining the appeal are out of date, having particular regard to the 5 year housing land supply position and relevant national policy; and

    c) Whether this, or any other material consideration, would justify the proposed development on safeguarded land at this time.

13. The potential for the proposed development to cause adverse impacts on highway safety and capacity, landscape character, heritage assets, ecology and other local issues has been raised in representations by interested parties. These are matters of common ground between the Council and the appellant and do not form part of the reasons for refusal. Nevertheless, I consider below the effects of the proposal on the above factors, along with the benefits which would arise from the proposed development, before concluding the planning balance.

Reasons

Five Year Housing Land Supply

14. There are two main elements to consider in this appeal in determining whether the Council can demonstrate a 5 year supply of housing land, under the terms of paragraph 73 of the Framework. Firstly, what is the housing need or requirement against which the supply should be measured; and secondly whether the sites identified in the land supply can deliver the required number of homes within the next 5 years. I deal with each element in turn below before setting out my conclusions on this main issue.

Housing Need or Requirement

15. Policy 4 of the CLCS sets out the minimum housing requirement for Chorley of 417 dwellings per annum (dpa) to 2026. However, the CLCS was adopted in 2012. Paragraph 73 and footnote 37 of the Framework make clear that where strategic policies are more than 5 years old, LPAs should identify a 5 year housing land supply (5YHLS) against their local housing need (LHN), unless those strategic policies have been reviewed and found not to require updating. The Council does not rely on such a review and the preparation of the emerging CLLP recognises that the strategic policies for Chorley require updating.

16. Footnote 37 goes on to state that where LHN is used as the basis for assessing whether a 5 year supply of deliverable sites exists, it should be calculated using the standard method set out in national guidance. The main parties agree that, as at 1 April 2020, the minimum LHN for Chorley, calculated using the standard method, is 569 dpa.[3]

17. However, the Council, PCC and SRBC have prepared a Memorandum of Understanding, dated April 2020 (MOU2), which aggregates the minimum annual LHN standard method figures for the three LPAs and redistributes that housing need across the Central Lancashire area. The redistribution relies on evidence in the Central Lancashire Housing Study (March 2020) (CLHS)[4], produced to inform the preparation of the CLLP. But it also seeks to provide an interim set of district level housing requirements, which MOU2 states is '*to reflect the most sustainable pattern of development in the sub-region*' and '*to align with City Deal growth aspirations in Preston and South Ribble.*'[5]

18. The LHN figures have been updated in a Statement of Common Ground published by the three Councils in May 2020 (SoCG), to incorporate the most recent workplace-based affordability ratios released by the Office for National Statistics (ONS). Applying the MOU2 redistribution to the updated LHN figures results in a minimum housing requirement for Chorley of 278 dpa, against which the Council now seeks to calculate its 5YHLS position[6]. For ease of reference, I set out below the comparative housing need figures under the standard method calculation and the MOU2 redistribution for the Central Lancashire authorities.

Area	***Standard Method LHN***		***MOU2 redistribution***	
	Dpa	***% of total***	***Dpa***	***% of total***
Chorley	569	56.3%	278	27.5%
Preston	191	18.9%	404	40%
South Ribble	250	24.8%	328	32.5%
Central Lancashire	1,010	100%	1,010	100%

19. The main parties have presented the two alternative figures for Chorley as a binary choice in this case. Either the 5YHLS should be calculated against the LHN figure for Chorley based on the standard method, 569 dpa, or against a requirement of 278 dpa, which is predicated on a strategy that redistributes half

[3] Paragraph 2.7 of the Housing Requirement and 5 Year Housing Supply SoCG
[4] CD7.05
[5] Paragraph 6.11 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, April 2020 (CD7.23)
[6] Paragraphs 2.5 and 2.6 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, Statement of Common Ground, May 2020 (CD7.34)

(51%) of Chorley's standard method LHN to Preston and South Ribble to meet the LPAs' joint growth aspirations. In reaching a conclusion on this, I consider below, firstly, whether it is acceptable in principle, in this case, to assess the 5YHLS against a housing need or requirement other than the standard method figure; and secondly, the weight that should be attached to the alternative figure, in this appeal, in the light of the evidence and the stage the Councils have reached in the strategic policy making process.

20. On the point of principle, it is common ground between the main parties that the LHN for Chorley borough should be calculated using the standard method in accordance with footnote 37 and paragraph 73 of the Framework[7]. Paragraph 60 and the definition of LHN in Annex 2 of the Framework permit an alternative approach to the standard method to be used to calculate the LHN in the context of preparing strategic policies only, where exceptional circumstances justify this. However, the Council does not seek to argue that there are exceptional circumstances for taking an alternative approach for calculating Chorley's LHN[8].

21. Instead, the Council refers to paragraph 2a-013 of the Planning Practice Guidance (PPG) on how LHN should be calculated where plans cover more than one LPA area[9]. In such circumstances, the PPG states that the housing need for the combined area should be at least the sum of the LHN for each LPA within the area, but that it will be for the strategic policy-making authority to distribute the total housing requirement arrived at across the plan area. This is the approach the Council has taken jointly with the Central Lancashire authorities and on which the redistribution of LHN in MOU2 and the May 2020 SoCG is based.

22. The Council maintains that it is legitimate to rely on this redistribution of LHN on an interim basis, for monitoring and calculating the 5YHLS, until the adoption of the replacement CLLP. That is clear from the agreement between the three Councils in paragraph 8.1 of the MOU2. The implication of this is that a housing requirement based on the redistribution of LHN set out in MOU2, as well as informing the emerging CLLP, is to be relied upon as a material consideration for decisions on planning applications and appeals in the meantime, where the existence of a 5YHLS is at issue. The Council has sought to argue that MOU2 is not material consideration for decision-making. However, it forms the basis for the Council's case that it can demonstrate a 5YHLS, and, therefore, is a material consideration in this appeal.

23. Whilst paragraph 2a-013 of the PPG does not prohibit LPAs in joint plan areas from relying on a redistribution of LHN figures to determine planning applications in advance of the adoption of their plans, this paragraph ostensibly applies to plan-making rather than decision-making. This is clear from the question it seeks to answer[10] and its repeated references to spatial development strategies and policy-making. The national guidance on how housing need should be calculated for the purposes of decision-making is found in section 68 of the PPG on Housing supply and delivery[11].

24. The courts urge treating the PPG with considerable caution when there is a dispute about its interpretation, given that it is intended to be guidance not policy[12]. However, the guidance in the PPG on calculating housing need and the 5YHLS for

[7] Paragraph 2.6 of the Housing Requirement and 5 Year Housing Supply Statement of Common Ground (SoCG)
[8] Confirmed by Nick Ireland (Iceni) in answers to cross examination on 23 June 2020
[9] Paragraph: 013 Reference ID: 2a-013-20190220 in the Housing and economic needs assessment section of PPG
[10] 'How should local housing need be calculated where plans cover more than one area?'
[11] To which the reader is directed from PPG paragraph: 016 Reference ID: 2a-016-20190220
[12] Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin) (ID13) [33]

decision-making purposes mirrors the policy in paragraph 73 and footnote 37 of the Framework, that where the adopted housing requirement is more than 5 years old and the strategic housing policies need updating, as in Chorley, the 5YHLS will be measured against the LHN using the standard method[13].

25. The standard method was introduced into national policy in the 2018 Framework as the new baseline for assessing 5YHLS in the absence of an up to date plan, in order to incentivise LPAs to get plans in place[14]. Therefore, it is reasonable to conclude that the guidance in paragraph 2a-013 of the PPG is not intended to allow for a redistribution of LHN in joint plan areas to provide the basis for calculating 5YHLS in decision-making in advance of that distribution being properly tested at examination and found sound. For the PPG to do so would run counter to the definition of LHN in the Framework and the clearly stated policy on the application of the standard method in decision-making.

26. Nevertheless, to date the courts have held that it is not unlawful for an LPA to rely on a housing requirement or an apportionment of housing need for decision-making purposes, even if this is not contained in an adopted plan[15]. I recognise that the *St Modwen* and *Oadby & Wigston* judgements predate the standard method and the *Harrogate* judgement related to a planning permission granted before the latest version of the Framework[16] made clear that LHN could only be calculated using an alternative approach in the context of preparing strategic policies. However, these judgements remain and establish the principle that an apportionment of housing need in an emerging joint plan can be a material consideration in decision-making. Therefore, I consider below the evidence for and against the apportioned housing need figure based on the analysis in MOU2 and the weight that should be attached to it.

27. The CLHS considers a range of factors to inform the future distribution of the aggregated standard method LHN for the three Central Lancashire authorities. These include the distribution of population, jobs, workforce and affordable housing need across the sub-region, the relative affordability and urban capacity of each district, the existing spatial strategy for Central Lancashire and the proportion of land not subject to national policy constraints[17]. The distributions for Chorley range from 18% for urban capacity to 36% for affordability.

28. The recommended distribution of the aggregate LHN to Chorley is 27.5%. Whilst this sits within the range of 18-36% and recognises that a lower proportion of Central Lancashire's jobs and affordable housing needs are concentrated in Chorley and that its development capacity is more constrained, it is less than the proportion of the sub-region's population and workforce based in Chorley (32%) and below the level of housing development required to address the relative affordability needs in the district (36%). It is also lower than the share of the sub-region's housing requirement apportioned to Chorley in the existing CLCS spatial strategy (30%). The Council's witness confirmed that the 27.5% apportionment of LHN to Chorley was a judgement based on the range of factors assessed in the CLHS[18]. But it is apparent that a higher or lower percentage within the 18-36% range could also be a justified judgement depending on the relative weight given to different factors.

[13] Paragraph: 005 Reference ID: 68-005-20190722 of the Housing supply and delivery section of the PPG
[14] Paragraph 1.15 of the White Paper on Fixing our broken housing market, 2017 (CD7.06)
[15] St Modwen v SSCLG and East Riding [2016] EWHC 968 (Admin) (CD11.04); Oadby & Wigston BC v SSCLG [2016] EWCA Civ 1040 (CD11.17); R (Oxton Farm) v Harrogate BC & Anr [2020] EWCA Civ 805
[16] Published in February 2019
[17] Table 4.14 of the Central Lancashire Housing Study, 2020 (CD7.05)
[18] Confirmed by Nick Ireland (Iceni) in answers to Inspector's questions on 23 June 2020

29. I acknowledge that the standard method figure of 569 dpa for Chorley, amounting to 56% of the aggregate LHN across Central Lancashire, is well above the distribution for Chorley for any of the factors assessed in the CLHS. If adopted for the emerging CLLP, it would represent a significant shift away from the current spatial strategy and housing distribution for the sub-region. However, there is also evidence, presented by the appellant, which suggests that adopting a requirement based on the MOU2 redistribution would deliver less than half of the number of homes in Chorley that the standard method LHN indicates is needed, leading to an undersupply of housing and worsening affordability in the district. Although Central Lancashire functions as a single Housing Market Area (HMA), the appellant's evidence points to more localised sub-markets within it[19] and a level of affordable housing need in Chorley, which the proposed apportionment of 278 dpa would fail to meet applying the current affordable housing policy[20].

30. I recognise the arguments for focussing a greater proportion of future growth in and around Preston as the largest urban centre in Central Lancashire and to align with the City Deal growth aspirations and infrastructure investment plans in Preston and South Ribble. I also note the evidence that the 2014-based projections on which the standard method LHN is based were influenced by a trend-based migration component for the period 2009-14, which for Chorley coincided with a higher than normal level of completions at Buckshaw village during that period. However, I am not persuaded that applying the standard method housing figure in Chorley would unduly affect the delivery of housing in Preston and South Ribble needed to support the City Deal growth and funding model, in the light of the high levels of housing completions which have been sustained in both Chorley and Preston over the last 3 years.

31. All of the above and the rebuttals submitted by both parties to these points, constitute arguments and evidence which need to be properly tested through the emerging CLLP preparation and examination process, in order to arrive at a housing requirement for the sub-region and for Chorley, which satisfies the tests of soundness in paragraph 35 of the Framework. Whilst MOU2 was the subject of consultation, it is evident[21] that there are significant and substantive objections to the proposed redistribution of the LHN and the evidence which supports it, which remain outstanding and will need to be resolved, ultimately through the CLLP examination. The Court of Appeal has established that *'it is not for an Inspector on a S78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure'*[22].

32. Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework. This guides my assessment of the weight that can be given to a housing requirement based on the redistribution of LHN in MOU2, as a policy document which informs the emerging CCLP. The emerging plan is at a very early stage and carries limited weight in this appeal. Although the MOU2 redistribution is an agreed position by the LPAs, there are significant unresolved objections to the recommended figures, which may result in Chorley's apportionment being modified following examination. For these reasons and in the light of my

[19] James Donagh's PoE
[20] James Stacey's PoE
[21] From the report on the consultation of the Revised Joint MOU to the Central Lancashire Strategic Planning Joint Advisory Committee in January 2020 (ID24)
[22] City and District of St Albans v Hunston Properties [2013] EWCA Civ 1610 [26] (CD11.12)

consideration of the evidence submitted, I attach limited weight to the housing requirement figure for Chorley of 278 dpa in this appeal.

33. However, full weight can be attached to the standard method LHN figure for Chorley, given that its value and use in this case are entirely consistent with the Framework and the PPG. Accordingly, I conclude that the figure of 569 dpa should be used for the purposes of calculating the 5YHLS in this appeal. This would also support the Government's objective, in paragraph 59 of the Framework, of significantly boosting the supply of homes.

34. In reaching this view, I have had regard to the previous decision for the appeal site in 2017[23]. Whilst the Inspector in that appeal applied a redistribution of the objectively assessed housing need (OAN) for Chorley based on the 2017 version of the MOU[24] (MOU1) in order to calculate the 5YHLS, the apportionment in MOU1 aligned with the adopted CLCS, rather than an alternative arrangement. In addition, national policy on the calculation of 5YHLS at the time of that decision was very different, in that it predated the 2018 Framework and the introduction of the standard method. However, I also note that in the Chain House Lane appeal decision[25], which dealt with the draft version of MOU2 in the context of the new Framework and the standard method, the Inspector gave limited weight to the draft MOU2 and concluded that the standard method LHN figure for South Ribble should be used in that case. I have explained my reasoning for attaching limited weight to a housing requirement based on the redistribution of LHN in MOU2 in the light of the evidence before me in this case.

Housing Land Supply

35. The Housing SoCG sets out two alternative housing land supply calculations for Chorley of 5.5 years or 2.5 years of deliverable supply. These are respectively based on annual requirements of 278 dpa and 569 dpa, with a buffer of 5% in light of the 2019 Housing Delivery Test Measurement, and a 5 year deliverable housing supply of 1,617 or 1,505 dwellings.

36. I have concluded above that 569 dpa is the appropriate housing requirement figure for Chorley for the purposes of calculating the 5YHLS in this appeal. The main parties dispute the deliverability of an allocated site at Cowling Farm, for which the Council includes 112 dwellings in the supply to the end of March 2025. However, even if the Cowling Farm figure were included in the deliverable supply, 1,617 dwellings would only amount to a 2.7 year supply against the LHN calculated using the standard method[26], still well below the 5 year requirement. Consequently, it is not necessary for me to consider the evidence for and against the inclusion of the Cowling Farm site any further here.

Conclusion on Five Year Housing Land Supply

37. Overall, therefore, in the light of the evidence before me at this appeal, the provisions of the development and the relevant national policy and guidance, I conclude that the Council is unable to demonstrate a 5 year supply of deliverable housing sites measured against the LHN for Chorley.

[23] APP/D2320/W/17/3173275
[24] Joint MOU and Statement of Co-operation relating to the Provision of Housing Land, September 2017 (CD7.22)
[25] APP/F2360/W/19/3234070
[26] 1,617 dwellings/598 dpa = 2.7 years

Most Important Development Plan Policies

38. Footnote 7 and paragraph 11(d) of the Framework establish that in situations where the LPA cannot demonstrate a 5 year supply of deliverable housing sites, the policies which are most important for determining the application are out-of-date and the 'tilted balance' in paragraph 11(d) is engaged for the purpose of decision-taking. However, in this case, given the evidence before me, it is also necessary to consider whether or not the 'most important' policies are otherwise to be regarded as 'out-of-date' under the terms of paragraph 11(d).

39. The courts have defined a three-step approach to be taken in making such an assessment[27]. First, it is necessary to identify which are the 'most important' policies for the decision. The Planning SoCG identifies a number of policies in the CLCS and CLP which are relevant to the appeal. However, I concur with the Inspector in the Nine Mile Ride appeal decision[28], that 'most important' does not mean all relevant policies and that it is a matter of judgement for the decision-maker to decide which are the 'most important' policies.

40. It is common ground between the main parties that Policy BNE3 of the CLP is one of the most important policies for this application and appeal. It sets the parameters for the restrictions on the development of Safeguarded Land, for which the appeal site is designated, and it is referenced in the reason for refusal. The appellant also considers that Policy BNE2 of the CLP is one of the most important policies, as it identifies the types of development allowed in Areas of Other Open Countryside (AoOOC), which Policy BNE3 defines as permissible within Safeguarded Land. However, the appeal site is not within an AoOOC and, as such, the proposal is neither in conflict nor in accordance with Policy BNE2. It is Policy BNE3 which acts to constrain development on the appeal site. It does so by reference to the types of development identified in Policy BNE2, but it is not Policy BNE2 of itself which sets those limits for Safeguarded Land. Accordingly, whilst Policy BNE3 is one of the most important policies for the determination of this appeal, I consider that Policy BNE2 is not.

41. Policy 1 of the CLCS sets the spatial strategy for Chorley borough, guiding the location of development to suitable sites and settlements, including Euxton. It is common ground between the main parties that Policy 1 is one of the most important policies of the development plan for this decision[29].

42. Policy 4 of the CLCS sets the minimum housing requirement for the district. It is common ground between the main parties that Policy 4 is out-of-date[30]. As such, the Council contends that it is not a most important policy. However, to exclude from the list of 'most important' policies those which are out-of-date, would undermine the purposes of paragraph 11(d) of the Framework, which seeks to ensure the 'tilted balance' is applied where the 'most important' policies of the development plan are out-of-date. The MOU confirms that Policy 4 is of particular relevance to the provision of housing land[31]. Given that the appeal proposal is for housing development and that there is a dispute over whether the Council can demonstrate a 5YHLS, it follows that Policy 4 of the CLCS must be one of the most important policies in this case.

[27] Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58] (CD11.10)
[28] APP/X0360/W/19/3238048, paragraph 11 (CD10.11)
[29] Page 29 of Christien Lee's PoE and paragraph 66 of the Council's closing submissions (ID 39)
[30] Paragraph 2.4 of the MOU (CD7.23) and page 29 of Christien Lee's PoE
[31] Paragraph 2.3 of the MOU (CD7.23)

43. The appellant also regards Policy 7 of the CLCS as a 'most important' policy, because it addresses the need for affordable housing. However, whilst the extent of affordable housing need in Chorley is disputed by the parties, the contribution the appeal scheme should make to that need is not, namely 30% of the total number of dwellings. Policy 7 itself guides the proportion of affordable housing to be provided on site, which would be met through the UU. As a result there is no suggestion that the proposal fails to satisfy the terms of Policy 7. Other relevant policies act in a similar way, for example Policies 14 and 24 of the CLCS, which place requirements on the proposed development to provide for school places and recreation facilities. If the proposal failed to comply with those policies they could be determinative, but they are not regarded as amongst the most important policies. On the same basis, I do not consider Policy 7 of the CLCS is one of the most important policies for this decision.

44. Therefore, Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP are the 'most important' policies in this case, defining the need and appropriate locations for housing in Chorley and the limitations on development on the appeal site as Safeguarded Land.

45. The second step is to examine each of these policies to see whether or not they are out-of-date. The courts have established that a policy may become 'out-of-date' where it is overtaken by a change in national policy[32]. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date.

46. However, the fact that Policy 4 is out-of-date for this reason, does not necessarily mean the spatial strategy in Policy 1 of the CLCS for the distribution of its housing requirements is also out-of-date. Although the two alternative distributions of the standard method LHN figures put forward in this appeal would lead to a much higher (569 dpa) or lower (278 dpa) quantum of housing growth in Chorley borough than the CLCS apportionment (417 dpa), Policy 1 still provides for growth to be concentrated in Chorley town and some to be located at Euxton and other local service centres in the borough.

47. I note the conclusions of the Wheatley Campus appeal decision[33] on this point, but that was a different policy context, where the relevant policies in the South Oxfordshire development plan defined settlement boundaries outside of which development was not permitted. In this case, Policy 1 does not of itself define settlement boundaries or limit development only to sites within settlements in Chorley borough. The evidence before me does not show that Policy 1 would unreasonably constrain the ability of the borough to accommodate its standard method housing requirement of 569 dpa. As such, I do not consider that Policy 1 of the CLCS is out-of-date for the purposes of this appeal.

48. Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains

[32] Bloor Homes Limited v SSCLG [2014] EWHC 754 (Admin) [paragraph 45]
[33] APP/Q3115/W/19/3230827 (paragraphs 13.8-13.10)

the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date.

49. Case law[34] has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026.

50. This is further supported by the fact that the emerging CLLP[35] identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet the borough's housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site[36] did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal.

51. The third step that the *Wavendon* judgement established as required by paragraph 11(d) of the Framework, is to assess the basket of 'most important' policies in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. In this case the 'basket' comprises Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP. Although the overall spatial strategy for Central Lancashire in Policy 1 is not itself out-of-date, the policies establishing the amount of housing needed in Chorley borough and designating the appeal site as Safeguarded Land, so preventing it from contributing to those needs, are out-of-date. On this basis therefore, taken as a whole, I conclude that the 'most important' policies for determining this appeal are out-of-date.

Other Material Considerations

Shortfall in Housing Supply

52. Based on the Council's housing land supply estimate, the deliverable supply of housing sites in Chorley borough would at best provide 1,617 dwellings over the next 5 years from April 2020 to March 2025. The 5 year requirement for the borough for the same period established by Chorley's standard method LHN is

[34] Suffolk Coastal District Council v Hopkins Homes Ltd and anr [2017] UKSC 37 [paragraph 63]
[35] Annex 1 to the CLLP Issues and Options Consultation, November 2019
[36] APP/D2320/W/17/3173275

2,990 dwellings. On this basis, there would be a substantial shortfall in the housing supply of 1,373 dwellings over the next 5 years. The appeal proposal would provide up to 180 market and affordable dwellings, meeting 13% of the shortfall. As such it would make a significant contribution to the housing needs of the borough.

Affordable Housing

53. Up to 54 (30%) of the proposed dwellings would be affordable housing, with a tenure mix of 70% social rented and 30% intermediate units, secured through the provisions of the UU. This would accord with the requirements of Policy 7 of the CLCS and the Central Lancashire Affordable Housing Supplementary Planning Document (SPD) and meet the expectations of paragraphs 61-64 of the Framework.

54. Although there is a pipeline of 91 affordable housing units with planning permission still to be built in Euxton, the evidence indicates a net need for further affordable housing in Euxton and the borough. The Housing Register for the borough contained 655 households in need of accommodation, as at 1 April 2020, of which 124 had selected Euxton as their preferred location and had a local connection to the borough. Therefore, purely based on current social housing needs, there is a requirement to increase the supply of affordable housing in Euxton.

55. Despite a healthy track record of both market and affordable housing delivery in the borough over the last 10 years[37], there is evidence of steadily worsening housing affordability. Average house prices in Chorley increased by 15% between 2010/11 and 2017/18 and the ratio of house prices to incomes in the borough has increased by 10% to 6.88 since the start of the plan period[38].

56. In terms of future affordable housing requirements, the CLHS identifies a need for 132 dpa of affordable rented housing in Chorley borough for the period up to 2036[39]. It is agreed between the parties that based on a 5YHLS of 1,617 dwellings, 60 dpa of affordable housing could be delivered over the next 5 years[40]. This would result in a shortfall of around 360 affordable housing units in the borough over the next 5 years[41]. The Council could offer little evidence as to how it would address this need.

57. For the above reasons, therefore, the affordable housing component of the appeal scheme would be a significant social benefit. It would provide for households on the Housing Register with a need for social housing in Euxton, reduce the shortfall in the supply of affordable housing across Chorley over the next 5 years and help to address the growing affordability problems in the borough.

Self-Build and Custom House Building

58. The appeal scheme would also provide up to 18 (10%) of the proposed dwellings as self-build or custom house building plots, secured through the UU. Although not a requirement of the CLCS or CLP, the housing needs of people wishing to build their own homes is one of the types of housing need which paragraph 61 of the Framework seeks to address.

[37] Table at paragraph 3.7 of Zoe Whiteside's Rebuttal Proof
[38] Paragraphs 8.30 and 8.31 of James Stacey's PoE
[39] Table 5.6 of the Central Lancashire Housing Study, March 2020 (CD7.05)
[40] Paragraph 8 of Note for Inspector on future supply of Affordable Housing in Chorley borough (ID26)
[41] (132 dpa x 5 = 660 units) – (60 dpa x 5 = 300 units) = 360 units

59. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for self-build and custom house building, and to grant enough planning permissions to meet the identified need[42]. Chorley's self-build register contained expressions of interest in serviced plots from 9 individuals at March 2020[43]. However, the CLHS acknowledges this may underestimate demand for self-build, because awareness of the Right to Build Registers in England is low[44].

60. The PPG advises that data on registers can be supplemented from secondary data sources to obtain a robust assessment of demand[45]. The Buildstore Custom Build Register, the largest national database of demand for self and custom build properties, has 185 people registered as looking to build in Chorley, with 699 subscribers to its PlotSearch service[46]. Data from a national survey conducted by Ipsos Mori for the National Custom and Self-Build Association, when applied to Chorley's population, indicates that as many as 1,929 people may wish to purchase serviced plots in Chorley over the next 12 months[47]. Whilst the secondary data sources may reflect a level of aspiration rather than genuine need and include households registering an interest in more than one district, the CLHS concludes they provide evidence of a greater level of demand for self-build than the Council's register shows.

61. In terms of supply, the Council's 5YHLS statement contains 49 self-build and custom house building plots with planning permission, including 20 in Euxton, but only 27 of the 49 plots have been secured by legal agreements. For the remaining 22 plots permitted, the applicants have indicated the intention to exercise self-build exemption from CIL. However, evidence[48] for the period 2016-2019 shows that only around 30% of such developments in Chorley have ultimately qualified for self-build exemption, which indicates that CIL self-build exemption applications are not a reliable proxy for the actual level of self-build supply.

62. Even so, and treating the Buildstore demand figures with caution, the evidence clearly indicates that the 5 year supply of self-build plots in the borough is likely to fall well short of the anticipated demand. As such the provision of a further 18 self-build and custom house building plots on the appeal site would make an important contribution to the need for this type of housing in Chorley. This would be an additional benefit of the scheme to which proportionate weight should be given in the planning balance.

Highway safety

63. Local residents have objected to the effects of the proposed development on the operation and safety of the surrounding highway network. Particular concerns which have been raised include the proposed southern access to the site from School Lane at a bend in the road where visibility is poor; the danger of an increase in traffic for pedestrians using Pear Tree Lane and School Lane, given their limited widths, the absence of footpaths in places, and the fact that School Lane is used by parents and children to access the schools on the western side of Wigan Road; the effects of an increase in traffic on the junction of Pear Tree Lane

[42] Footnote 26 of the Framework
[43] Paragraph 4.20 of Andrew Moger's PoE and paragraph 7.21 of Zoe Whiteside's PoE
[44] Paragraph 9.33 of the Central Lancashire Housing Study, March 2020 (CLHS) (CD7.05)
[45] Paragraph: 003 Reference ID: 67-003-20190722
[46] Paragraph 9.41 of the CLHS
[47] Paragraph 9.39 of the CLHS
[48] From the Council's response to an FoI request in June 2020 (see Andrew Moger's Supplemental Evidence)

and Euxton Lane where there is a history of accidents; and an increase in traffic at the junction of School Lane and Wigan Road, which is already busy.

64. The highway and traffic impacts of the proposed development have been assessed in the Transport Assessment (TA)[49] submitted with the application, which proposes a series of improvements intended to mitigate the effects of the proposal on the highway network[50]. The Highways SoCG between the appellant and Lancashire County Council, as the local Highway Authority (HA), confirms the robustness of the traffic and junction modelling in the TA and that, subject to the implementation of the proposed improvements, the cumulative impact of the appeal development on the road network would not be severe. No other highways evidence was submitted to me to counter the technical evidence contained in the TA and SoCG.

65. With regard to the main traffic and safety concerns raised by residents, the accesses to the proposed development would form two new priority-controlled T-junctions on School Lane, one on the northern frontage of the site and the other at its south-western corner. The main internal road to the development would become the principal traffic route between School Lane and Pear Tree Lane, reducing through traffic on the northern section of School Lane. The junction at the south-western corner would improve visibility at the bend in School Lane and the T-junction would significantly reduce the potential for conflict between vehicles at the existing corner. Footways would be installed along the northern frontage of the site and adjacent to the junction at its south-western corner to provide a continuous pedestrian route along the length of School Lane. This would link up with the footpath running through the Rowland Homes development to the north, providing a safe walking route to Euxton Lane, to avoid pedestrians having to use the carriageway on the northern section of Pear Tree Lane. Traffic calming measures are also proposed along the length of the through route from the junction of Pear Tree Lane with Euxton Lane to the junction of School Lane with the A49 Wigan Road, together with a 20mph speed limit and additional street lighting. I am satisfied that these measures would improve the safety of School Lane and Pear Tree Lane for pedestrians, cyclists and drivers and adequately mitigate the effects of additional traffic along these roads.

66. Traffic modelling in the TA shows that the traffic generated by the development would result in an increase in vehicles at the junctions of School Lane with Wigan Road and Pear Tree Lane with Euxton Lane of 2.9-3.6% during the morning and evening peak hours, with resultant increases in queuing times. There has been only 1 'slight' accident in the last 5 years at the Pear Tree Lane/Euxton Lane junction; therefore, the accident records of the junctions are not a cause for concern. However, improvements are proposed, to be provided by the developer, at both junctions. At the School Lane/Wigan Road junction, a MOVA[51] system would be installed to manage the traffic light sequencing, minimising waiting times and queue lengths. At the Pear Tree Lane/Euxton Lane junction the bell mouth would be widened, visibility improved and a pedestrian island and refuge added on Euxton Lane. The modelling indicates that both junctions would continue to operate within capacity with the development traffic included. The T-junctions at the site accesses are both predicted to operate with high levels of spare capacity and minimal queues.

[49] CD1.08
[50] Plans numbered: 1318/09 Rev G and 1318/23 Rev A
[51] Microprocessor Optimised Vehicle Actuation

67. The appeal site is accessible by sustainable modes of transport to shops, community facilities and employment, which should minimise the need for car journeys. It is within convenient walking distance of a number of local services in Euxton, including primary schools, a nursery, health centre, dental surgery, community centre and places of worship. An equipped play area is proposed on-site, which would be secured through the UU. There are bus stops on Wigan Road and Euxton Lane within 800 metres of the site, with frequent services to a wider range of shops, services and employment in Buckshaw Village, Leyland, Chorley and Preston. There are two railway stations near to the site at Balshaw Lane in Euxton (1.35 km away) and Buckshaw Parkway (1.6 km away), providing rail services to the major centres and services of Manchester, Liverpool and Blackpool. Bus stop improvements are proposed and a travel plan, which would encourage the use of sustainable modes of transport. The travel plan would be monitored to measure the modal shift from private car to sustainable modes of travel. The costs of monitoring would be funded by the development via the UU, which is both necessary and reasonable.

68. Therefore, given the location of the appeal site and its accessibility by sustainable transport modes, and subject to the range of improvements proposed to mitigate the effects of additional traffic on the road network, which could be secured by condition, I conclude that the proposed development would not result in an unacceptable impact on highway safety or a severe impact on the operation of the road network. Accordingly, it would comply with paragraphs 103 and 109 of the Framework and with the expectations of Policies ST1 and BNE1(d) of the CLP.

Landscape and Visual Impacts

69. The appeal site consists of five fields, currently used for grazing, which are bounded by tall hedgerows with trees. It sits between the existing urban edge of Euxton to the west and north and countryside to the east and south. Along its western boundary, the site is fringed by housing in School Lane and The Cherries, which forms a strongly urban context to this part of the site. In contrast, on its eastern boundary, Pear Tree Lane retains the appearance of a country lane lined by mature trees and hedgerows, with dispersed dwellings and farm buildings, lending a more rural character to this side of the site. Along the northern boundary of the site, School Lane is similarly lined by trees and hedgerows, albeit the context here is changing from rural to urban, with new housing to the north seen through the roadside hedges. The southern boundary of the site is formed by a well-established hedgerow and woodland surrounding Rushton's Brook, with countryside beyond.

70. There are no public footpaths running across the appeal site and views of it from the footpaths to the south and east and more distant viewpoints are largely screened by the intervening landscape. However, there are views into and across the site from Pear Tree Lane and School Lane, which are used by local residents for walking and exercise. There are also views across the site from the rear of properties adjoining the site on School Lane, Pear Tree Lane and The Cherries.

71. The Landscape and Visual Appraisal (LVA)[52] submitted with the application and the Landscape SoCG confirm that no landscape designations apply to the site and that it is not part of a 'valued landscape' referred to in paragraph 170(a) of the Framework. It is located within the Lancashire Valleys national landscape

[52] CD1.05

character area and in the Cuerden-Euxton landscape character area of the Undulating Lowland Farmland landscape character type, as defined in the Landscape Strategy for Lancashire (LSL). The description of these landscapes[53] recognises that agricultural land within the Lancashire Valleys is fragmented by urban development and, as such, that within the Cuerden-Euxton landscape, its rural character is compromised. This is true of the appeal site, given its partially urban surroundings. Policy 21 of the CLCS, in respect of Landscape Character Areas, expects new development to be well integrated into existing settlement patterns and appropriate to the landscape type in which it is situated. The proposal would not conflict with Policy 21, which is common ground between the main parties[54].

72. Nevertheless, the site's open landscape is clearly of value to local residents, as a visual amenity and as part of the wider rural setting of Euxton on this side of the settlement. The construction of up to 180 dwellings would result in a permanent change to the character of the site from agricultural land to urban development, causing harm to the landscape. However, in part this could be mitigated by the retention of the existing trees and hedgerows within and on the edge of the site, which could be secured by condition, helping to soften the visual impact of the development, particularly in views from Pear Tree Lane and School Lane. As the site is well contained by the surrounding landscape and dwellings from more distant views, the visual impact of the proposed development on the wider rural landscape would not be significant.

73. The Arboricultural Assessment[55] submitted with the application confirms that a number of trees would need to be removed to enable the construction of the proposed site accesses. This includes the specimen Oak tree at the southern entrance off School Lane, which is prominent in the street scene and of amenity value locally. However, its loss could be mitigated by planting replacement trees to either side of the proposed access, which could form part of the reserved matters landscaping scheme and be secured by condition.

74. The LVA provides a robust analysis of the landscape and visual impacts of the proposed development. Based on this, it is common ground between the main parties[56] that the proposal would have minor to moderate adverse effects on the landscape and visual amenity of the site and surroundings. In the light of my assessment above, I concur with this view. Whilst landscape harm would occur, the impacts would be localised and could be partially mitigated by retained and new landscaping. Moreover, the development would be seen in the context of existing housing on Pear Tree Land and School Lane. Accordingly, the landscape and visual harm carries no more than moderate weight in the planning balance.

Heritage Assets

75. Houghton House Farmhouse, a Grade II listed building, lies adjacent to the north-east corner of the appeal site. Its principal elevation benefits from open views across the northernmost field of the site, which forms part of the setting of the listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering development that affects a listed building or its setting, special regard shall be given to the desirability of preserving that building or its setting. Paragraph 194 of the

[53] Paragraphs 3.2, 3.5 and 3.6 of the Landscape SoCG
[54] Paragraph 4.2 of the Landscape SoCG
[55] CD1.11
[56] Paragraph 5.8 of the Landscape SoCG

Framework advises that the significance of a designated heritage asset can be harmed by development within its setting. Policy BNE8 of the CLP refers to the Framework for proposals affecting the setting of a heritage asset.

76. The significance of Houghton House Farmhouse is derived principally from its historical and aesthetic value. It is the primary building in a former farm complex, dating from the late 18th century, the associated barns and outbuildings of which have since been converted for residential occupation. Its historical interest relates to its place in the agricultural economy of Euxton. Its aesthetic value is seen in its symmetrical form, vernacular stone materials, original features and architectural detailing, making it a fine example of a farmhouse of its period.

77. The appeal site once formed part of the land holding of the farm. However, the surrounding farmland is now dissociated from the plot and no longer has any functional relationship with Houghton House Farmhouse. The wider historic rural setting of the Farmhouse has also been compromised by the residential expansion of Euxton to the north and west. The appeal site plays little role in affording views of the listed building, apart from distant private vistas from the rear of the houses along School Lane to the west. Public views of the main façade of Houghton House approaching east along School Lane are largely restricted by the roadside trees and vegetation, until arrival at the entrance to the property.

78. Therefore, despite forming part of the setting for Houghton House Farmhouse, it is common ground between the Council and the appellant that the appeal site only makes a minor contribution to the significance of the listed building.[57] For the reasons given above, I concur with this view. However, I also consider that the proposed development would reduce the remaining pastoral setting of Houghton House Farmhouse and thereby cause harm to its significance. The Heritage Statement submitted with the application proposes mitigation in the form of an area of open space in the north of the site, landscaping to the site boundary with Houghton House Farmhouse and setting back development from the north-eastern edge of the site[58]. These measures would reduce the harm, but not avoid it.

79. Nevertheless, given the minor contribution of the appeal site to the significance of the heritage asset, the proposals would amount to less than substantial harm to the heritage significance of Houghton House Farmhouse. With the inclusion of the mitigation measures proposed, I consider this would be towards the lower end of the spectrum of less than substantial harm. Paragraph 196 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of a heritage asset, the harm should be weighed against the public benefits of the proposals. I consider this below as part of the overall planning balance.

80. The Archaeological Desk Based Assessment submitted with the application identified the potential for archaeological deposits from the Roman period along the eastern boundary of the site. However, the County Archaeological Service did not object to the proposal subject to a programme of archaeological work prior to the start of any development, which could be secured by condition. Accordingly, the potential effects on the archaeological interest of the site would not weigh against the proposal.

[57] Paragraph 5.1(4) of the Heritage SoCG
[58] Paragraph 5.3.1 of the Heritage Statement, April 2019 (CD1.17)

Ecology

81. An Ecological Appraisal (EA)[59] of the appeal site, informed by surveys of habitats and protected species, was submitted with the application. An Ecology SoCG between the main parties was also submitted with the appeal. These confirm that the site mainly comprises species-poor, improved agricultural grassland of negligible nature conservation value. The hedgerows subdividing and bounding the fields are the habitats of principal importance, but the development framework plan and EA indicate these would be retained as part of the landscaping scheme for the site, which could be secured by condition. Likewise, the evidence indicates that the trees on site, which offer both amenity value and potential habitat for roosting bats and nesting birds, would mostly be retained. That includes the strip of woodland along the northern boundary and the woodland around Rushton's Brook on the southern boundary, which would be protected by a buffer of land.

82. In terms of protected species, Rushton's Brook offers ecological value for a range of species. Although the brook is off-site, measures are recommended to prevent pollution from the construction and operation of the site, which again could be secured by condition. There is a pond in the centre of the site, which surveys showed to be of average suitability for Great Crested Newts (GCNs), albeit GCNs were found to be absent from it and from any ponds within 500m of the site at the time of the surveys. However, the development framework plan shows the pond to be retained as part of the open space and landscape provision within the development. The Greater Manchester Ecology Unit also recommended that, if the development were to proceed, an Amphibian Mitigation Strategy be secured by condition to avoid any future harm to newts.

83. The site is used by foraging bats and nesting birds. However, hedgerows and trees, which form the main habitats to support these types of wildlife, would be largely retained. A condition could be imposed to ensure any clearance or construction work would be undertaken outside of the nesting season. As part of the landscaping scheme, bird and bat boxes on existing trees or new buildings are proposed to enhance opportunities for birds and bats.

84. The Council's view is that the proposed development would be likely to result in a net gain in biodiversity, which carries moderate weight in favour of the scheme in the planning balance[60]. I concur with this conclusion for the following reason. Although the proposal would involve a major urban development of the site, it would also provide the opportunity to retain, manage and enhance the existing habitats of value on site and introduce new habitats for nature conservation, as part of the landscaping, open space and sustainable drainage proposals for the site. I am also satisfied that the mitigation measures proposed would avoid or compensate for any residual harm to ecology that may occur.

85. As such the proposed development would comply with the principles for protecting and enhancing habitats and biodiversity in paragraph 175 of the Framework and with the requirements of Policy BNE9 of the CLP. It would also satisfy the relevant tests under the Conservation of Habitats and Species Regulations 2017 (as amended).

[59] CD1.10
[60] Paragraph 7.26 of Zoe Whiteside's PoE

Flood risk

86. The application was accompanied by a Flood Risk Assessment (FRA)[61], which demonstrates that the appeal site is located within Flood Zone 1 and therefore at the lowest risk of flooding. As such, the proposal would meet with the expectations of paragraph 158 of the Framework, to steer new development to areas with the lowest risk of flooding.

87. However, the FRA proposes a number of measures to ensure surface water run-off is managed and would not increase flooding elsewhere. These include a sustainable drainage system (SuDS) with an attenuation basin in the south-west corner of site, the use of culverts under School Lane on the northern part of the site, and setting development levels across the site so that flows would be contained within the existing ditch systems and pond. Implementation and management of the SuDS would be obligated through the UU. The other measures could be secured by condition.

88. On this basis, the proposed development would not result in increased flood risk. It would, therefore, accord with Policy 29(d) of the CLCS, which seeks to manage flood risk in all new development and with paragraph 163 of the Framework which seeks to ensure flood risk is not increased elsewhere.

Local infrastructure

89. The proposed development would increase the population of Euxton, generating additional spending for local businesses, which would be an economic benefit. However, it would also increase pressure on existing community services and infrastructure. Policy 2 of the CLCS seeks to ensure that development makes an appropriate contribution to the costs of infrastructure necessary to support it.

90. I have concluded above that the proposed transport improvements would be sufficient to mitigate the effects of the proposal on the highway network. The UU provides for financial contributions to create additional primary school places at local schools and to improve playing pitches at Gillet Playing Fields in Chorley. In addition, it secures the provision of a new play area on site, which would meet the needs of the development, but also be of benefit for the wider community.

91. The playing pitch contribution is proportionate to the number of dwellings proposed and the primary education contribution is based on the anticipated number of primary school age children who would be living on the site. They have been calculated according to the relevant formulae in the Council's SPDs and are agreed by the Council and the Local Education Authority (LEA). Local residents have expressed concerns about the absence of any provision for secondary school places as part of the proposal. However, there is forecast to be a surplus of secondary school places within 3 miles of the site once the development is occupied, and, therefore, the LEA does not require a contribution to secondary education provision.

92. A contribution towards improvements to local healthcare facilities is also not proposed. Whilst, the Euxton Medical Centre has expressed concerns about the capacity of the surgery to take on further patients, a financial contribution to local healthcare facilities has not been requested by the statutory providers, NHS England and the local Clinical Commissioning Groups.

[61] CD1.13

93. Therefore, I am satisfied that contributions towards secondary education and healthcare facilities would not be necessary to make the proposed development acceptable in planning terms. However, the financial contributions to primary education, recreation and travel plan monitoring would meet the tests for planning obligations in paragraph 56 of the Framework.

94. The Planning SoCG[62] confirms that the wider impact of the proposed development on strategic infrastructure in Chorley would be adequately mitigated through CIL payments, for which the appeal scheme would be liable. Accordingly, subject to the provision of CIL and the planning obligations in the UU, the appeal proposal would not have an unacceptably adverse impact on infrastructure, services or facilities in Euxton and the surrounding area. It would as such comply with Policy 2 of the CLCS.

Living conditions

95. With regard to impact of the proposed development on the privacy and outlook of the occupiers of residential properties adjacent to the site, whilst their view would change from open fields to houses, there is no evidence that this would result in harm to living conditions through overlooking or an overbearing outlook. As layout and appearance are reserved matters, the Council would be able to control the detailed design of the development to ensure adequate separation distances between the new and existing dwellings. As such the proposal would not conflict with paragraph 127(f) of the Framework, which seeks a high standard of amenity for existing and future occupiers. Accordingly, this matter does not weigh against the proposal.

Economic Benefits

96. It is common ground between the main parties that the appeal proposal would generate a number of economic benefits[63]. These are quantified by the appellant as including a £19.9 million investment in construction on the site, approximately 353 direct and indirect FTE jobs in construction and associated industries, and around 400 new residents of whom at least half would be economically active generating a combined annual household expenditure of £4.9 million, a proportion of which would be spent in the local economy. These are not insignificant economic benefits, which carry weight in favour of the proposal in the planning balance.

Planning Balance

97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development would conflict with the appeal site's designation as Safeguarded Land under Policy BNE3 of the CLP. The policy remains broadly consistent with paragraph 139 of the Framework, in safeguarding land to meet longer-term development needs. Accordingly, paragraph 213 of the Framework establishes that due weight should be given to it. However, Policy BNE3 is also out-of-date, because it continues to safeguard land for longer-term development needs, based on a housing requirement in Policy 4 of the CLCS which is out-of-date, and when most of the safeguarded land is being promoted by the Council in the emerging CLLP for development to meet housing needs

[62] Paragraph 4.19.6 of the Planning SoCG
[63] Paragraph 4.20.1 of the Planning SoCG

from 2021 onwards. Although limited weight can be attached to the emerging CLLP given it is at an early stage in the plan-making process, its recognition that Safeguarded Land, including the appeal site, may be released for housing development in the near future, is a material consideration which reduces the weight that can be given to the conflict with Policy BNE3 in this appeal.

98. Paragraph 11(d) of the Framework is also an important material consideration in this case. I have concluded above that the most important policies for this decision are out-of-date, both on their own merits and because the Council is unable to demonstrate a 5YHLS against the standard method LHN for Chorley. As such the 'tilted balance' in paragraph 11(d) is engaged for this decision. This means that planning permission should be granted unless: i) the policies of the Framework that protect areas or assets of particular importance, as defined in Footnote 6, provide a clear reason for refusing the development proposed; or, ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

99. On the first limb of paragraph 11(d), it is common ground between the main parties that there are no policies in the Framework which provide a clear reason for refusal[64]. Although the previous appeal decision on this site[65] found that Safeguarded Land was a specific policy in the Framework indicating development should be restricted, national policy has changed since then and Safeguarded Land is not listed in Footnote 6 in the current Framework.

100. The Framework's policies on designated heritage assets are Footnote 6 policies. Paragraph 193 of the Framework establishes that great weight should be given to an asset's conservation when considering the impact of a proposed development on the significance of a designated heritage asset. In this case the proposal would cause less than substantial harm to the significance of Houghton House Farmhouse and that harm would be at the lower end of the range of heritage harm, for the reasons I have explained above. Paragraph 196 of the Framework establishes that where less than substantial harm arises it should be weighed against the public benefits of the proposal. The public benefits of the appeal scheme include its contribution to reducing the shortfall in the housing supply and to meeting needs for affordable and self-build housing, a boost to the local economy from jobs and investment, a net gain in biodiversity on the site and additional local play facilities. I am satisfied that the combined effect of these benefits outweighs the less than substantial harm to the significance of the heritage asset in this case. Accordingly, I agree that the policies in the Framework for the protection of areas and assets of importance do not provide a clear reason for dismissing the appeal.

101. Turning to the second limb of paragraph 11(d), the adverse impacts of the proposal comprise a conflict with the site's status as Safeguarded Land under Policy BNE3, minor to moderate adverse effects on landscape and visual amenity, and less than substantial harm to the significance of the listed building. I attach limited weight to the conflict with Policy BNE3, because it is out-of-date and no more than moderate weight to the harm to the landscape and visual amenity. This is added to the great weight which should be attached to conserving the heritage asset.

[64] Paragraph 4.21.1 of the Planning SoCG
[65] Paragraph 63 of APP/D2320/W/17/3173275

102. Balanced in favour of proposed development, the delivery of up to 180 new dwellings carries significant weight in addressing housing needs and reducing the shortfall in the housing land supply by 13%. The designation of up to 54 of the units as affordable homes, of which 38 (70%) would be social rented tenure, would reduce the 360 unit shortfall in the projected supply of affordable rented housing by more than 10%, which also carries significant weight in addressing housing needs in the borough. The provision of 18 of the units as self-build or custom house building plots should also attract significant weight in favour of the proposal, given the level of demand for self-build as a sector of housing need in Chorley.

103. In terms of the economic benefits of the scheme, the creation of 353 FTE jobs and almost £20million of investment during the construction phase, plus an ongoing annual injection of almost £5million of expenditure, would serve to boost the local economy. However, in the overall scale of the economy in Chorley, the contribution would be modest and in the main temporary, thereby attracting moderate weight. The net gain in biodiversity carries moderate weight in favour of the proposal. Likewise the provision of an equipped play area offers a local benefit of modest weight. The highway improvements and contributions to education and playing fields would serve to mitigate the impact of the proposal and therefore carry neutral weight in the planning balance.

104. No other adverse impacts have been identified and there are no other policies in the Framework or the development plan which weigh against the proposal. Accordingly, taking all considerations into account, I conclude that adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Under the presumption in favour of sustainable development in paragraph 11(d) of the Framework, this means permission should be granted.

105. Overall, therefore, notwithstanding the proposal's conflict with the appeal site's designation as Safeguarded Land in Policy BNE3 of the CLP, the presumption in favour of sustainable development in paragraph 11(d) of the Framework is a material consideration which, in this case, warrants a decision other than in accordance with the development plan. Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed.

Conditions and Planning Obligations

106. The Council submitted a set of suggested planning conditions which were discussed at the inquiry. I have considered which conditions are required having regard to the tests contained in paragraph 55 of the Framework and the Planning Practice Guidance. I have revised some of the wording, either as discussed at the inquiry or in the interests of clarity and enforceability.

107. A condition to specify the approved plans, including the access arrangements, is necessary in the interests of good planning and highway safety. It is also

necessary to specify the reserved matters to be submitted for approval and the time limits for their submission and the subsequent implementation of the permission in accordance with the requirements of the Act.

108. Conditions are included requiring a landscape retention, creation and management plan, lighting strategy and method statement on measures to avoid harm to amphibians, and to ensure no works to trees during the nesting season. I have amended the landscape condition to ensure it refers to the replacement of trees lost to create the site accesses. These are necessary to preserve the important habitats on site, avoid harm to protected species, enable a net gain in biodiversity and mitigate impacts on the landscape and visual amenity. However, I am satisfied it is not necessary to specify compliance with the wildlife legislation, as suggested in representations. I have assessed the proposal in terms of the tests in the 2017 Conservation of Habitats and Species Regulations, which the conditions referred to above would help to meet. The developer will be under a separate statutory duty to ensure compliance with the relevant legislation for the protection of wildlife and habitats during the construction phase.

109. A condition requiring an arboricultural method statement is necessary to ensure the appropriate measures are taken during construction to protect trees and hedgerows which form part of the retained landscape features. It is also necessary to impose a condition to ensure the implementation of the landscaping scheme as soon as possible after occupation or completion in the interests of the overall appearance of the development.

110. A separate condition to ensure the landscaping scheme incorporates measures to screen the development from Houghton House Farmhouse is necessary to meet the statutory duty to preserve the setting of the heritage asset. To preserve any archaeological heritage, a scheme of archaeological investigation and a programme of works are also required to establish the presence or absence of archaeological remains and, where necessary, to preserve or record them before construction starts.

111. A condition requiring finished floor levels to be agreed before the start of each phase is necessary to control the height of the development and safeguard the amenities and living conditions of local residents. Although the provision of public open space and an equipped play area is an obligation of the UU, a condition to ensure the position, layout, design and phasing of the open space provision is agreed as part of the reserved matters is necessary for the proper master planning of the development and the timely provision of public open space.

112. A condition requiring all dwellings on the site to achieve emission rates of 19% above the requirements of the 2013 Buildings Regulations is both necessary and reasonable to comply with Policy 27 of the CLCS. This would ensure the energy performance of the proposed dwellings would be at least equivalent to that of the former Code for Sustainable Homes (CSH) Level 4. Although the CSH has been withdrawn, continuing to require compliance with the equivalent energy efficiency standard accords with the transitional arrangements put in place by the Government until housing standards are set through revised building regulations. It is also consistent with national policy on climate change. I have amended the suggested wording of this condition to ensure it applies to all new dwellings proposed, as required by Policy 27, rather than the development as a whole.

113. A series of conditions were suggested for the approval and implementation of a surface water drainage scheme. I have condensed these into two conditions requiring an overall master strategy and details of the system for regulating the flow of surface water. This includes measures to prevent pollution of surface waters, such as Rushton's Brook. I consider these conditions are necessary to ensure the sustainable drainage of the site, prevent an increase in flooding elsewhere in line with the requirements of the Framework and protect wildlife habitat and ecology. I am satisfied that conditions to control the construction of estate roads to the required standard for adoption, their completion for each phase and details of their subsequent maintenance and management along with all parts of the public realm are also necessary to ensure highway safety and visual amenity.

114. A Full Residential Travel Plan (Full RTP) is necessary to encourage sustainable modes of travel and reduce car journeys. I have amended the suggested condition to refer to the Framework Travel Plan submitted with the application, to ensure the Full RTP remains consistent with the sustainable transport measures proposed in the Transport Assessment which address the traffic impacts of the development. A condition requiring a construction management plan to control the hours of site operation, noise, dust, emissions and waste during the construction phase is also necessary to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety.

115. A condition is proposed requiring a strategy and infrastructure to support super-fast broadband on the site. Paragraph 112 of the Framework expects planning decisions to support the expansion of electronic communications networks, including full fibre broadband connections. Policies 1 and 3 of the CLCS also encourage greater use of information technology and better telecommunications to enable home working as a means of reducing the need to travel. I note the appellant's objections to this condition, but am satisfied there is a clear national and local policy basis for it and that it meets the Framework tests as necessary and reasonable to support the delivery of full fibre broadband connections for each property within the development.

116. A condition requiring an Employment and Skills Plan is a reasonable and necessary requirement to allow for local residents to benefit from the employment and training opportunities which would be available during the construction phase of the proposed development. This would also accord with Policy 15 of the CLCS.

117. A condition requiring a road link to the southern boundary of the site to enable access to the remainder of the BNE3.9 Safeguarded Land allocation to the south was discussed at the inquiry. Although the land to the south is not currently proposed for development, I am satisfied that the condition meets the Framework tests in the interests of good planning and to avoid this land being sterilised, should it be required for longer-term development.

118. A condition requiring the construction of the proposed accesses and off-site highway works before the development is occupied is necessary to ensure the effects of the proposal on the surrounding roads are adequately mitigated, in the interests of highway safety and the efficient operation of the highway network. I have amended the wording of the condition to remove the phrase which means the potential highway works would not be 'not limited to' those

listed, as this is too open ended. The intention of the condition is to ensure those works identified as necessary to mitigate the impacts of the development on the highway network are delivered. However, there may be ancillary accommodation works, such as street lighting, drainage and services diversions, which the Highway Authority is concerned may be necessary to enable the construction of the listed works to adoptable highway standards. I have therefore added these words for preciseness.

119. Finally, the Council suggested a condition requiring the location of the affordable housing to be submitted as part of the reserved matters relating to layout. However, the UU contains a legally binding obligation for an affordable housing scheme, including details of the numbers, type, tenure and location of the affordable housing units, to be approved by the LPA before the development is commenced. Therefore, a condition effectively requiring the same is not necessary.

120. The proposal is also subject to the signed UU, dated 6 July 2020, to secure the provision of 30% affordable housing, 10% self-build and custom housebuilding plots, amenity greenspace and play space and a SuDS on site, together with financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The obligations accord with the development plan and are required to mitigate the impact of the proposed development. As such they are necessary to make the development acceptable in planning terms. They are also directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, the deed meets the tests set out in paragraph 56 of the Framework and in Regulation 122 of the CIL Regulations 2010 (as amended).

Conclusion

121. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be allowed, subject to the conditions in the attached schedule and the obligations in the S106 UU, dated 6 July 2020.

M Hayden

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 5219-L-04 Rev A and Indicative Access Arrangements 1318/09 Rev G.

2) Prior to the commencement of development, full details of the layout, scale appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.

3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.

4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

5) The first reserved matters application shall be accompanied by a Landscape Retention, Creation and Management Plan for the entire site, which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. This shall include the following details:

   a) Details of new ponds / wetland creation;
   b) Details for the retention of hedgerows, trees and ponds / wetlands on the site and how they are to be protected during any construction period, in accordance with the recommendations of the FPCR Ecological Appraisal, dated April 2019, the FPCR Arboricultural Assessment, dated June 2019, and the Heritage Statement, April 2019;
   c) Planting plans, including details for the replacement of trees removed to create the site accesses off School Lane, taking into account the need to mitigate impacts on landscape and visual amenity, and to contribute to landscape connectivity and the creation of a coherent local ecological network;
   d) Details of the location of bird boxes;
   e) Detailed measures required to support bats;
   f) Written specifications (including cultivation and other operations associated with plant and grass establishment);
   g) Schedules of plants, noting species, planting sizes and proposed numbers/ densities where appropriate;
   h) Implementation timetables.

   The development shall be implemented in accordance with the approved details.

6) The first reserved matters application shall be accompanied by a 'lighting design strategy' that shall identify areas/features on site that are potentially sensitive to lighting for bats and any other species that may be disturbed, to show how and where the external lighting will be installed (through appropriate lighting contour plans), so that it can be demonstrated clearly that any impacts on wildlife are negligible (in particular bats), in accordance with the recommendations in the FPCR Ecological Appraisal, dated April 2019. All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy.

7) The first reserved matters application shall be accompanied by a comprehensive Method Statement describing Reasonable Avoidance Measures for the avoidance of harm to amphibians, and shall subsequently be implemented as approved.

8) No tree felling, vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive, unless surveys by a competent ecologist show that nesting birds would not be affected.

9) The first reserved matters application shall be accompanied by an Arboricultural Method Statement that shall include details for the protection of all trees to be retained and details of how construction works will be carried out within any Root Protection Areas of retained trees. The development shall only be carried out in accordance with the approved Arboricultural Method Statement and with British Standard BS 3998:2010 or any subsequent amendment. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the Root Protection Areas.

10) Any Reserved Matters submission for landscaping associated with the development hereby approved shall provide sufficient screening to the development site from the adjacent grade II listed building, Houghton House Farmhouse, in accordance with the recommendations of the Heritage Statement, dated April 2019. The development shall be carried out in conformity with the approved landscaping details.

11) Either with any reserved matters application or prior to the commencement of each phase full details of the existing and proposed ground levels and proposed dwelling finished floor levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such details shown on previously submitted plans(s). The development shall be carried out strictly in conformity with the approved details.

12) Either with the first or any subsequent reserved matters application, full details of the position, layout, phasing and equipping of the public open space and play areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the provision and equipping of these areas shall be carried out in strict accordance with the approved details.

13) Prior to the construction of the superstructure of any of the dwellings hereby permitted details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that all new dwellings proposed to be constructed on the site will achieve a minimum Dwelling Emission Rate of 19% above the 2013 Building Regulations. Thereafter, the development shall be completed in accordance with the approved details.

14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any dwellings on each phase or following the completion of the development within the relevant Phase, whichever is the earlier. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

15) A programme of archaeological work in accordance with a written scheme of investigation, which shall have been submitted to, and approved in writing by, the local planning authority, shall be undertaken and submitted to the local planning authority as part of the first reserved matters application. This programme of works shall include an initial phase of geophysical survey and trial trenching, as well as the compilation of a report on the work undertaken and the results obtained. These works should aim to establish the presence or absence of buried archaeological remains and their nature, date, extent and significance. If archaeological remains are encountered, then a subsequent phase of impact mitigation (which may include preservation in situ by the appropriate design or siting of new roads, structures and buildings, formal excavation of remains or other actions) and a phase of appropriate analysis, reporting and publication shall be developed. A written scheme of investigation for that mitigation phase along with a timetable for its implementation shall be submitted for approval to the Local Planning Authority as part of the reserved matters application. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor and comply with the standards and guidance set out by the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.

16) At the same time as the submission of the first Reserved Matters application a Surface Water Drainage Master Strategy for the whole site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall be guided by the principles of the submitted Lees Roxborough Flood Risk Assessment - Pear Tree Lane, Euxton, Chorley, Ref. 5901/R3, dated June 2019, including the Drainage Strategy, Ref: 5901 01-02 Rev. A. The Master Strategy shall include the following details as a minimum:

    a) schedule of pass forward rates for each phase or part phase;

    b) preliminary timetable for implementation of the SuDS system;

    c) The development levels appropriately set to ensure flows are contained within the existing ditch systems and directed safely through the development down to the boundary watercourse system to the south.

    Thereafter development should proceed in accordance with the approved Strategy, unless the Local Planning Authority gives written consent to any variation.

17) Prior to the commencement of each phase of the development, full details for a surface water regulation system and means of disposal for that phase, based wholly on sustainable drainage principles, shall be submitted to, and approved in writing by, the Local Planning Authority. For the avoidance of doubt no surface water shall discharge directly or indirectly into the public foul or combined sewerage systems. The details for each part or phase must be consistent with the approved Surface Water Drainage Master Strategy for the whole site. Those details shall include:

    a) Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;

    b) The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff rate and volume.

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

c) Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change) with 10% allowance for urban creep;

d) A plan/plans identifying areas contributing to the drainage network;

e) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;

f) A plan to show overland flow routes and flood water exceedance routes and flood extents;

g) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;

h) Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

Thereafter development shall proceed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

18) No roads proposed for adoption shall be commenced until full engineering, drainage and constructional details for them have been submitted to, and approved in writing by, the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

19) Prior to the commencement of development, other than site enabling works, an Estate Street Phasing and Completion Plan shall have been first submitted to, and approved in writing by, the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards to which estate streets serving each phase of the development will be completed. No dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has/have been completed in accordance with the Lancashire County Council Specification for Construction of Estate Roads.

20) No dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and public open space and any other areas within the development not to be adopted (including details of any Management Company) have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details, until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

21) No development shall commence until a Full Residential Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority, together with a timetable for its implementation. The Full Residential Travel Plan shall be guided by the principles in the Ashley Helme Framework Travel Plan, Ref. 1318/4/D, dated May 2019, submitted with the application. The

provisions of the Full Residential Travel Plan shall be implemented and operated in accordance with the timetable contained therein unless the Local Planning Authority gives written consent to any variation. All elements of the Full Residential Travel Plan shall continue to be implemented at all times thereafter for a minimum of 5 years after the completion of the development.

22) No development shall take place, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved CMP shall be adhered to throughout the construction period. The CMP shall provide for:

a) vehicle routing and the parking of vehicles of site operatives and visitors;

b) hours of operation (including deliveries) during construction;

c) loading and unloading of plant and materials;

d) storage of plant and materials used in constructing the development;

e) siting of cabins, site compounds and material storage area(s) (ensuring they comply with the Method Statement for the avoidance of harm to amphibians);

f) the erection of security hoarding where appropriate;

g) wheel washing facilities that shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway;

h) measures to mechanically sweep the roads adjacent to the site as required during the full construction period;

i) measures to control the emission of dust and dirt during construction;

j) a scheme for recycling/disposing of waste resulting from demolition and construction works.

23) Prior to the construction/provision of any utility services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.

24) The development shall not commence until an Employment and Skills Plan that is tailored to the development and will set out the employment and skills training opportunities for the construction phase of the development has been submitted to, and approved in writing by, the Local Planning Authority, unless the Local Planning Authority gives written consent to any variation. Thereafter, the development shall be carried out in accordance with the Employment and Skills Plan.

25) Any Reserved Matters application submitted in relation to layout shall include the exact location and details of an internal access road that links School Lane with the southern boundary of the application site at a point between X and Y as marked on plan ref. 2018-013/303, to ensure access to the land located to the south within the wider safeguarded allocation BNE3.9 in the Chorley Local Plan 2012-2026 Policies Map, July 2015.

26) No part of the development hereby approved shall commence until a scheme for the construction of the site accesses and the off-site works of highway improvement has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with the Highway Authority (as part of a section 278 agreement, under the Highways Act 1980). The scope of the works are shown on Drg. Nos. 1318/09 Rev. G and 1318/23 Rev. A and shall include;

a) Extension of the 20mph speed limit eastward along School Lane to the junction with Pear Tree Lane and introduction of a 20mph speed limit on Pear Tree Lane between the junction with Euxton Lane and the junction with School Lane;

b) Introduction of a footway on the south side of School Lane along the northern Site frontage and to Pear Tree Lane;

c) Introduction of a footway on Pear Tree Lane;

d) Introduction of street lighting on School Lane and Pear Tree Lane;

e) Introduction of traffic calming measures on Pear Tree Lane;

f) Introduction of traffic calming measures on School Lane between the southern Site access and the A49 Wigan Road;

g) Improvement works at Euxton Lane/Pear Tree Lane junction (SJ5) as indicated on Drg No 1318/23/A;

h) Introduction of MOVA at A49/School Lane traffic signal junction (SJ2);

i) The upgrade of 2No bus stops in the vicinity of the Appeal Site to quality disability compliant standards;

j) Any ancillary accommodation works to street lighting, drainage and services diversions, which are necessary to enable the construction of the listed works to adoptable highway standards.

No part of the development hereby approved shall be occupied until the approved schemes have been constructed and completed in accordance the scheme details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel	instructed Chorley Borough Council (CBC)
Nick Ireland BA (Hons), MRTPI	Director, Iceni Projects
Katherine Greenwood MTCP, MRTPI	Planning Policy & Housing Officer, CBC
Zoe Whiteside BA(Hons), PG Dip, MSc, CIHCM	Planning Policy Manager, CBC
Alison Marland BA(Hons), MRTPI	Principal Planning Officer, CBC
Iain Crossland MPLA, MRTPI	Principal Planning Officer, CBC
Stephanie Leach LLB(Hons)	Solicitor, CBC

FOR THE APPELLANT:

Christopher Young QC	instructed by Gladman Developments Limited (GDL)
James Donagh BA(Hons), MCD, MIED	Director, Barton Willmore
Andrew Moger BA(Hons), MA, MRTPI	Associate Director, Tetlow King Planning
James Stacey BA(Hons), Dip TP, MRTPI	Director, Tetlow King Planning
Christien Lee BSc (Hons), MCD, MRTPI	Planning Manager, GDL
Ben Jackson	Director, Ashley Helme Associates
Jason Clemens	Director, Head of Heritage Planning, Savills
Gary Holliday	Director, FPCR Environment and Design
Suzanne Mansfield	Director of Ecology, FPCR
Nicola Baines	Solicitor, GDL

INTERESTED PARTIES:

Glenn Robinson DMS	Team Lead, Highways and Transport, Lancashire County Council
Mrs S. Shannon	Local Resident
Susan Fox	Local Resident
Debra Holroyd-Jones	Homes England

DOCUMENTS SUBMITTED AT THE INQUIRY

ID01 Appellant's opening statement

ID02 Council opening statement

ID03 Written statement from Mrs S. Shannon

ID04 Joint Memorandum of Understanding and Statement of Co-Operation relating to the Provision and Distribution of Housing, Statement of Common Ground, Central Lancashire Local Plan, May 2020 (CD7.34)

ID05 Draft suggested Planning Conditions V6 from the Council.

ID06 Chapter 2a, PPG 2014, on Housing & Economic Development Needs Assessments.

ID07 Extracts from chapter 61 of PPG 2019 on Plan Making

ID08 Appeal decision APP/R1038/W/17/3192255, Land at Deerlands Road, Wingerworth, November 2018

ID09 Summary Grounds of Resistance in Gerald Gornall v Preston City Council High Court claim CO/1962/2020, 18 June 2020

ID10 Enclosures with Defendant's Summary Grounds of Resistance in the Gerald Gornall v Preston CC High Court claim, 18 June 2020

ID11 Claimant's Summary Statement of Facts and Grounds, Gornall v Preston CC.

ID12 Note for Inspector from Tetlow King Planning on Custom Build Homes (Buildstore) Demand Data, 22nd June 2020

ID13 Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin)

ID14 Draft S106 Unilateral Undertaking, submitted by the Appellant

ID15 Education Contribution Methodology, Lancashire County Council, April 2020 Revision

ID16 Written representations from Ms. Susan Fox, dated 18th, 23rd June and 25th June 2020

ID17 Written representation from resident of Belfry Close, Euxton

ID18 Schedule of 66 written representations on the appeal, Chorley BC

ID19 SHELAA Methodology Statement, Central Lancashire Local Plan, April 2019

ID20 Chorley Borough Council Local Plan Review, Written Statement, Adopted Edition, August 2003

ID21 South Ribble Local Plan, Policy G3 - Safeguarded Land for Future Development, adopted July 2015

ID22 Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805

ID23 CIL Compliance Statement, addendum on Self-Build and Custom Housebuilding Plots, submitted by CBC

ID24 Report to Central Lancashire Strategic Planning Joint Advisory Committee Consultation on Consultation of the Revised Joint Memorandum of Understanding, 28th January 2020

ID25 Response from CBC to written representations from Ms Fox (ID16)

ID26 Agreed note to the Inspector on future supply of Affordable Housing in Chorley borough

ID27 Chorley Local Plan [Publication] Policies Map (2012), Map 1

ID28 National Planning Policy Framework, July 2018

ID29 Core Strategy Policy 27: Sustainable Resources and New Developments, Position Statement following Deregulation Act 2015, submitted by CBC

ID30 CBC Note to the Inspector on Suggested Planning Condition 25

ID31 CBC Response to the Inspector's questions on Suggested Conditions v7

ID32 Appellant (FPCR) Response to written representations from Ms Fox (ID16) on matters relating to ecology, 25th June 2020

ID33 Appellant (Tetlow King) Response to Issues and Options Consultation Call for Sites Part 3 Annex 7

ID34 Appellant note on the Publication of the 2018-based Household Projections, 30 June 2020

ID35 Letter to MPs from Robert Jenrick, Secretary of State for Housing, Communities and Local Government, about Housing and Planning Update, 30th June 2020

ID36 Appellant (FPCR) further response to written representations from Ms Fox, dated 1st July 2020

ID37 Costs application on behalf of the Appellant, 2 July 2020

ID38 LPA response to the appellant note on the Publication of the 2018-based Household Projections (ID34), 2 July 2020

ID39 Closing submissions on behalf of the Council, 2 July 2020

ID40 Closing submissions on behalf of the Appellant, 2 July 2020

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

ID41 Location plan (drawing no. 2018-013/303) relating to suggested condition 25

ID42 Certified and signed copy of S106 Unilateral Undertaking from Gladman Developments Limited, dated 6 July 2020

ID43 Email from Gladman Developments containing agreed revised wording for suggested condition 25

ID44 Council response to appellant’s costs application, dated 9 July 2020.

ID45 Manchester City Council v Secretary of State for the Environment [1988] J.P.L. 774; [1988] 1 WLUK 266 (QBD)

ID46 Appellant final reply to the Council’s response to Costs application

The Planning Inspectorate

Appeal Decision

Site visit made on 27 October 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2020

Appeal Ref: APP/H1840/W/20/3255350
Land at Church Lane, Whittington WR5 2RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr K Wylde against the decision of Wychavon District Council.
- The application Ref 19/02767/FUL, dated 24 December 2019, was refused by notice dated 9 March 2020.
- The development proposed is erection of 2 no. dwellings, improvement to access existing & 1 new access.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 no. dwellings, improvement to access existing & 1 new access on land at Church Lane, Whittington WR5 2RQ in accordance with the terms of the application, Ref 19/02767/FUL, dated 24 December 2019, and the plans submitted with it, subject to conditions in the attached Schedule.

Main Issue

2. The main issue is whether the proposal is in an acceptable location with regards the development strategy for the area.

Reasons

3. The National Planning Policy Framework (the Framework) sets out under Paragraph 61 that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes those who wish to commission or build their own homes. Footnote 26 sets out that Council's should give enough suitable development permissions to meet the identified demand for such house building, in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (as amended).

4. To this end, the appellant has supplied empirical evidence showing that demand derived from the total number of people on the register is outstripping supply by around 50%. However, the Council has also supplied empirical evidence showing that when considering the first and second base periods more specifically, the picture becomes nuanced and that supply is closer to demand. The Council has acknowledged that for the second base period, there is still a significant undersupply. Consequently, and notwithstanding the existence of a five year housing land supply more generally, the significant undersupply of self-build housing in the second base period carries substantial weight in favour of the proposal in helping to meet statutory requirements.

5. The self-build nature of the proposal has been appropriately secured by the executed Unilateral Undertaking (UU) submitted by the appellant. I have considered the UU against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. It is considered necessary to control the use of the land pursuant to delivering self-build housing, which accords with policy objectives of the Framework by securing more housing of this type to address demand. Consequently, it would directly relate to the development; fairly and reasonably in scale and kind.

6. The South Worcestershire Development Plan 2016 (SWDP) is part of the adopted development plan for the area. In accordance with the Policies Map associated with the SWDP, it is clear that the site lies beyond defined development boundaries. Accordingly, the site is located within the countryside and Policy SWDP2 states that the development of dwellings in such locations will be strictly controlled. Exceptions to these strict controls include dwellings for rural workers, employment development in rural areas, affordable housing rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings and renewable energy projects and development specifically permitted by other SWDP policies.

7. The SWDP does not treat self-build housing as an exception for the purposes of controlling development in the countryside. The SWDP also designates the area as a significant gap, which serves as a buffer or visual break between rural settlements and adjacent urban areas. However, when viewed on the ground and despite being an open field, the character and appearance of the site's immediate context belies the fact it is in the countryside. There is extensive development within the immediate vicinity of the site and when walking its perimeter during my visit it did not present itself as a countryside location; it did not have an undeveloped rural character or appearance.

8. The wider area has clearly become developed to an extent whereby the role of the significant gap has diminished considerably. This is in essence what has been found within the South Worcestershire Development Plan Review Preferred Options 2019, with the significant gap recommended for removal. Even though the emerging development plan is at pre examination stage and carries limited weight, it is clear that the situation on the ground is a material consideration that overtakes and reduces the effectiveness of the significant gap as an existing policy tool, limiting harm derived from conflict with it.

9. In light of this and considering the limited scale of the proposal and the potential for sensitive landscaping measures to further reduce any effects on the character and appearance of the area, any harm from conflict with policies in the development plan would be limited. Paragraph 2 of the Framework affirms that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

10. Overall, the proposal would not be in an appropriate location, conflicting with Policies SWDP1, SWDP2 and SWDP21 of the SWDP, as these policies seek to protect the countryside and significant gaps from urbanising development. However, I have identified an undersupply of self-build housing, and the policy objectives under Paragraph 61 of Framework, as a material consideration carrying substantial weight in favour of the proposal that outweighs the limited harm from conflict with the development plan in this particular case.

Conditions

11. The Council suggested nine conditions and the appellant suggested amendments, including to drawing references, access details, and additional conditions in accordance with another appeal decision. I have considered these against the Framework and Planning Practice Guidance. Some of the conditions relating to access and archaeology were combined to avoid duplication and, more generally, conditions were subject to minor amendments in the interests of consistency, clarity and running order. The appellant referred to a condition for biodiversity enhancement and net gain. To ensure there is a baseline for net gain, a condition securing a construction environmental management plan is also necessary in tandem. All conditions in the attached Schedule are necessary to make the development acceptable in planning terms.

12. The standard conditions setting out the time limits, and securing compliance with the approved plans, are necessary to provide certainty. A condition controlling the implementation of the water management strategy are necessary to ensure the development is appropriately drained upon occupation, to avoid uncontrolled surface water runoff and effects on the water environment therein. A condition requiring the access for each dwelling to be completed prior to occupation, along with conditions for parking, turning and visibility splays are necessary to ensure occupants can enter and exit the development safely. A condition requiring further noise assessment, and mitigation measures, is necessary because of the proximity to a major trunk road and the potential effects of noise on living conditions that this could generate. Conditions for cycle storage and electric vehicle charging are necessary to promote alternative modes of sustainable transport.

13. The PPG is clear that pre-commencement conditions should only be used where clearly justified, likely meaning requirements of the condition are fundamental to the development permitted and it would otherwise be necessary to refuse permission. It is necessary to secure construction and environmental management plans, and other schemes of investigation, before development commences to ensure that areas of sensitive archaeological or ecological importance are appropriately managed and protected from harm during construction, and that living conditions of neighbouring occupiers and highway safety is also protected. It is necessary to secure biodiversity enhancement measures before development commences to ensure opportunities for enhancement come forward in a logical manner in tandem with construction.

14. In accordance with the procedural requirements set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (as amended), pursuant to Paragraph 3 (b), the appellant has provided a substantive response, confirming that they are happy with the pre-commencement conditions and underpinning reasons provided by the Council in the event they were attached under the appeal.

Conclusion

15. For the reasons given, the appeal is allowed, and planning permission is granted subject to conditions in the attached Schedule.

Liam Page

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information provided on the application forms and the following plans/drawings/documents –

   a. JJ/2019-09/02 revision B
   b. JJ/2019-09/03
   c. JJ/2019-09/04
   d. JJ/2019-09/05
   e. JJ/2019-09/06
   f. JJ/2019-09/07
   g. 651-0102
   h. MG1659_S1
   i. 1979/1
   j. B19096.101

3) The development hereby approved shall not commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include: -

   a. Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
   b. Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
   c. The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvre
   d. Details of any temporary construction accesses and their reinstatement.

   The CMP shall be implemented in accordance with the approved details throughout the construction period.

4) The development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:

   a. Risk assessment of potentially damaging construction activities;
   b. Identification of "biodiversity protection zones";
   c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements and should include details of appropriate protective fencing of retained trees' root protection zone);
   d. The location and timing of sensitive works to avoid harm to biodiversity features;
   e. The times during construction when specialist ecologists need to be present;

f. Responsible persons and lines of communication;
g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
h. Use of protective fences, exclusion barriers and warning signs.

The CEMP shall be implemented in accordance with the approved details throughout the construction period.

5) The development hereby approved shall not commence until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:

a. Purpose and conservation objectives for the proposed works;
b. Review of site potential and constraints;
c. Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
d. Extent and location of proposed works shown on appropriate scale maps and plans;
e. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
f. Persons responsible for implementing the works;
g. Initial aftercare;
h. Details for disposal of any wastes arising from works.

The BES shall be implemented in accordance with the approved details and all features retained thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works (or similarly competent person) confirming that specified and consented measures have been implemented.

6) The development hereby approved shall not commence until a programme of archaeological work, including a Written Scheme of Investigation (WSI), has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and as a minimum:

a. The programme and methodology of site investigation and recording.
b. The programme for post investigation assessment.
c. Provision to be made for analysis of the site investigation and recording.
d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
e. Provision to be made for archive deposition of the analysis and records of the site investigation.
f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The WSI shall be implemented in accordance with the approved details throughout the construction period.

7) The development hereby approved shall not be occupied until a noise assessment has been undertaken in accordance with British Standards and submitted to and approved in writing by the local planning authority. Any noise mitigation measures identified by the noise assessment shall be implemented in accordance with the approved details before the development is occupied and retained thereafter.

8) The development hereby approved shall not be occupied until an area has been provided for sheltered and secure parking of bicycles (insofar as it relates to each dwelling) in accordance with council cycle parking standards and details which shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details and retained for the parking of bicycles thereafter.

9) The development hereby approved shall not be occupied until an area has been laid for the parking of cars (insofar as it relates to each dwelling) and the charging of electric vehicles in accordance with council car parking standards and details submitted to and approved in writing by the local planning authority. The car parking shall be implemented in accordance with the approved details and retained for the parking of cars thereafter.

10) The development hereby approved shall not be occupied until the visibility splays shown on drawing JJ/2019-09/02 revision B (insofar as they relate to each dwelling) have been provided. The splays shall at all times be maintained free of level obstruction exceeding a height of 0.6m above adjacent carriageway.

11) The development hereby approved shall not be occupied until the accesses and turning areas shown on drawing JJ/2019-09/02 revision B (insofar as they relate to each dwelling) have been implemented. These areas shall be retained for their intended use thereafter.

12) The development hereby approved shall not be occupied until the details set out in the submitted Water Management Statement have been implemented. Such details as implemented shall be retained thereafter.

13) The development hereby approved shall not be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:

    a. Description and evaluation of the features to be managed;
    b. Ecological trends and constraints on site that might influence management.
    c. Aims and objectives of management;
    d. Appropriate management options for achieving aims and objectives;
    e. Prescriptions for management actions;
    f. Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and longer term thereafter;

g. Details of the body or organisation responsible for implementation of the plan;
h. Ongoing monitoring and remedial measures.

The LEMP shall also set out how contingencies and/or remedial action will be identified, agreed and implemented where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved.

End of Schedule

The Planning Inspectorate

Appeal Decision

Hearing (Virtual) Held on 15 April 2021

Site Visit made on 19 and 20 April 2021

by Mr Andrew McGlone BSc(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/V3120/W/20/3265465
Land behind 31-33 The Causeway, Steventon OX13 6SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Joe McDermott of Albright Dene Ltd against the decision of Vale of White Horse District Council.
- The application Ref P19/V2459/O, dated 7 October 2019, was refused by notice dated 17 June 2020.
- The development proposed is an outline application for provision of self-build and/or custom housebuilding plots for 7 detached dwellings, with all matters reserved except for access and layout.

Decision

1. The appeal is allowed and planning permission is granted for outline application for provision of self-build and/or custom housebuilding plots for 7 detached dwellings, with all matters reserved except for access and layout at Land behind 31-33 The Causeway, Steventon OX13 6SE in accordance with the terms of the application, Ref P19/V2459/O, dated 7 October 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future consideration, except for access and layout.

3. The main parties agree that a revised layout to plot 7 submitted as part of the appeal is minor in detail. The dwelling is now shown to be positioned further away from the eastern boundary, and the gable end facing the driveway has been moved to the rear of the house. Both parties agree that the consideration of the amended plans as part of the appeal would not prejudice interested parties. I agree and thus I have considered the appeal on this basis.

4. In my Pre-Hearing Note, I identified the provisional main issues in this case. The fourth of these concerned local bus transport and biodiversity. Along with the land to the east, the site is a Priority Habitat as a Traditional Orchard. Three fruit trees on site are a remnant part of this habitat. To address a net loss of biodiversity, it is common ground between the main parties that a planning condition would mitigate the effects of this. Moreover, they agree that landscaping details could be addressed at reserved matters stage so that the proposed development would not have a significant biodiversity impact.

5. A signed and dated Section 106 Deed of Agreement (s106) has been submitted which includes a contribution towards public transport services. As a result, the Council accepts that the fourth reason for refusing planning permission has been addressed. I agree, and I am satisfied that this would meet the tests of

the Framework and Regulation 122 of the Community Infrastructure (CIL) Regulations. The s106 also includes provisions in respect of self-build and custom housebuilding and a waste strategy. I shall consider the merits of these shortly. A Unilateral Undertaking mirroring the provisions of the s106 was also submitted by the appellant in case the s106 was not executed in accordance with the deadline that I set for its submission. However, as the s106 has been signed and dated by all parties, I have reached my decision based on the s106.

6. To reflect the party's points made at the Hearing, I have adjusted the third main issue compared to the version that I read out at the start of the event.

Main Issues

7. The main issues are: a) whether the proposed development would preserve or enhance the listed buildings at 39 The Causeway, 35/37 The Causeway, Pound House, The Cottage, the Raised Causeway, Station House and Brook House, and character or appearance of the Steventon Conservation Area; b) whether the development would accord with development plan policies relating to the location of development in the District, including the provision of self-build and custom-build dwellings; and c) whether the proposed development would provide suitable access arrangements and adequate provision for on-site waste management.

Reasons

Heritage assets

8. Steventon is an historic, extended village that has evolved along two historic routes: The Causeway which runs roughly west to east and joining it, on its southern side, High Street, which runs roughly south to north. The village is characterised by domestic and commercial development. The appeal site is located near to the centre of the village, to the west of the junction of The Causeway and High Street. The site itself mostly lies behind the detached dwellings at 31 and 33 The Causeway. It comprises of improved grassland with an area of dense scrub with four mature sycamore trees on the southern boundary. Beyond here is a field extending to Ginge Brook and the buildings of Station Yard which lie near to the Great Western Railway line. Access to the site is between Nos 29 and 31. To the west of the site is Bargus Close, which contains 15 static caravans. To the east is a rectangular shaped orchard. Dwellings accessed from High Street adjoin its eastern boundary.

9. The proposed access and the upper part of the site lie within the Conservation Area whilst most of the site lies outside, but next to the larger of part of the Conservation Area which is focussed around the historic core of the village and its listed buildings. The smaller part of the Conservation Area is to the south of the site around the former railway station, Station House, Brook House and the 20th century development at Station Yard that abuts the railway line.

10. The early development of the village took place along the length of the 'Raised Causeway' which is an ancient, raised cobbled Grade II* listed pathway lined by mature trees that extends alongside The Causeway. Buildings within the Conservation Area range from 15th and 16th century timber framed houses to 19th brick vernacular and mid-20th century housing. The village has a high number of Grade II and II* listed timber framed houses that extend along the Raised Causeway towards the Grade I listed parish church found at the western end of The Causeway. Fields and paddocks do abut, extend up to and between

parts of the village, and in turn the Conservation Area. Some then give way to a character that is more readily associated as open countryside. This reflects the village's rural heritage.

11. Several of the historic buildings along this part of The Causeway are listed, including Nos 35/37 (Grade II), 39 (Grade II*), Pound House and The Cottage (both Grade II). Pound House and The Cottage are the closest to the appeal site. The latter of the two is an exposed timber frame two storey building with a two-storey bay window with a jettied roof over. Pound House is of a roughcast construction on timber-framing with a plain tile roof and a brick chimney stack above the ridge to the right of centre of this two-storey dwelling. To the rear of Pound House is a long orchard/paddock.

12. Nos 35/37 is next to the junction of Bargus Close with The Causeway. This two-storey timber framed building is now two dwellings and has a rendered cross-wing to the left-hand side. Next door is No 39 which is a two-storey detached dwelling dating from around late 14th century with additions in later years. The building is rendered with a timber frame and a cross-wing.

13. The appeal scheme would not physically affect any of the listed buildings and not fall within the setting of Station House and Brook House which were constructed for use by the Great Western Railway. These buildings are a reasonable distance from the site, separated by other development which is more reflective of the village's vernacular and associated with the arrival of the railway to Steventon in 1840. Hence, no harm would arise to their significance. The proposal would also not harm the setting, and thus the significance of the southern part of the Conservation Area.

14. No appraisal or management plan associated with the Conservation Area has been produced as per Policy CP39 of the Local Plan 2031 Part 1 Strategic Sites and Policies (Local Plan). The setting of the Conservation Area extending along The Causeway varies according to the development or space next to it or how it is experienced. In turn this influences its significance, albeit it remains an irreplaceable resource and great weight should be given to its conservation. Nevertheless, I agree with the appellant's assessment that the eastern and western ends of The Causeway are areas of very high heritage significance, and that there are pockets of 20th century development next to or to the east of the site that don't positively contribute to its significance. The listed buildings either side of the proposed access in tandem with the Raised Causeway do, however, still positively contribute to the overall significance of the Conservation Area, though the varied type, form and age of development along this stretch of The Causeway displays how the village has evolved over time.

15. Gaps between buildings fronting The Causeway between High Street and Stocks Lane are not uniform in their size or frequency. Nor do they always allow views beyond due to alignment of built form or the presence of outbuildings. These gaps, when travelling by car or on foot in either direction on The Causeway, are not readily perceived due to the speed of travel, the need to focus on oncoming or parked vehicles, or the close proximity of the footway to the frontage development. So, while there are limited glimpsed views, the undeveloped land behind parts of the frontage development is not readily apparent or sensed. The projection of development at Bargus Close and outbuildings associated with nearby dwellings also influences matters.

16. However, the experience differs from the elevated Raised Causeway which is

set back on the northern side of The Causeway. Users speed of travel allows for the site's surroundings to be appreciated. Mature trees lining the Raised Causeway inhibit views to some extent, especially whilst in leaf, but there are pockets of elevated views through some gaps and above boundary treatments to the undeveloped land beyond. This positively reflects the village's rural heritage, historic pattern of development and evolution. At times, the views include Steventon Hill. Some gaps also include views of the static caravans on Bargus Close, Timsbury House, the development next to the railway line and the electrified lines themselves. The ridgeline of Steventon Hill prevents views to the wider countryside beyond.

17. The proposal would introduce development behind the predominate frontage development lining The Causeway, despite the development at Bargus Close and on and behind High Street. While the proposed layout would allow views down the access road to the land beyond, the access would be a long formal arrangement. The use of a design code would inform any reserved matters application so that the dwellings are of a high-quality design and responsive to their surroundings, but even with bespoke designs, the proposal would erode the sense of open space that the appeal site positively contributes to and which informs the sense of being within a rural village. The loss of this space would adversely affect the character and appearance of the Conservation Area as a whole and harm the rural setting, and thus significance of the listed buildings at Nos 35/37, 39, Pound House, The Cottage and The Raised Causeway.

Location of development

18. Local Plan Policy CP3 details the settlement hierarchy in the District. Steventon is a 'Larger Village'. Local Plan Policy CP4 outlines the Council's strategy for meeting housing needs through the allocation of strategic sites, and development within the 'built area' of the larger settlements such as Larger Villages. The appeal site is not allocated for development by the Local Plan or by a neighbourhood plan. There is no defined settlement boundary for Larger Villages, such as Steventon. Consequently, it is a matter of judgement[1] as to whether or not the appeal site lies within the built area of Steventon.

19. Bargus Close could be viewed as an anomaly in the context of the historic pattern of development nearby, but it has been part of the village for a long period of time. Built form has also been added to the east of the site over the 20th century. The appeal scheme would mirror the length of Bargus Close and extend as far as the development at Timsbury House.

20. Collectively, the existing development on The Causeway, High Street (including that set behind and accessed from High Street) and Bargus Close provides a sense of enclosure to three sides of the site even with the adjacent orchard separating the site to the development to the east. The dense scrub and trees on the site's southern boundary add to the sense of enclosure, but their retention cannot be relied upon in perpetuity. Between here and the buildings at Station Yard is a field leading to Ginge Brook. While this physically 'loops' around to the other side of Bargus Close and a wider field/paddock, this is not appreciated from within the site, from The Causeway or High Street. The railway line beyond Station Yard is a strong physical feature with Steventon Hill rising up beyond and of a more rural countryside character. The perception from within the site is one of enclosure, but it does have a transitional feel

[1] Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

between the development fronting The Causeway and the open countryside beyond Station Yard and the railway line. However, the site does not have the same open character as the land beyond the railway line or benefit from its openness due to the built form adjoining the site or near to it.

21. The relationship between and point at which built form becomes open countryside varies physically and visually across the village. The appeal site has a greater degree of enclosure and far fewer physical and visual links to the open countryside than the Brewers Close[2] site which affects how it is experienced. Hence, the two sites are not directly comparable. I have also noted the context to 97 The Causeway[3], but this differs to the appeal site due to the cohesive block of undeveloped backland spaces that extend between the development on The Causeway and Castle Street. There is not the same sense of enclosure as that which influences the appeal site. Therefore, I consider, on balance, that the appeal site lies within the built area of Steventon.

Self-build and custom housebuilding

22. The Council has a duty under the Self Build and Custom Housing Act 2015 (as amended by the Housing and Planning Act) ('the Act') to keep a register of persons who are interested in acquiring a self-build or custom-build plot, and to also grant enough suitable development permissions for serviced plots to meet this demand. Policy DP1 of the Local Plan 2031 Part 2 Detailed Policies and Additional Site (Local Plan 2) and Framework paragraph 61 are generally supportive of the provision of plots for sale to self and custom builders in the District. Framework paragraph 61 reflects this.

23. There is no dispute between the main parties about the number of persons who have been added to the register in each base period since December 2015. The demand for each base period must be met by 30 October 3 years after the end of that period.

24. The Council accepts that it has not granted enough suitable planning permissions to address the demand arising from the first two base periods (70 and 109 entries respectively) which was to be met by 30 October in 2019 and 2020. It is continuing to assess whether other planning permissions have been granted which could count towards the first, second or third base periods. This work is ongoing, but I must reach my decision based on the current situation.

25. Despite the demand established by the register, the Council speculates on what the 'actual' demand is for this type of housing if they were to apply a local eligibility test and financial solvency test. This is an academic exercise as neither test has been subject to public consultation as advised by the Planning Practice Guidance. The Council confirmed at the Hearing that it does not operate a two-part register.

26. In any event, the proposal would help meet the demand arising from the third base period (80 entries). As of 24 February 2021, the Council had granted 7 suitable planning permissions. This figure was unchanged by the time of the Hearing. The Council has until 30 October 2021 to meet this demand and fulfil its duty for the third base period. The Council accepted in the Chilton[4] hearing that it would, based on current progress, not be likely to meet the demand for

[2] Appeal Decision Ref: APP/V3120/W/16/3160879
[3] Appeal Decision Ref: APP/V3120/W/18/3208949
[4] Appeal Ref: APP/V3120/W/20/3261691

the third base period. A different view was expressed by Ms Smith at the Hearing relating to this case, but consistency is important in decision-making. I am aware of the 6 self-build and custom build houses proposed at Chilton and anecdotally of a further proposal on another site in the District, but even if all these were granted planning permission, and suitable, there would still a good number of permissions to grant and there is no evidence to suggest that there are other schemes either being considered or likely to be considered or determined by the Council before the end of October. The proposed provision would be of a substantial benefit given the period of time left for the Council to meet the demand for the third base period.

27. Notwithstanding this, the appellant considers Policies CP3, CP4 and DP1 are out of date due to the under delivery of this type of housing. The number of suitable permissions granted by the Council for the first two base periods varies between the main parties with either 30 (appellant) or 53 (Council) suitable permissions granted for the first base period, and either 13 (appellant) or 25 (Council) for the second base period.

28. Legislation, planning policy or guidance does not set out how any under supply of this type of housing against the established demand should be dealt with. However, not accounting for past under delivery of this type of housing would seem to be, when considered in the context of the duties placed on local authorities in the Act, Framework paragraph 61, Local Plan 2 Policy DP1 and Government's encouragement for this type of housing, illogical. Approaches to unmet demand, which is a relevant consideration, have been considered in several appeal decisions[5]. If I were to take unmet demand into account, the scale of the proposal would not change the substantial weight that I have set out above, nevertheless, the position would only confirm my opinion about the weight that I have given to the provision of this type of housing.

29. Local Plan Policies CP3 and CP4 outline the approach to housing development in the district, where it ought to be located and how much. They don't specifically refer to self-build or custom build housing, so they must be read with other development plan policies such as Policy DP1. As the Council can demonstrate a five-year supply of deliverable housing sites, Policies CP3 and CP4 appear to be fulfilling their purposes. Jointly Policies CP3, CP4 and DP1 support self-build or custom build housing schemes or with elements thereof if in line with the settlement hierarchy and the strategy for housing delivery. There is not a specific exception to the Council's strategy for housing delivery that allows self-build and custom build housing to come forward. But, evidently the mechanics of policy or the application of it are not yielding the number of suitable permissions required. However, the position could change once further robust work is completed by the Council. Given this, and considering how Policies CP3, CP4 and DP1 can operate together, I am content that they are not out-of-date.

Conclusion on this main issue

30. I conclude, in respect of this issue, that the proposal would accord with Local Plan Policies CP3 and CP4 and Local Plan 2 Policy DP1 which, when taken together, relate to the location of development in the District, including the provision of self-build and custom-build dwellings.

[5] Appeal Decision Refs: APP/G2435/W/18/3214451 and APP/W0530/W/19/3230103

On-site waste management

31. Local Plan Policy CP43 seeks developments to make adequate provision for the recycling of waste on site. Local Plan 2 Policy DP28 adds that development will not be permitted if recycling and refuse provision that meets the requirements set out within the policy cannot feasibly or practicably be provided. Proposals must ensure that there is sufficient space for recycling and refuse containers; access is safe for existing users/residents and for refuse and recycling collection vehicles; and the location and design of recycling and refuse provision should be integral to the design of the proposed development, having regard to the level and type of provision.

32. The width and length of the proposed access would mean that the Council's large refuse vehicles would not be able to access the site to undertake household refuse and recycling collections. It would also not be practical or reasonable for future occupiers to move refuse, recycling and food waste receptacles to the kerb on The Causeway for collection due to the distance and number of containers involved. The latter would be likely to block or hinder pedestrian access along the footway and/or affect potentially affect the safety of vehicles using the road. A communal collection point nearer to the highway is also not an option due to the width of the proposed access as this would comprise the ability of users to pass one another safely.

33. The appellant submitted an option agreement during the Hearing. This may allow the access to be widened, but it is not the scheme before me and both parties agreed that it was a matter of fact and that I was not being asked to grant planning permission on this basis.

34. Given the practical issues of a Council waste collection, the s106 proposes a private waste collection to mirror the Council's own service in terms of bin provision and the frequency of collection for refuse, recycling and food waste.

35. The evidence shows that a private waste contractor could use a vehicle to access the site, collect refuse and recycling, turn around and leave in forward gear. Moreover, each property could have separate refuse and recycling containers to match the size of those used for Council collections. There is sufficient space for these to be accommodated on each plot. The key difference would be that future occupiers would need to pay for this service. While this would be an extra financial commitment on top of Council Tax, this would not be prohibitively expensive for future occupiers.

36. The Council also collects food waste weekly. This is line with the proposals within the Environment Bill which is yet to receive Royal Assent. The evidence of the potential private waste operator confirms that they would be unable to offer a weekly food waste collection. Therefore, to match the Council's service, the appellant suggests two options. The first is that the Council collect food waste. A partial collection service may not be normal practice, but it is possible based on the size of the vehicle currently used. However, this size of vehicle could well change. Hence, Council food waste collections are uncertain over the lifetime of the development.

37. The second option would be a composting bin for each dwelling. This could be of a benefit to the environment in mitigating the effects of climate change, and financially beneficial to future occupants as they could re-use composted material in their gardens. Otherwise future occupiers would either dispose of their food waste in refuse collections, need to pay for food waste to be

collected or they would need to dispose of it themselves. It is therefore a sustainable waste management measure that would encourage future occupiers to recycle their food waste. While the Council are concerned about its potential use, and I recognise that it would be a choice for future occupiers, this is no different to the choice that residents have in using the Council food waste collection. The Environment Bill may change matters, but my decision is based on the current situation and adopted development plan policy.

38. The Council are worried about future occupiers expecting a Council run collection service and the associated costs of responding to queries such as this, but there is no substantive evidence of what, if any, costs there would be to the Council based on a private waste collection service.

39. Insofar as the s106, I consider that the proposed waste strategy would meet the tests of the Framework and CIL Regulation 122. Consequently, I conclude that the proposed development would provide suitable access arrangements and adequate provision for on-site waste management and would as a result accord with Local Plan Policy CP43 and Local Plan 2 Policy DP28. These policies collectively seek development to make adequate provision of the recycling of waste on site and ensure safe access for existing users/residents.

Other Matters

40. Points are raised by residents about the use of The Causeway, highway safety and the effect of additional parking. The proposal would provide off-street parking for each plot and the access could be used by the majority of vehicles, including fire tenders. There would not be any specific visitor parking, but there are no parking restrictions along this stretch of The Causeway which allows for good forward visibility in either direction. Although vehicles do need to wait to pass oncoming vehicles, the proposal would not change this or make matters worse in highway safety terms.

41. I have had regard to the points raised about the effect of the proposal's construction on existing built form, but there is no substantive evidence before me to support the concerns. Any existing damage will not be because of the proposal as no development has commenced.

Planning Balance

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

43. The Government's objective is to significantly boost the supply of housing and the proposal would accord with the strategic plan-led approach set out in the Development Plan and provide 7 modern self-build and custom-build dwellings in a location with adequate access to facilities and services.

44. No harm would be caused by the proposed waste strategy and the s106 would mitigate the scheme's impact on public transport services and biodiversity. These matters do not weigh in favour or against the proposal.

45. I have found that the character and appearance of the Conservation Area would not be preserved and that the proposal would harm to the setting of the listed buildings at Nos 35/37, 39, Pound House, The Cottage and The Raised Causeway which would be contrary to the respective duties of Sections 66(1)

and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

46. In terms of the Framework, the degree of harm to the special interest and significance of the heritage assets would be at the lower end of less than substantial harm. Even so, I give it great weight and importance. Policies DP36 and DP37 along with Framework paragraph 196 require such harm to be weighed against the public benefits of the proposal which require clear and convincing justification. Policy DP37 states insofar as the Conservation Area that the development should make an equal or greater contribution in terms of public benefit.

47. The provision of self-build and custom-build houses would be a public benefit as they would help the Council meet its duty, help address the established demand for this type of house and widen the type and size of housing in the area. These are substantial social benefits. The s106 would secure the provision of the self-build or custom-build houses and satisfy the relevant tests. Future occupiers would be very likely to use and support local services, local facilities and local businesses. Consequently, the proposal would make a positive contribution to the local economy. The development of each house should also create opportunities for local builders, tradesmen and builder's merchants leading to local employment opportunities, especially given that construction is the third highest employment type in Steventon[6]. These economic benefits carry moderate weight. Council Tax is mitigation not a public benefit. Collectively, in this case, I consider these public benefits would outweigh the less than substantial harm that I have identified. Accordingly, the proposal would accord with Local Plan Policies CP1, CP37 and CP39, and Local Plan 2 Policies DP36, DP37 and DP38 and Framework paragraph 196.

48. I note the Corner Mead[7] appeal decision, but the issues in this case differ. Concerns are expressed about a precedent being set, but my decision is based on the specific circumstances of the site, its surroundings and the merits of the case itself. It would be for the Council to consider any other development proposal based on its own merits in the first instance but having visited the village I am satisfied that my decision would not set a precedent.

Conditions

49. Conditions in respect of the reserved matters for the individual plots and the shared area of the site are necessary due to the nature of the scheme before me and to ensure the site is developed in accordance with the details submitted. I understand the points about the length of time which the development could take place over and to strike a balance between this and the type of housing that would be pursued by individuals, I have adjusted the timescale for submission of the reserved matters for each individual plot. An approved plans condition is necessary in the interests of certainty. Whilst allowing for flexibility in the design of each self-build and custom-build dwelling, a design code condition is necessary so secure a coherent and high-quality development that conserves or enhances the surrounding historic environment. For the same reason, conditions to secure tree protection measures and landscaping of the shared area are necessary.

50. A condition to secure a detailed sustainable drainage scheme for foul and

[6] Appellant Statement of Case, Appendix C
[7] Appeal Decision Ref: APP/H1840/W/19/3241879

surface water is necessary to prevent pollution and flooding. To ensure the construction of the development does not adversely affect highway safety, the living conditions of residents and the historic environment, I have imposed a condition for a construction traffic management plan. Conditions have been imposed in respect of car parking provision, turning areas and the access in the interests of highway safety. To compensate and mitigate for the net loss of biodiversity resulting from the development I have imposed a condition to secure off-site biodiversity enhancements. To minimise the impacts of the development on biodiversity, I have imposed a condition requiring the recommendations of the Preliminary Ecological Appraisal to be implemented. A permitted development restriction is necessary for extensions, roof additions or alterations and outbuildings due to the size of the plots, neighbouring residents living conditions and so that future development accords with the design code. A permitted development restriction is also necessary for gates, fences, walls or other means of enclosure to ensure compliance with the design code.

Conclusion

51. The proposal would accord with the Development Plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision.

52. For the reasons given above I conclude that the appeal should be allowed.

Mr Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

1) Within two years of the date of this planning permission an application for approval of the initial reserved matters for the Initial Phase of the development involving all elements of the scheme not comprised within the individual dwelling plots shall be submitted, to include the following details:

- the site access works comprising the access to The Causeway generally in accordance with, but not limited in detail to the application drawings, such including the removal or relocation of the existing telegraph post;
- the shared access driveway and shared surfaces;
- all car parking facilities and manoeuvring areas to be provided within the site in accordance with Oxfordshire County Council's standards (Transport for New Developments Parking Standards for New Residential Developments 2017 design guide document or any superseding document);
- any external lighting in these areas;
- site boundary treatments and structures;
- landscaping not incorporated within a residential plot curtilage including shared open space and associated tree planting; and
- the identification of plot boundaries

All subsequent reserved matters for each individual plot or plots must be submitted not later than three years from the date of this planning permission and development must be begun not later than two years from the date of the approval of the last reserved matter for the Initial Phase.

2) Approval of the details of the scale and appearance of buildings and landscaping within any particular plot (hereinafter called "the reserved matters") shall be in accordance with the approved Design Code for the site and shall be obtained from the Local Planning Authority in writing before the development of the dwelling on that plot is commenced. The development of each plot shall be carried out as approved.

3) That the development hereby approved shall be carried out in accordance with the following approved plans, A-02-102; A-01-101 Appeal Revision – Plot 7; Parameters for 7 plots Rev A; 333675-1; P850-03; P850-04; and P850-02a, except as controlled or modified by conditions of this permission.

4) No reserved matters applications shall be submitted until such time as a Design Code for the entirety of the site has been submitted to and approved in writing by the Local Planning Authority. The Design Code shall reflect guidance in the Vale of White Horse District Council Design Guide (March 2015) and include details, but not be limited to;

- the form, massing and scale of the buildings;
- plot coverage and plot parameters;
- maximum building and storey heights for each plot;
- building appearance;
- building openings
- material palette and detailing;
- boundary treatments, soft and hard landscaping;
- vehicle parking reflecting parking provision as per the approved initial reserved matters
- cycle parking facilities;
- external lighting;

- water and Waste Water (including SUDs);
- sustainable Construction (standards and design principles);
- gross Internal Floor Areas meeting the Local Government's Technical Housing Standards - Nationally Described Space Standard Level 1 in the case of any one or two-bedroom dwellings; and
- facilities for the storage of household waste and recycling;

All reserved matters applications shall include a statement providing an explanation as to how the design of the development complies with and responds to the details approved in the Design Code. The development shall thereafter be carried out in accordance with the approved details.

5) Prior to the commencement of any site works (including site clearance) a protected area shall be designated for all existing trees which are shown to be retained, and the trees shall be protected in accordance with a scheme which complies with the current edition of BS 5837: "Trees in relation to design, demolition and construction" that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The approved measures shall be kept in place during the entire course of development.

6) No development shall commence until a detailed sustainable drainage scheme for foul and surface water along with a programme and phasing plans for these works has been submitted to and approved by the Local Planning Authority. The strategy shall be based on Version 3 of the Flood Risk Assessment prepared by Water Resource Associates dated October 2019 and the information contained within letter reference WRACS02 dated 06/12/2019. The scheme shall have full consideration for the hydrogeological situation of the site and be based on latest sustainable drainage principles. No dwelling shall be occupied until all drainage required to serve that dwelling has been constructed in accordance with the scheme. The scheme shall include;

- infiltration tests to be undertaken in accordance with BRE365;
- proposed discharge rate limited to greenfield QBar (if attenuation based) and details of flow control;
- SUDS features, attenuation requirements and detail drawings;
- detailed drainage layout with pipe/chamber/soakaway numbers & sizes;
- maintenance and management plan for SUDS;
- detailed network calculations to include climate change allowances;
- ground investigation report;
- proposed site levels, floor levels and an exceedance plan;
- site emergency response plan based on Environment Agency warnings with safe access and egress routes highlighted.

7) No development hereby permitted shall commence until a Construction Traffic Management Plan (CTMP) is submitted to and approved by the Local Planning Authority. The CTMP shall include details of:
   - parking arrangements for all vehicles of site personnel, operatives and visitors and mechanisms to ensure no vehicles of site personnel, operatives and visitors are parked on The Causeway;
   - the arrangements for the loading and unloading of plant and materials on to the site for the duration of the works;
   - the storage of all plant and materials on the site;
   - on-site turning for construction vehicles;
   - hours of construction and operation of machinery of deliveries;

- confirmation that no deliveries of plant or materials to/from the site shall take place between the hours of 0730 – 0930 hours and 1500 – 1800 hours;
- point of contact details for site manager during initial construction phase and prior to the construction of individual units;
- details of where the approved CTMP will be displayed on site for all site personnel, operatives and visitors to observe;
- details of wheel washing facilities and their location on the site;
- a plan showing the route to and from the site along the highway network for delivery vehicles; and
- details of how access to the site will be controlled (e.g. a banksman).

The approved CTMP shall be implemented prior to any works being carried out on site and shall be maintained throughout the course of the development and the development of each individual plot.

8) Subsequent to the initial reserved matters application, a scheme for the landscaping of the site in communal areas, including boundary treatments and the planting of live trees and shrubs, shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the building up of the eastern stone boundary wall and schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and a implementation and maintenance programme.

   The approved scheme shall be commenced prior to the first occupation of any dwelling and implemented in accordance with the approved implementation programme. Thereafter it shall be maintained in accordance with the approved scheme and maintenance programme. In the event of any of the trees or plants so planted within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, such trees or plants shall be replaced in the next planting season with others of similar size and species.

9) No development shall commence until details of all car parking facilities and manoeuvring areas to be provided within the site have been submitted as part of the initial reserved matters and approved in writing by the Local Planning Authority. The approved car parking and manoeuvring facilities shall be provided before first occupation and shall thereafter be retained at all times for the use of the development.

10) No development shall commence until details of the proposed works to the existing access to the site have been submitted as part of the initial reserved matters and approved in writing by the Local Planning Authority and no part of the development shall be occupied until those works have been constructed in accordance with the approved details. Thereafter, prior to the first occupation of any dwelling, the entire means of access to and shared surface drive within the site (except for the final surfacing thereof) shall be laid out, constructed, lit and drained and if required, temporary or permanent traffic calming shall be put in place in accordance with the previously approved details.

11) No development shall commence unless and until a certificate confirming the agreement of an Offsetting Provider to deliver a Biodiversity Offsetting Scheme totalling a minimum of 0.82 biodiversity units has been submitted to and approved in writing by the Local Planning Authority. The written approval of the Council shall not be issued before the certificate has been issued by the Offset Provider. The

details of biodiversity enhancements shall be documented by the Offset Provider and issued to the Council for their records.

12) The development hereby approved shall be implemented in accordance with all the recommendations made in section 6 of the supporting Preliminary Ecological Appraisal (Ecology By Design Ltd, 18/04/2019, Project Code: EBD000803).

13) Notwithstanding the provisions of Classes A, B, and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), there shall be no extension to any of the dwellings hereby permitted and no incidental buildings or structures shall be erected within the curtilage of any dwelling without the prior grant of planning permission.

14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) (England) 2015 (or any Order revoking or re-enacting that Order) the erection or construction of gates, fences, walls or other means of enclosure as described in Schedule 2, Part 2, Class A of the Order shall not be undertaken without obtaining planning permission from the Local Planning Authority.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Karen Cooksley	W Legal
Andre Botha	Albright Dene Ltd
Nichola Burley	Heritage Vision

FOR THE LOCAL PLANNING AUTHORITY:

Celina Colquhoun	39 Essex
Tracy Smith	South Oxfordshire and Vale of White Horse District Councils
Samantha Allen	South Oxfordshire and Vale of White Horse District Councils
Ryan Hunt	South Oxfordshire and Vale of White Horse District Councils
Lisa Selby	South Oxfordshire and Vale of White Horse District Councils
Kate Morris	South Oxfordshire and Vale of White Horse District Councils
Luke Veillet	South Oxfordshire and Vale of White Horse District Councils
Paul Harrison	Oxfordshire County Council
Nick Hill	South Oxfordshire and Vale of White Horse District Councils
Alex Tait	39 Essex

INTERESTED PARTIES:

Lesley Lovell	
Alexandra Freeman	
Dr C Wilding	Steventon Parish Council
Angela Einon	Steventon Parish Council

DOCUMENTS

1 - Suggestion walking route for site visit

2 – Two photographs of Council food collection vehicle

3 - Option agreement

4 – Revised wording to suggested condition no. 7

5 – Unilateral Undertaking

6 – Section 106 Dead of Agreement

The Planning Inspectorate

Appeal Decisions

Inquiry held between 26 April – 6 May 2021

Site visits made on 1 April 2021 and 4 May 2021

by C Masters MA (Hons) MRTPI

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

Decision date: 14 June 2021

Appeal A: APP/B1930/W/20/3265925
Roundhouse Farm, Land Off Bullens Green Lane, Colney Heath

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Canton Ltd against St Albans City & District Council.
- The application Ref 5/2020/1992/LSM was dated 28 August 2020.
- The development proposed is outline application for the erection of up to 100 dwellings, including 45% affordable and 10% self build, together with all ancillary works (All matters reserved except access) at Land off Bullens Green Lane, Colney Heath.

Appeal B: APP/C1950/W/20/3265926
Roundhouse Farm, Land Off Bullens Green Lane, Colney Heath

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Canton Ltd against the decision of Welwyn Hatfield Borough Council.
- The application Ref 6/2020/2248/OUTLINE, dated 28 August 2020, was refused by notice dated 2 December 2020.
- The development proposed is outline application for the erection of up to 100 dwellings, including 45% affordable and 10% self build, together with all ancillary works (All matters reserved except access) at Land off Bullens Green Lane, Colney Heath.

Decision

1. The appeals are allowed and planning permission is granted for the erection of up to 100 dwellings, including 45% affordable and 10% self build, together with all ancillary works (All matters reserved except access) at Land off Bullens Green Lane, Colney Heath, in accordance with the terms of the applications: 5/2020/1992 /LSM dated 28 August 2020 and 6/2020/2248/OUTLINE dated 28 August 2020, subject to the conditions set out on the attached schedule.

Preliminary Matters

2. The boundary between St Albans City & District Council (SADC) and Welwyn Hatfield Borough Council (WHBC) transects the appeal site with the proposed access falling within WHBC off Bullens Green Lane and the western part of the site abutting Roestock Park and the Pumping Station falling within SADC. The planning applications, subject to these appeals, were essentially the same and were submitted to each of the planning authorities and considered collectively at the same public inquiry. For this reason, I have considered the proposed scheme in its entirety rather than as two separate and divisible schemes. I have thus determined the appeals on that basis.

3. In the context of appeal APP/B1930/W/20/3265925, this scheme was presented to planning committee on 18 January 2021 to request that members confirm how they would have determined the application had it not been subject to an appeal against non determination. At this committee meeting, it was resolved that the Council would have refused planning permission.

4. The reasons for refusal given by WHBC and putative reasons by SADC were similar, in respect to objections related to the suitability of the location, character and appearance, highways, ecology, archaeology, impacts on local infrastructure and services, Green Belt and heritage matters.

5. It was common ground that the Councils could not demonstrate a 5 year supply of housing sites. However, the parties disagreed on the extent of this shortfall. It was agreed that the variation between the two parties was not a matter which was material to the decision on these appeals. I will return to this matter below.

6. Since the appeals were submitted, the appellant has submitted an updated Ecological Impact Assessment. An agreed statement of common ground (SoCG) was submitted prior to the start of the inquiry which set out, amongst other things, principal matters of agreement and disagreement. This confirmed that objections relating to archaeology, ecology and impacts on local infrastructure and services could be addressed by suitably worded conditions/the completion of a Section 106 Agreement. Where necessary, I return to these matters within my report. In addition, appendix A to the SoCG included an agreed facilities plan illustrating the location and average distances to a number of services and facilities within Colney Heath and beyond. I return to this matter below.

7. At the start of the inquiry, a further SoCG was submitted in relation to highways matters. The Councils, Hertfordshire County Council (HCC) as highways authority and the appellant agreed that the appeals would have an acceptable impact on highways safety and therefore reason for refusal (RfR) number 3 on the WHBC decision and putative RfR number 4 of SADC were therefore withdrawn. Notwithstanding this position and in light of third party representations in relation to this issue, this topic was still subject to a round table discussion as part of the inquiry.

8. A replacement access drawing was submitted prior to the inquiry. It was subject to a separate consultation. Neither WHBC or SADC objected to the plan being substituted and all parties had an opportunity to comment on the drawing. Accordingly, I do not consider anybody would be prejudice by my taking this drawing into account and have considered the appeals on this basis.

9. The appellants submitted an unsigned Section 106 (S106) to the inquiry. This was discussed at a round table session and I allowed a short amount of time after the inquiry for the document to be signed. The signed version was received on 24 May 2021. The agreement made included a number of obligations and provision for payments to be made to WHBC, SADC and HCC. I return to this matter below.

Main Issues

10. The appeal site is located within an area of Green Belt. It was agreed between the appellant and the Councils that in the context of the Framework, the

proposals would present inappropriate development within the Green Belt, a matter that must attract substantial weight against the proposals. I concur with this view. As a result and against the background I have set out above, the main issues are:

- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
- the effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane;
- whether the site is in an accessible location with regards to local services and facilities;
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Effect on Character and Appearance

11. The appeal site comprises a parcel of land of approximately 5 hectares on the eastern edge of Colney Heath. It is bounded by residential development to the northern boundary. There is a short terrace of cottages to the eastern corner along Bullens Green Lane before the boundary opens out into open countryside and beyond. To the south, the site is contained by Fellowes Lane where again residential dwellings are present on the south western corner. The western boundary comprises Roestock Park and the Pumping Station.

12. The parties agree that the site is not a valued landscape under the Framework paragraph 170 definition and that no other landscape designations are applicable to the appeal site. The Hertfordshire Landscape Strategy, 2005 notes the site is located within the Mimmshall Valley, where the landscape character is described, amongst other things, as being strongly influenced by the major transport routes and the surrounding settlement which give it an urban-edge rather than rural character.

13. The A1 and railway line do not have any visual impact on the appeal site. From what I saw on the site visits, the character of the area is a mix of edge of settlement and countryside. Walking along the footpaths which traverse the site, the experience is one of being on the edge of a settlement rather than a wholly rural context. Whilst the open countryside to the south and east is clearly visible, the surrounding residential properties either facing the site or their rear gardens and associated boundary treatment is also clearly visible. These range in scale and form from bungalows fronting Fellowes Lane, glimpsed views of the 3 storey dwellings within Admiral Close and Hall Gardens and the rear elevations and gardens of properties along Roestock Gardens. Bullens Green Lane and Fellowes Lane serve to enclose the appeal site and provide a degree of containment from the wider countryside and beyond. My judgement leads me to conclude that the site strongly resonates with this urban edge definition provided by the 2005 Landscape Strategy.

14. Turning to consider the area beyond the appeal site itself, the sense of countryside prevails via the public footpath network and road network. These public footpaths continue within Bullens Green Wood and further beyond the appeal site at Tollgate Farm. Contrary to the views expressed by the Council, my experience of the views to the appeal site within Bullens Green Wood are of glimpse views of the appeal site. From the south and in the wider landscape context, the appeal site appears against the backdrop of the existing dwellings as a relatively self contained parcel of land on the edge of the settlement. These longer distance views of the appeal site reinforce the urban edge definition.

15. The Councils contend that the appeal site provides a positive element of the countryside that frames Colney Heath. I do not agree. The very clear sense of countryside is only evident when you travel beyond the appeal site south along Tollgate Road. Here the landscape character changes from mixed residential and open field to predominantly open fields with dotted farm buildings and isolated residential dwellings set within this open landscape. This is entirely different to my experience of the appeal site which I have outlined above.

16. The Councils raised specific concerns regarding alleged harm which would arise as a result of the new vehicular access off Bullens Green Lane and also the new pedestrian footpath and access point along Fellowes Lane. The new access road would be located towards the northern end of Bullens Green Lane, where the character of the existing area is already influenced by cars parked on the public highway, and the visibility of the residential properties beyond, all contributing to the edge of settlement character. Along Fellowes Lane, a new pedestrian access to the site would be introduced along with a public footpath. These characteristics are entirely compatible with the urban edge environment which currently exists.

17. The changes brought about by the built development and changes to the surrounding roads would result in visual changes to the area, which in my view would be localised in impact. Landscaping of the site which would be the subject of any reserved matters submission would mean that in the context of the existing immediate locality, the impacts of the development would be significantly reduced over time. Nevertheless, the proposed development would introduce built development here where currently no development exists which would cause some harm to the character and appearance of the area.

18. Taking into account all of the above factors, I conclude that the proposals would cause limited harm to the character and appearance of the area. I attach moderate weight to this factor. There would be conflict with policy D2 of the Welwyn Hatfield District Plan, 2005. Policy D2 requires all new development to respect and relate to the character and context of the areas. Proposals should as a minimum maintain and where possible should enhance or improve the character of the existing area.

19. The Council have also referred to policies D1, RA10 and RA11 in their reasons for refusal. Policy D1 requires a high standard of design in all new developments. Policy RA10 relates specifically to the Landscape Character Assessment outlined above, requiring proposals to contribute, where appropriate to the maintenance and enhancement of the local landscape character. Policy RA11 refers to the location of the site within the Watling Chase Community Forest boundary. The policy requires, amongst other things,

that proposals seek to include planting, leisure and landscape improvements, where this accords with Green Belt policies. I shall return to the matter of Green Belt below. However, in broad terms I see no reason why these policy objectives could not be readily achieved at reserved matters stage through an appropriately designed scheme and landscape strategy for the site.

20. For the same reasons, the proposals would conflict with policy 2 of the St Albans Local Plan, 1994. Policy 2 of the St Albans Local Plan 1994 identifies, amongst other things, Colney Heath as a Green Belt settlement whereby development will not normally be permitted except for the local housing needs, local services and facilities needs of the settlement and development must not detract from the character and setting of the settlement.

21. The Council have also referred me to policies 69, 70 and 74 of the St Albans Local Plan, 1994. There would be some conflict with policy 69. In relation to the requirements regarding scale and character in terms of plot ratios, height, size and scale, as well as the requirements in relation to materials, I can see no reason why these matters could not be satisfactorily addressed at the reserved matters stage. However the policy also cross references to the requirements of policy 2 outlined above which I have already identified a conflict with. Policy 70 goes onto set out a number of design criteria and layout criteria including but not limited to the dwelling mix, privacy between dwellings, parking and materials. Policy 74 relates specifically to landscaping and tree preservation. Again noting this is an outline scheme, and subject to the reserved matters submission, I can see no reason why the matters raised by policies 70 and 74 could not be appropriately addressed at the reserved matters stage.

Purposes of including land within the Green Belt

22. The Framework and in particular paragraph 133 makes it clear that the Government attaches great importance to the Green Belt and the protection of its essential characteristics. It was common ground between the parties that the proposals represent inappropriate development as identified by the Framework. In terms of the five purposes of the Green Belt identified at paragraph 134 of the Framework, it was also common ground that the key tests in the context of these appeals are the effect on openness, encroachment and urban regeneration. I deal with each of these matters in turn.

Openness of the Green Belt

23. The appeal site comprises an open agricultural field with a number of public footpaths which traverse the site. It is entirely free from built development. The appeal proposals would introduce built development to the site in the form of 100 dwellings with associated access roads and pavements, residential gardens, open space and driveways. The precise layout and form of the development would be determined at reserved matters stage. Even taking into account the potential for boundary treatment and landscaping which could include open green space and play space and could be integral to the layout of the residential development proposed, this would have the effect of a considerable reduction in the openness of the site. The proposals would lead to conflict with policy 1 of the St Albans District Council Local Plan, 1994. This policy identifies the extent of Green Belt within the Borough, and outlines the developments which would be permitted which broadly align with the

development identified by the Framework. This, harm, in addition to the harm by inappropriateness, carries substantial weight against the proposals.

Safeguarding the countryside from encroachment

24. It was generally agreed that the impact of the appeal proposal would be limited in terms of the impact on the wider integrity of the Green Belt. This is a view that I share. In terms of the impact of the development on the purpose of safeguarding the countryside from encroachment, my attention has been drawn to a number of background evidence documents including Green Belt studies. These include a report prepared by SKM Consultants in 2013 which included an assessment of Green Belt in both WHBC, SADC and Dacorum Borough Council. Here, the appeal site is assessed as part of parcel 34, a 419ha parcel of land. Reflective of the size and scale of the parcel of land, the report sets out a number of key characteristics of the land. With reference to the gap between Hatfield and London Colney, preventing the merger of St Albans and Hatfield, and preserving the setting of London Colney, Sleapshyde and Tyttenhanger Park, the report states that the parcel makes a significant contribution towards safeguarding the countryside and settlement patten and gaps between settlements. These characteristics bear little or no relationship to the appeal site, and given the sheer size and scale of the land identified within the report when compared to the appeal site, I place only very limited correlation between the conclusions drawn here in relation to the function of the land or assessment of its function relative to the purposes of the Green Belt when compared to the appeal site.

25. The most recent Green Belt Assessment which was prepared in relation to the WHBC Local Plan review is noted as a Stage 3 review and was prepared by LUC in March 2019. Only the part of the appeal site which falls within Welwyn Hatfield forms part of the assessment, and is included within the much wider site area known as parcel 54. The report notes that whilst residential development is visible across much of the parcel, the parcel *as a whole* makes a significant contribution to the safeguarding of the countryside from encroachment. The report notes that the impact of the release of the parcel *as a whole* from the Green Belt would be moderate-high, however the impact on the integrity of the wider Green Belt would be limited. Again, I place only limited weight on the findings of this report relative to the appeal site as the assessment and conclusions drawn relate specifically to parcel 54 *as a whole* which includes a much wider area and excludes part of the appeal site in any event.

26. I have already set out in my assessment of character and appearance above that the appeal site has an urban edge/ edge of settlement character. I have made a clear distinction between the appeal site and its separation from the countryside beyond to the south and east of the appeal site. In this way, the appeal site is influenced by the surrounding residential development. As a result of these locational characteristics and influences, the consequences of the development at the appeal site would mean that the proposals would have only a localised effect on the Green Belt. The broad thrust of, function and purpose of the Green Belt in this location would remain and there would be no significant encroachment into the countryside. I therefore conclude that the appeal proposal would not result in harm in term of the encroachment of the Green Belt in this location. This is a neutral factor which weighs neither in favour nor against the appeal proposals.

To assist in urban regeneration, by encouraging the recycling of derelict and other urban land

27. The harm alleged here is limited to WHBC where the Council contend that the proposal would not assist in respect of this fifth purpose of the Green Belt. I am aware that the emerging plan proposes a number of urban regeneration sites, some of which already have planning permission. However, I have no substantive evidence to suggest that the development at this site would disincentivise the urban regeneration of sites elsewhere. Given the scale of development proposed to be located within the WHBC boundary I do not consider that the proposals would be likely to adversely impact on the regeneration of urban redevelopment sites elsewhere. There would as a result be no conflict with this purpose. Again, this is a neutral factor which weighs neither in favour nor against the appeal proposals.

The effect of the proposed development on the setting of the nearby listed building 68 Roestock Lane

28. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses. It is therefore necessary to consider the effect of the appeal proposals on the setting of the listed building itself.

29. The heritage asset concerned is a grade II listed residential dwelling. It is located adjacent to the northern boundary of the site. The house which was formerly two cottages, dates from the late C17 and has been subject to a number of modifications and extensions over the years. The dwelling is accessed from Roestock Lane. In this context, it is seen within its garden enclosure set back from the road adjacent to the Pumping Station and within the build fabric of residential development along Roestock Lane extending into Roestock Gardens.

30. From what I saw on my site visits, the significance of the heritage asset is in the main, locked into its built form and fabric. Given the mature vegetation which borders the rear garden, the extent of its setting that contributes to its significance is limited to the rear garden, and the way the front of the house addresses the main road. From Roestock Lane, the aesthetic value of the dwelling is evident through architectural detailing to the front elevation which is clearly visible.

31. The appeal proposals would see residential development introduced to the existing open agricultural field which abuts the rear boundary of the heritage asset. There would be no change to the built form or fabric of the dwelling, or the relationship of the heritage asset with its immediate garden. To my mind, these are the factors which provide the greatest contribution to the significance of the heritage asset.

32. The Councils heritage witness stated that the listed building has an historical association with the surrounding agricultural land and that the appeal site allows the listed building to have uninterrupted longer range views towards the south east. I do not agree. There is no evidence which confirms that the occupiers of the heritage asset were engaged directly with the appeal site. Neither does this serve to demonstrate any functional relationship between the appeal site and the heritage asset concerned. There is no evidence of an

existing or former access that existed between the appeal site and the heritage asset. Whilst the property may well have been at times occupied by agricultural workers, I have no doubt that this would be common to many residential dwellings in the area at that time and would indeed be reflective of the historical associations with farming in years gone past in the immediate area and beyond.

33. Turning to consider the issue of views, I am unable to agree with the Councils contention that uninterrupted longer-range views across the appeal site from the property contribute to the significance of the listed building. The extensive and mature boundary vegetation to the property provides significant screening to the boundary of the property, such that these views would at best be described as limited. In any event, given my conclusions above regarding the linkage between the appeal site and the heritage asset, I am not convinced that longer-range views from the property make any contribution to the historical significance of the dwelling. As I have already set out, the main front of the dwelling addresses Roestock Lane. That situation would not be changed. Neither, given the existing screening, that could be augmented through reserved matters, would the significance the listed building derives from its garden setting be undermined by the proposals.

34. Looking at the issue of views of the dwelling from the appeal site, the appreciation of the architectural interest of the building is limited. The rear elevation has been subject to extensions over time. The property is seen in the context of the other immediate surrounding residential dwellings which lie adjacent to the appeal site, their rear gardens and extensive and mature vegetation to these boundaries, not as an isolated heritage asset with any functional or historical link to the appeal site. The reserved matters submission will afford the Councils the opportunity for enhancements to the landscape setting in the vicinity of the site boundary.

35. It is common ground between the parties that the harm to the significance of the designated heritage asset would be less that substantial. It is also common ground that the public benefits of the scheme outweigh the less than substantial harm. For the reasons I have outlined above, even the appellants assessment at the very lowest end of the broad spectrum of less than substantial harm overstates the schemes likely effect in this context. As I have already set out, the main aspect of the dwelling is from Roestock Lane. In such views, the appeal proposals would have a very limited effect on the current position.

36. I conclude that the proposals would not result in any harm to the setting or significance of the heritage asset concerned. As such, s.66(1) of the planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged, and there would be no conflict with policy 86 of the St Albans District Local Plan (1994) which states, amongst other things, that where proposals effect the setting of a building of historic interest, the Council will have due regard to the desirability of preserving the building, its setting, or any features of architectural or historic interest which it possesses. Policy D1 is also referred to from the Welwyn Hatfield District Plan (2005). However, this policy concerns the provision of high quality design and is not of relevance to the heritage matters before me.

Whether the site is in an accessible location with regards to local services and facilities

37. The Councils contend that the appeal site is in an unsuitable and isolated location and as a result, it would fail to provide satisfactory access to services and facilities by means other than the private motor car. The appeal site is located on the eastern edge of Colney Heath. The parties agreed a facilities plan which clearly demonstrates the location of the appeal site relative to services, facilities and public transport and included walking and cycling distances from the appeal site. I will firstly assess the availability of and access to services and facilities outside of Colney Heath by means other than the private car, before turning to consider the facilities and services available within Colney Heath itself and how accessible these maybe to potential future occupiers at the appeal site.

38. In terms of public transport and travel outside of Colney Heath, there are a number of bus stops available most notably on Roestock Lane, Fellowes Lane and Hall Gardens. These are all within an 800m walking distance of the site, a flat comfortable walk. These stops provide services to both Potters Bar, Welwyn Garden City, St Albans and Hatfield Tesco Extra where more extensive shopping, medical, education, employment and leisure facilities are located. Whilst I accept that the buses serving these stops are limited in number and frequency and could by no means support regular commuting, they nevertheless provide an alternative mode of transport to the private car and could provide an important alternative to those sectors of the community who do not have access to a private car. Although the reliability of the services was questioned, I have no robust evidence to suggest that the service is so severely unreliable that it would lead me to reach a different conclusion on this issue.

39. For travel further afield, the nearest train services are provided at Welham Green, approximately 3.5km away with direct and frequent services to London. Turning to consider cycling, the Council's witness raised a number of concerns in relation to the nature of the roads and suitability for cycling. HCC as highways authority advised that cycling facilities are adequate with safe routes and access to the national cycle route network. These include National Cycle Route 61 approximately 3km from the appeal site providing access to St Albans and cycle route 12 approximately 2km to the south east providing access to both Welham Green and Hatfield. The agreed facilities plan indicates that taking into account average cycling times, a number of services and facilities would be available between 6 and 12 minutes away. I saw evidence on my site visits of both Bullens Green Lane and Fellowes Lane being well used for recreational purposes, including walkers and cyclists. Taking into account the average cycle times and distances to facilities outside of Colney Heath as set out within the facilities plan, I concur with HCC that cycling provides a reasonable alternative in this location to the private car.

40. Turning to consider journeys possible on foot, Colney Heath itself has a number of facilities and services which one would expect in a settlement of this size. These include but are not limited to a public house, primary school which has some albeit limited capacity and pre school, church, takeaway, village hall, hairdressers, scout hut, post office and mini mart. The availability of the public rights of way (PROW) within the site mean that these facilities and services could be accessible through a choice of routes, utilising the connections to

either Roestock Lane or Fellowes Lane and then onwards to the High Street. This choice of routes adds to the quality of the walking experience in this location however I acknowledge the concerns expressed regarding the use of the underpass under the A1 and the quality of the pedestrian environment provided here. In common with other lower order settlements in both SADC and WHBC, residents are expected to travel to larger settlements highlighted above for medical facilities, larger scale supermarkets, employment and secondary education and beyond. To my mind, the facilities and services available within Colney Heath and the accessibility of these facilities both on foot and by cycle mean that a number of day to day needs could be met without reliance on the private car. As a result, the location of the appeal site cannot be described as isolated. These factors weigh in favour of the appeal proposals.

41. Overall and to conclude, taking into account the essence of the Framework test as to whether a genuine choice of transport modes is on offer, the appeal proposals would in my view represent a sustainable location for new residential development.

42. My attention has been drawn to policy 2 of the St Albans Local Plan 1994 which identifies, amongst other things, Colney Heath as Green Belt settlement whereby development will not normally be permitted except for the local housing needs, local services and facilities needs of the settlement and development must not detract from the character and setting of the settlement. Given the policy wording, there would be a conflict with this policy. In relation to WHDC, I also conclude that the proposals would accord with policies SD1 and H2 of the Welwyn Hatfield District Plan, 2005. Policy SD1 confirms that development will be permitted where it can be demonstrated that the principles of sustainable development are satisfied. Policy H2 applies a criteria based approach to windfall residential development, which includes, amongst other things, the location and accessibility of the site to services and facilities by transport modes other than the car.

43. Policy GBSP2 is also referred to however this is a policy relating to towns and specified settlements where development will be located and the settlement of Colney Heath is not identified by the policy however the supporting text to the policy identifies Bullen's Green and refers to development to support services and facilities. Overall, the proposals would not accord with this policy.

44. Policy R1 requires development to take place on land which has been previously used or development. It goes onto state that development will only be permitted on 'greenfield' land where it can be demonstrated that no suitable opportunities exist on previously used or developed land. The proposals would conflict with this policy.

Whether very special circumstances exist

45. Substantial weight is attached to any harm to the Green Belt by reason of inappropriateness. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It is widely acknowledged that the definition of very special circumstances do not in themselves have to be rare or

uncommon[1]. I now turn to consider the factors which I have taken into account in making this assessment.

Provision of Market Housing

46. Paragraph 59 of the Framework seeks to support the Governments objective of significantly boosting the supply of homes. In order to achieve this, the Framework notes that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

47. I am aware of the Written Ministerial Statement of December 2015 which indicates that unmet need is unlikely to clearly outweigh harm to Green Belt and any other harm so as to establish very special circumstances. However, in common with the appeal decision[2] referred to, I note that this provision has not been incorporated within the Framework which has subsequently been updated and similar guidance within the Planning Practice Guidance has been removed. I can therefore see no reason to give this anything other than little weight as a material consideration.

48. It is common ground that neither SADC or WHBC can demonstrate a five year supply of deliverable homes. Whilst there is disagreement between the parties regarding the extent of this shortfall, the parties also agreed that this is not a matter upon which the appeals would turn. I agree with this position. Even taking the Councils supply positions of WHBC 2.58 years and SADC at 2.4 years, the position is a bleak one and the shortfall in both local authorities is considerable and significant.

49. There is therefore no dispute that given the existing position in both local authority areas, the delivery of housing represents a benefit. Even if the site is not developed within the timeframe envisaged by the appellant, and I can see no compelling reason this would not be achieved, it would nevertheless, when delivered, positively boost the supply within both local authority areas. From the evidence presented in relation to the emerging planning policy position for both authorities, this is not a position on which I would envisage there would be any marked improvement on in the short to medium term. I afford very substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in both local authority areas.

Provision of Self Build

50. Turning to consider the issue of Self Build, as part of the overall dwelling numbers, the proposal would deliver up to 10 self build or custom build dwellings. The Government attaches great importance to the provision of this element of the supply. Notably, paragraph 61 of the Framework identifies that planning policies should reflect the housing needs of different sectors of the community including, but not limited to people wishing to commission or build their own homes. Footnote 26 gives further explanation with reference to the requirements of the Self Build and Custom Housebuilding Act 2015 (as amended). The Planning Practice Guidance advises that local authorities

[1] Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692.
[2] APP/C2741/W/19/3227359

should use the demand data from registers, supported by additional data from secondary sources, to understand and consider future need for this type of housing in their area. Furthermore, it goes onto note that the registers are likely to be a material consideration in decisions involving proposals for self and custom housebuilding.

51. In the case of these appeals, there are no development plan policies which relate specifically to the provision or delivery of self building housing in either authority. Emerging policy SP7 at WHBC identifies four allocations which would contribute towards self build plot provision although the allocations do not specify how many plots. Furthermore, neither authority has an uptodate assessment of likely future demand for this type of housing in line with the Planning Practice Guidance. The appellant provided detailed evidence in relation to the Custom Build Register, none of which was disputed. Evidence also presented demonstrated that the statutory duty to provide for base period plot provision has also not been met in either authority, in some periods by a significant margin. Taking into account other secondary data sources, these shortfalls may well be on the conservative side.

52. In common with both market housing and affordable housing, the situation in the context of provision of sites and past completions is a particularly poor one. To conclude, I am of the view that the provision of 10 self build service plots at the appeal site will make a positive contribution to the supply of self build plots in both local planning authority areas. I am attaching substantial weight to this element of housing supply.

Provision of affordable housing

53. The uncontested evidence presented by the appellant on affordable housing for both local authorities illustrates some serious shortcomings in terms of past delivery trends. In relation to WHBC, the affordable housing delivery which has taken place since 2015/16 is equivalent to a rate of 23 homes per annum. The appellant calculates that the shortfall stands in the region of 4000 net affordable homes since the 2017 SHMA Update, a 97% shortfall in affordable housing delivery. If the shortfall is to be addressed within the next 5 years, it would required the delivery of 1397 affordable homes per annum. In SADC, the position is equally as serious. Since the period 2012/13, a total of 244 net affordable homes have been delivered at an average of 35 net dwellings per annum. Again, this equates to a shortfall also in the region of 4000 dwellings (94%) which, if to be addressed in the next 5 years, would require the delivery of 1185 affordable dwellings per annum.

54. The persistent under delivery of affordable housing in both local authority areas presents a critical situation. Taking into account the extremely acute affordable housing position in both SADC and WHBC, I attach very substantial weight to the delivery of up to 45 affordable homes in this location in favour of the proposals.

Other Matters

Other Appeal Decisions

55. I have been referred to no fewer than 21 other appeal decisions[3] in addition to 9 Secretary of State decisions[4] as part of the evidence before me in relation to these appeals. Both the appellant and the Councils have sought to draw comparisons and similarities between this extensive array of decisions before me for a variety of reasons. Two historical decisions at the appeal site, as acknowledged by the Councils, were determined under a different planning policy framework and accordingly I attach very limited weight to these. In relation to the appeal decision at the neighbouring site[5], I do not have the full details of the evidence which was before that Inspector, the main issues were different to these appeals and the decision predates the current Framework.

56. Rarely will any other appeal decision provide an exact comparison to another situation. In some of the cases referred to, there are similarities in the size and scale of the proposal, in other cases there are entirely different planning policy positions, housing supply considerations, land use considerations, locational characteristics, main issues and other factors which have been weighed in the balance. Furthermore, it remained common ground that each appeal should be considered on its own merits as is the case here. It is for the decision maker in each case to undertake the planning balancing exercise and as a result, the weight I have attached to these other appeal cases is limited.

Other Matters

57. I have considered the effect of the proposals on the occupiers of the neighbouring dwellings in terms of effect on living conditions, highways impacts, flooding and loss of agricultural land. There are no objections from either SADC , WHBC or HCC in relation to these matters. I acknowledge concerns expressed by local residents in relation to existing flooding which takes place on Bullens Green Lane, however I am satisfied that appropriately worded conditions in relation to surface water and drainage can satisfactorily address any impacts of the appeal proposals in this regard. Similarly, I have no evidence before me which would lead me to reach a different conclusion to the Councils in relation to the effect of the development on the living conditions of neighbouring properties.

58. In terms of highways impacts, I acknowledge that a number of local residents have expressed concerns regarding localised congestion and parking and overall highways impacts. I am also mindful of the concerns expressed by Colney Heath Parish Council in connection with the data used to support the appeal proposals. However, taking into account the likely vehicular traffic to be generated by the development and the conclusions reached by the supporting

[3] Two historical appeal decisions at the appeal site E6/1973/3202 & E6/1954/0860, APP/B1930/W/19/3235642, APP/Y0435/W/20/3251121, APP/C2714/W/19/3227359, APP/D2320/W/20/3247136, APP/P0119/W/17/3191477, APP/P1615/W/18/3213122, APP/G2435/W/18/3214451 & 3214498, APP/W0530/W/19/3230103, APP/C1570/W/19/3234530 & 3234532, APP/X0360/W/19/3238048, APP/H1840/W/20/3255350, APP/P3040/W/17/3185493, APP/L3815/W/16/3165228, APP/D0840/A/13/2209757, APP/G1630/W/14/3001706, APP/G5180/W/16/3144248, APP/G5180/W/18/3206569, APP/E2001/W/20/3250240,
[4] APP/W4705/V/18/3208020, APP/Q3115/W/19/3230827, APP/C4235/W/18/3205559, APP/P1615/A/14/2218921, APP/A0665/W/14/2212671, APP/H1840/A/13/2199085 & 2199426, APP/P4605/W/18/3192918, APP/Q3630/A/05/119826, APP/W1850/W/20/3244410
[5] APP/B1930/W/15/3137409

transport assessments, I concur with the view that this will not have a severe impact on the operation of the wider highways network.

59. The site access would be located off Bullens Green Lane where it is currently subject to the national speed limit. The Highways Authority consider that the introduction of a transitional speed limit restriction may be necessary to the south of the site. As a result, two Grampian conditions are proposed to address this issue. I conclude that the development would not cause harmful levels of congestion or increase risk to highway safety.

60. I note the conclusions the Councils have drawn in relation to the loss of agricultural land and the inconsistencies between the development plan policies and the Framework in this regard and can see no reason to disagree with the conclusions drawn by the Councils in relation to this matter.

61. The Councils argued that the site is not a suitable location for housing as it does not form part of the emerging policy context for either SADC or WHBC. Whilst I acknowledge this to be the case, this in itself is not a reason that the appeals should fail. In neither SADC nor WHBC is there an emerging policy position to which any significant weight can be attached. The SADC Local Plan Review was adopted in 1994, some 27 years ago. The most recent replacement plan was withdrawn. As a result, there is currently no uptodate strategic housing land requirement assessment which has been subject to any rigorous soundness assessment through the local plan examination process.

62. Turning to consider the position at WHBC, the adopted plan dates from 2005, some 16 years ago. The emerging plan was submitted for examination some 4 years ago. As was outlined during the inquiry, Interim Findings issued by the Inspector in October 2020 and subsequent round up notes issued by the Inspector in March 2021 set out that findings in relation to the FOAHN, windfall allowance and green belt boundaries at proposed development sites are yet to be issued. As a result, I am unable to conclude with any certainty when the WHBC Plan will be found sound and as such attach very limited weight to this emerging plan.

Biodiversity

63. Policy R11 of the WHBC Local Plan requires, amongst other things, that all new development should demonstrate how it would contribute positively to the biodiversity of the site by meeting a number of identified criteria. In the case of these appeals, the criteria most relevant are (i) the retention and enhancement of natural features of the site and (ii) the promotion of natural areas and wildlife corridors where appropriate as part of the design. For SADC, my attention has been drawn to policy 106 of the SADC Local Plan 1994 however this policy deals specifically with the effect of planning applications on identified SSSIs, Nature Reserves, other sites of wildlife, geographical or geomorphological importance which is not applicable to the appeal site. This is a position confirmed by the Councils in their proof of evidence.

64. The appeals are supported by an amended Ecological Impact Assessment. Hertfordshire Ecology, as ecological advisors to both WHBC and SADC confirmed that subject to a suitably worded condition and obligations within the Section 106 agreement, both of which I set out later within this report, the appeal proposals adequately address the ecological impacts of the development

at the appeal site. I therefore conclude that the proposals would accord with policy R11 of the WHBC Local Plan in this regard.

Planning Obligation

65. I have taken into account the various obligations identified within the executed Section 106 Agreement with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) as well as the tests identified at paragraph 56 of the Framework. The obligation would secure a number of provisions relating to HCC, SADC and WHBC. I deal with each of these individual matters in turn.

66. A number of clauses in relation to biodiversity measures are proposed. A biodiversity offsetting contribution is included within the obligation, which would contribute towards the creation of new habitats. This would be calculated by using the Biodiversity Net Gain Matrix which provides for a financial contribution based on the formula identified by the matrix which measures and takes into account biodiversity losses and gains resulting from the development. In support of this approach, the Councils have identified that adopting the use of this matrix approach allows for landscaping and open space proposals as well as on site mitigation to be taken into account at reserved matters stage. In addition, the parties have also referred me to an alternative appeal decision[6] to endorse the use of the Biodiversity Net Gain Matrix approach. Once calculated, a scheme would be submitted for approval to both Councils referred to as the biodiversity offsetting scheme. In addition to this offsetting, biodiversity onsite compensation would also be provided through the identification of biodiversity measures to be implemented within the site as part of an identified onsite compensation scheme. In both instances, the Councils would be approving the onsite and offsetting schemes with reference to the biodiversity metric formular approach.

67. A green space contribution, to be calculated based on the precise number of dwellings and mix, will deliver the creation of a wildflower meadow at Angerland public open space off Bishops Rise, South Hatfield. Officers confirmed that this was the closest facility to the appeal site to which improvement requirements have been identified.

68. I note the Councils expressed concerns that the appellant could rely on the green space contribution as part of the biodiversity offsetting scheme and biodiversity offsetting contribution. However the biodiversity offsetting scheme, by definition, requires a scheme to be approved by both Councils to include but not limited the identification of an appropriate receptor site(s). As a result, I consider that this matter is adequately addressed by the obligation and the concerns are unfounded.

69. Taking into account the information and evidence presented, I am content that the obligations in relation to biodiversity, including the offsetting contribution, offsetting scheme and onsite compensation are necessary, directly related to the development and fairly and reasonably related in scale and kind. I draw the same conclusion in relation to the green space contribution. These obligations therefore comply with Regulation 122 of the CIL Regulations and can be taken into account in the grant of planning permission.

[6] APP/Y0435/W/20/3251121

70. In addition to the above, the obligation would secure the provision of affordable housing, apportioned equally between WHBC and SADC. The affordable housing scheme would also secure the mix of units and tenures. In a similar way, the obligation would secure the plots and associated provision for the self build and custom housebuilding plots on the site. A district community facilities contribution is sought, to provide improvements towards the Roestock Park Scout Hut. Obligations relating to the highways works necessary to implement the scheme, waste and recycling, bus stop improvements at Hall Gardens, travel plan, libraries contribution towards improvements to the Creator Space at Hatfield Library, education contribution for both primary and secondary school provision, youth contribution towards increased provision at Hatfield Youth Centre, indoor sports facilities contribution towards the University of Hertfordshire and/or Hatfield Swimming Pools, and medical facilities in the form of community healthcare, general medical services specified at Northdown Road and/or Burvill House Surgery and mental health contribution specified at Queensway Health Centre and Roseanne House are also included. Finally, a monitoring fee, not to exceed £5000 would be payable to WHBC to cover the reasonable and proper administrative costs of monitoring compliance with the obligations.

71. The delivery of up to 100 dwellings in this location will result in an increase in the local population, with subsequent impacts on schools, social infrastructure such as medical facilities, libraries, sports and transport. A number of the other obligations, for example the provision of self or custom build housing as well as the provision for affordable housing weigh in favour of the appeal proposals.

72. I conclude that all of the aspects of the obligations outlined above are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. As a result, the obligations therefore comply with Regulation 122 of the CIL Regulations and can be taken into account in the grant of planning permission.

73. The obligation also includes a contribution towards outdoor sports facilities, specifically improving drainage at grass pitches at Welham Green recreation ground and/or towards repairs to the bowls ground in the same location. Welham Green is approximately 3.5km from the appeal site. There is an existing recreational facility next to the appeal site, as well as outdoor sports facilities, albeit within SADC, located locally within Colney Heath. I am not convinced that this contribution would be necessary to make the development acceptable in planning terms or directly related to the development. Accordingly, I do not find this part of the obligation would satisfy the necessary tests.

Conditions

74. A round table session was held at the inquiry to discuss a list of agreed planning conditions. I have considered this list of conditions with reference to the tests as set out at paragraph 55 of the Framework. Where necessary, I have amended the wording of the conditions in the interests of precision and clarity.

75. In the interests of certainty and highways safety, conditions outlining the approved plans, including the access arrangements and their implementation, as well as the visibility splays, are necessary. I have however not included the suggested condition relating to the parameter plan as I do not consider a condition relating to this is necessary or reasonable in this instance. As the proposals are in outline form only, it is however necessary to specify the reserved matters to be submitted for approval and associated time limits for their submission and subsequent implementation. Two highways related conditions are attached. The first relate to submission, approval and implementation of any necessary Traffic Regulations Order (TRO). The second relates to the provision of a safe and suitable pedestrian crossing and footway on Fellowes Lane. Both of these conditions are necessary in the interests of highways safety.

76. A condition requiring an archaeological written scheme of investigation is both necessary and reasonable in order to establish the presence or absence of archaeological remains. Conditions requiring the submission of a scheme relating to surface water drainage and also relating to the arrangements for surface water to be disposed of are necessary and reasonable to ensure the satisfactory storage and disposal of surface water from the site. To address any risk of flooding, a further condition is attached requiring the development to be completed in accordance with the Flood Risk Assessment and Drainage Strategy. In addition, to prevent contamination, conditions have been attached which require full details of any substance containers to be submitted and approved in writing and also specific details of works involving excavation. A condition relating to indoor and outdoor noise levels is both necessary and reasonable to protect the living conditions of future residents. Furthermore, a condition relating to accessible housing is justified in order to ensure the needs of accessible or wheelchair housing are met.

77. The submission of a construction management plan is required by condition 11. This is necessary in the interests of highways safety and also the living conditions of nearby residents. In order to promote sustainable transport a condition relating to the provision of electric vehicle charging points has been included. Conditions covering landscaping details, a landscaping and ecological management plan and requiring a tree protection plan and method statement are necessary to ensure that the appearance of the development is satisfactory, biodiversity impacts of the development are suitably addressed and that where necessary, to ensure that retained trees and hedgerows are protected during the course of construction.

Conclusions

78. The proposals would cause harm by reason of inappropriateness and harm to openness. Both of these attract substantial weight. I have also attached moderate weight to harm to the character and appearance of the area. However, these appeals involves two local authority areas, both of which have acute housing delivery shortages and acute affordable housing need. The proposals would make a contribution towards addressing these needs in the form of market, self build and affordable housing in both WHBC and SADC. I have attached very substantial weight to the provision of both market housing and affordable housing. I have attached substantial weight to the provision of self build housing. These factors, when considered collectively demonstrate that very special circumstances do exist.

79. I conclude that in the case of these appeals, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, very special circumstances do exist to justify inappropriate development in the Green Belt. My findings on the other matters before me do not lead me to a different conclusion. As a result, I therefore conclude that the proposals would comply with both the Framework and the development plans taken as a whole. For the reasons given above, and having considered all other matters raised, the appeals are allowed.

C Masters

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITES:

Matthew Fraser of Counsel	Instructed by WHBC and SADC

He called:

Phillip Hughes BA(Hons) MRTPI FRGS Dip Man MCMI	Director of PHD Chartered Town Planners Limited

Other Participants at Round Table Discussions:

David Elmore	Senior Development Management Officer, Welwyn Hatfield Borough Council
Ruth Ambrose MA (Hons) MTP MRTPI	St Albans Borough Council
Martin Hicks	Hertfordshire Ecology
Martin Wells	Hertfordshire County Council Growth and Infrastructure Unit
Chris Martin	Hertfordshire County Council Children's Services (Education)
Lindsay McCauley	Hertfordshire County Council Highways
Rob Walker	Solicitor, Welwyn Hatfield Borough Council

FOR THE APPELLANT:

Zack Simons of Counsel	Instructed by Russell Gray of Woods Hardwick

He called:

Andrew Crutchley BA (Hons) PG Dip (Oxon) MCIfA	Director at the Environmental Dimension Partnership
John Freeman MEng CEng MICE MICHT MIOD	Director of Woods Hardwick Ltd
Gary Holliday B.A (Hons) MPhil CMLI Ltd	Director at FPCR Environment and Design Ltd
Andrew Moger BA (Hons) MA MRTPI	Associate Director at Tetlow King Planning Ltd
James Stacey BA (Hons) Dip TP MRTPI	Senior Director at Tetlow King Planning Ltd
Russell Gray BA (Hons) DIP UP MRTPI	Director of Woods Hardwick Planning Ltd

Other Participants at Round Table Discussion

Paul Arnett	Town Legal

RULE SIX PARTY:

John Clemow – 4ColneyHeath

INTERESTED PERSONS:

Cllr Peter Cook	Colney Heath Parish Council

DOCUMENTS SUBMITTED DURING INQUIRY

CD 10.13	Appeal Decision, land at Church Lane, Wittington
CD 7.07	Extracts from SADC SHLAA 2009

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called, the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

3. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing no. 17981 1002 (Site Location Plan), drawing no. 18770-FELL-5-500 Rev B (Revised Site Access) and drawing no. 18770-FELL-5-501 Rev A (Proposed Footpath Connection).

4. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

5. No development of the site shall commence until:
   a) A scheme to reduce speeds (to support the access proposals designed to 30mph) on Bullens Green Lane, Colney Heath, is provided to and approved in writing by the Local Planning Authority. Any scheme is required to be designed in line with the requirements of Hertfordshire County Council's (HCC) Speed Management Strategy (SMS); and
   b) Any necessary Traffic Regulation Order (TRO) is made in respect of part a) to this condition. 'Made' means that the TRO has been approved and can be implemented.
   No occupancy of the site can occur until the Traffic Regulation Order referred to above is implemented and brought into force. Evidence of the implemented scheme, in the form of a Certificate of Completion of the Section 278 of the Highways Act 1980, must be submitted to and approved in writing by the local planning authority.

6. No development of the site shall commence until a scheme for the provision of a safe and suitable pedestrian crossing and footway on Fellowes Lane, Colney Heath, in line with drawing number 18770-FELL-5-501 Rev A in principle, is provided and approved in writing by the Local Planning Authority and is designed in line with the requirements as set out in Hertfordshire County Council's Roads in Hertfordshire: Highway Design Guide (3rd edition). No occupation of any part of the development may occur before implementation of the approved scheme referred to in Part 1 of the condition.

7. No works involving excavations (e.g. piling or the implementation of a geothermal open/closed loop system) shall be carried until the following has been submitted to and approved in writing by the Local Planning Authority.
   a) An Intrusive Ground Investigation to identify the current state of the site and appropriate techniques to avoid displacing any shallow contamination to a greater depth
   b) A Risk Assessment identifying both the aquifer and the abstraction point(s) as potential receptor(s) of contamination including turbidity.

c) A Method Statement detailing the depth and type of excavations (e.g. piling) to be undertaken including mitigation measures (e.g. turbidity monitoring, appropriate piling design, off site monitoring boreholes etc.) to prevent and/or minimise any potential migration of pollutants including turbidity or existing contaminants such as hydrocarbons to public water supply. Any excavations must be undertaken in accordance with the terms of the approved method statement.
All works shall be carried out in accordance with approved reports listed above.
The applicant or developer shall notify Affinity Water of excavation works 15 days before commencement in order to implement enhanced monitoring at the public water supply abstraction and to plan for potential interruption of service with regards to water supply.

8. Development must not commence until an Archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of archaeological significance and research questions; and:
a) The programme and methodology of site investigation and recording;
b) The programme and methodology of site investigation and recording as required by the evaluation;
c) The programme for post investigation assessment
d) Provision to be made for analysis of the site investigation and recording;
e) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
f) Provision to be made for archive deposition of the analysis and records of the site investigation;
g) Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.
The development must not take place other than in accordance with the approved programme of archaeological works set out in the Written Scheme of Investigation.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority.
An investigation and risk assessment and, where remediation is necessary, a remediation scheme must then be submitted to and approved in writing by the Local Planning Authority and implemented as approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

The investigation and risk assessment must assess the nature and extent of any contamination on the site, whether or not it originates on the site and must be undertaken by competent persons. A written report of the findings must be produced and the findings must include:
(i) a survey of the extent, scale and nature of contamination;
(ii) (ii) an assessment of the potential risks to:
- human health;
- property (existing or proposed) including buildings;
- crops;
- livestock;
- pets;

- woodland and service lines and pipes;
- adjoining land;
- groundwaters and surface waters;
- ecological systems;
- archaeological sites and ancient monuments.

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

The investigation and risk assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Remediation Scheme

Following completion of measures identified in the approved remediation scheme, a verification report which demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.

9. Development must not commence until the final design of the drainage scheme is completed and sent to the local planning authority for approval. The surface water drainage system should be based on the submitted the Flood Risk Assessment and Drainage Strategy (prepared by Woods Hardwick, ref: 18770/FRA and DS, dated August 2020). The scheme must also include:

a) Detailed, updated post-development calculations/modelling in relation to surface water for all rainfall events up to and including the 1 in 100 year return period, this must also include a +40% allowance for climate change;

b) A detailed drainage plan including the location and provided volume of all SuDS features, pipe runs and discharge points. If areas are to be designated for informal flooding these should also be shown on a detailed site plan;

c) Exceedance flow paths for surface water for events greater than the 1 in 100 year including climate change allowance;

d) Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs. This should include details regarding the connection into the existing Thames Water surface water sewer;

e)The drainage scheme shall also confirm use of an oil/water interceptor; and

f) Final detailed management plan to include arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the local planning authority.

10. Development must not commence until details of all substance containers are submitted to and approved in writing by the local planning authority. These details must include:

a) Confirmation of bunding of 110% capacity; and

b) Confirmation of the presence of a leak detection system and methodology that includes immediate notification to Affinity Water

11. Development must not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development must only be carried out in accordance with the approved Plan. The Construction Management Plan must include details of:
a) Construction vehicle numbers, type, routing;
b)Access arrangements to the site;
c) Traffic management requirements including arrangements for the PROW across the site during construction;
d) Construction and storage compounds (including areas designated for car parking, loading / unloading and turning areas);
e) Siting and details of wheel washing facilities;
f) Cleaning of site entrances, site tracks and the adjacent public highway;
g) Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
h) Provision of sufficient on-site parking prior to commencement of construction activities;
i) Post construction restoration/reinstatement of the working areas and temporary access to the public highway; and
j) Where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements.

12. No development above ground level shall take place until a scheme to protect the development from noise due to transport sources is submitted to and approved in writing by the local planning authority. The scheme must ensure that:

The indoor ambient noise levels in living rooms and bedrooms meet the standards within BS 8233:2014. Relaxed noise levels in BS 8233:2014 will not be accepted in living rooms and bedrooms unless it can be demonstrated that good acoustic design practices have been followed and the implementation of acoustic barriers/bunds to lower façade noise levels as much as reasonably practicable, have been implemented. Internal LAmax levels should not exceed 45dB more than ten times a night in bedrooms;
If opening windows raises the internal noise levels above those within BS8233, the mechanical ventilation will need to be installed, with ventilation rates required to meet those found within The Noise Insulation Regulations 1975. Alternative methods (such as passive systems) and rates can be considered, however, evidence that overheating will not occur will need to be provided in the form of a SAP assessment conducted with windows closed, curtains/blinds not being used, showing the required ventilation rates to ensure that the medium risk category is not exceeded. Details must be provided of the ventilation system to be installed and to demonstrate that it will provide the ventilation rates shown in the SAP Assessment; and
Outdoor amenity areas must meet the 55dB WHO Community Noise Guideline Level

The approved scheme must be implemented prior to first occupation, unless the Local Planning Authority otherwise agrees in writing.

13. No development above ground level shall take place until a scheme setting out the arrangements for the delivery of accessible housing will be supplied to the council in accordance with the following requirements:
a) A schedule of units, together with appropriate plans and drawings, must be submitted to and be approved by the local planning authority setting out details of the number, layout and location of all units that will comply with Part M4(2) of the Building Regulations 2010. At least 20% of all new dwellings must meet Building Regulations Part M4(2) standards for 'accessible and adaptable dwellings';
b) All units specified as M4(2) in the agreed schedule and plans must be implemented in accordance with that approval and in compliance with the corresponding part of the Building Regulations in that regard;
c) The person carrying out the building work must inform the Building Control body which requirements apply; and
d) Written verification of the completion of all dwellings in accord with part (a) above will be supplied to the local planning authority within 30 days of the practical completion [of the block it forms part of].

14. Prior to the first occupation of the development hereby permitted the vehicular access must be provided and thereafter retained at the position shown on drawing no. 18770-FELL-5-500 Rev B in accordance with the agreed highway specification . Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

15. Prior to the first occupation of the development hereby permitted a visibility splay must be provided in full accordance with the details indicated on drawing no. 18770-FELL-5-500 Rev B. The splay shall thereafter be maintained at all times free from any obstruction between 600mm and 2m above the level of the adjacent highway carriageway.

16. Prior to first occupation of the development hereby permitted, a minimum provision of 20% of the car parking spaces must be designated for plug-in Electric Vehicles (EV) and served by EV ready [domestic and/or fast] charging points.

17. The development permitted by this planning permission must be carried out in accordance with the Flood Risk Assessment and Drainage Strategy (prepared by Woods Hardwick, ref: 18770/FRA and DS, dated August 2020) and the following mitigation measures:
a) Limiting the surface water run-off generated by the critical storm events so that it will not exceed the surface water run-off rate of 9.3 l/s during the 1 in 100 year event plus 40% of climate change event;
b) Providing storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event providing a total storage volume in two attenuation basins;
c) Discharge of surface water from the private drainage network into the Thames Water surface water sewer system located in Bullens Green Lane.
The mitigation measures shall be fully implemented prior to first occupation of the development hereby approved.

Surface water must not be disposed of via direct infiltration into the ground via a soakaway.

Notwithstanding the submitted 'Updated Arboricultural Assessment – Version 2 (by FPCR Environment and Design Ltd, July 2020), a detailed tree protection plan and method statement should be submitted as part of application(s) for reserved matters approval as required by Condition 1.

18. Full details of both soft and hard landscape works should be submitted as part of application(s) for reserved matters approval as required by Condition 1. The landscaping details to be submitted shall include:

a) existing and proposed finished levels and contours
b) trees and hedgerow to be retained;
c) planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing;
d) hard surfacing;
e) means of enclosure and boundary treatments;
f) Details of toddler play area including play equipment; and
g) Any other structures (such as furniture, refuse or other storage units, signs, lighting)

19. A landscape and ecological management plan (LEMP) should be submitted as part of application(s) for reserved matters approval as required by Condition 1 and include:

a) A description of the objectives;
b) Habitat/feature creation measures proposed
c) Maintenance of habitat/feature creation measures in the long term and those responsible for delivery;
d) Lighting strategy (aim to ensure that illumination of the existing hedgerows does not exceed 0.5 lux); and
e) A monitoring programme and the measures required to adapt the LEMP should objectives fail to be met.
The LEMP should cover all landscape areas within the site, other than small privately owned domestic gardens.

The Planning Inspectorate

Appeal Decision

Site visit made on 10 May 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/L1765/W/20/3254522
Gubblecotes, Boyes Lane, Colden Common SO21 1TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Nick Plowright against the decision of Winchester City Council.
- The application Ref 19/02720/FUL, dated 5 December 2019, was refused by notice dated 6 April 2020.
- The development proposed is demolition of triple garage and subdivision of plot to create one wheelchair accessible dwelling.

Decision

1. The appeal is allowed and planning permission is granted for demolition of triple garage and subdivision of plot to create one wheelchair accessible dwelling at Gubblecotes, Boyes Lane, Colden Common SO21 1TA in accordance with the terms of the application, Ref 19/02720/FUL, dated 5 December 2019, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The Council has advised that, following receipt of additional information, it is no longer seeking to defend the third refusal reason in relation to the effect of the proposal on European protected sites. I shall return to this later in my decision.

Main Issues

3. The main issues are:

   a) whether the proposal would comply with development plan policy on the location of new housing;

   b) the effect of the proposal on the character and appearance of the area; and

   c) whether there are material considerations to outweigh any policy conflicts identified in relation to the above matters.

Reasons

Development plan policy on the location of new housing

4. The property known as 'Gubblecotes' lies immediately adjacent to the settlement boundary of Colden Common, as defined on the Policies Map for the Winchester District Local Plan Part 2 – Development Management and Site

Allocations (2017) (LPP2). The Policies Map annotates the land as countryside where Policy MTRA4 of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) (JCS) restricts new-build residential development to that which has an operational need to be located in the countryside. This policy is consistent with the National Planning Policy Framework (the Framework) in recognising the intrinsic character and beauty of the countryside.

5. As a matter of fact, the proposal would be contrary to JCS Policy MTRA4. In exercise of Section 38(6) of the Planning and Compulsory Purchase Act 2004, a grant of planning permission would only be appropriate where material considerations exist to justify a decision otherwise than in accordance with the development plan.

Character and appearance

6. Boyes Lane extends from the B3354 eastwards towards Colden Common Park and Tanglewood Equestrian Centre. It also serves a handful of dwellings, including the appeal property. The first section of lane runs adjacent to a recent housing development at Dunfords Ride. The boundary landscaping for that scheme is of high quality and maintains a strong rural character within the lane.

7. The lane continues past Gubblecotes and another dwelling known as The Shires. These properties were built at a lower density than the Dunfords Ride development, occupying larger plots. Nevertheless, they have urban boundary treatments onto the lane and visually relate more closely to the built-up area than the countryside. In my opinion, the countryside begins to the south of the lane and beyond The Shires where the views open out across paddocks.

8. The proposed dwelling would replace an existing detached triple garage with pitched roof. It would be enclosed by Gubblecotes itself to the east, the housing within the settlement boundary to the west, woodland to the north and a high wall to the road frontage. The dwelling would be of similar height to its neighbours and of broadly comparable design. It would fit comfortably onto the site without appearing cramped. To the average passer-by, this would read as infill development and it would be wholly unsurprising.

9. The Council alleges that there would be encroachment of the built-up settlement into the countryside. The Oxford English Dictionary definition of 'encroach' is to intrude on or to 'advance gradually beyond usual or acceptable limits'. The proposal would do neither; it would simply replace a large domestic outbuilding between one dwelling and another. The settlement would not be extended and there would be no loss of countryside, or visual intrusion into the landscape setting of Colden Common. The new dwelling would be experienced in the context of existing built form, the enclosed nature of the site preventing all but localised public views from Boyes Lane.

10. Accordingly, I conclude on this issue that there would be no material harm to the character and appearance of the area. The proposal would comply with LPP2 Policies DM15 and DM23 insofar as these seek to protect the rural character of the area and ensure that new development respects the qualities, features and characteristics that contribute to local distinctiveness.

Other material considerations

11. Policy DM2 of the LPP2 requires affordable dwellings to be constructed, where practical and viable, to Part M4 Category 2 of the Building Regulations. These

standards relate to accessible and adaptable dwellings. The supporting text to the policy sets out the Council's aim to secure Part M4 (2) dwellings as part of market housing development, together with a small number of wheelchair user dwellings as specified under Part M4 (3), depending on local needs. However, this relies on negotiation with developers on a case-by-case basis and there is no means of requiring the developers of market housing to meet these optional higher standards.

12. The Council advises that all of the 68 affordable dwellings at the Sandyfields site in Colden Common are being built to Part M4 (2). Although it argues that the need for accessible homes is likely to be more acute in the affordable sector, this is not supported with any firm evidence. Owner occupiers may have the resources to adapt existing market homes, but equally they may not. The probability is that they would not be eligible (or at least a priority) to be allocated an affordable home, neither would it be fair to expect them to move to affordable housing as they become older and frailer.

13. The latest Strategic Housing Market Assessment, which will feed into the preparation of the next local plan, provides strong evidence to support the view that additional wheelchair accessible housing will be required to meet the needs of an ageing population. The aspiration for a proportion of market homes to be wheelchair accessible is already set out within the development plan, even if the policy lacks teeth.

14. The planning application is accompanied by a unilateral undertaking[1] (UU) which secures the construction of the proposed dwelling to the Part M4 (3) standard. This would make a small, but useful contribution to the stock of wheelchair accessible homes in the District and I have attached it some positive weight in the planning balance, even though there is no indication that the appellant is a wheelchair user at present. The proposal would 'future-proof' the appellant's home into old age and meet the needs of subsequent occupiers.

15. Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Within this context, the Framework requires plan-makers to assess the demand from people wishing to commission or build their own homes. There is no explicit requirement for a policy on self-build, but the expectation is that policies should reflect the needs of different groups in the community.

16. The register for Winchester is split into two parts: Part 1 includes those individuals or associations who meet all the eligibility criteria, whereas Part 2 includes those who meet all the criteria except for a local connection test. There is a legal obligation to grant planning permissions to meet the demand under Part 1, within 3 years of the end of each base period. The Council states that 140 CIL[2] exempt permissions have been granted to date and that this is sufficient to meet the demand for base periods[3] 1 and 2 which amounts to 88 sites. However, I note that 114 persons have been removed from the register

[1] Dated 18th June 2020
[2] Self-builders can claim an exemption from Community Infrastructure Levy
[3] Ending 30 October 2016 and 30 October 2017 respectively

after multiple attempts to make contact; the Council has assumed that these individuals are no longer interested in finding a self-build site.

17. The limited information presented gives me some confidence that provision is being made for self-build homes. However, it falls short of the robust evidence needed to demonstrate full compliance with the legal duty. Whilst the Council has a pool of sites on its brownfield register which are potentially suitable for self-build, there can be no guarantees that such sites will come forward for that purpose. The UU secures the proposed dwelling as a self-build property and this commitment can be afforded some positive weight in the planning balance.

18. The Council has provided an appeal decision[4] for a site elsewhere in the District in which the benefits of self-build/custom-build housing were attributed neutral weight. I have not had sight of the full evidence presented to that Inspector in relation to the ability of the Council to meet its legal obligations, but in any event it is clear that the appeal turned on character and appearance issues. The current appeal is not comparable in that there would be no material planning harm. As such, the cases can be distinguished from one another.

Appropriate Assessment

19. The site lies within the zone of influence of the Solent Special Protection Areas which are at risk from eutrophication, caused by nutrients entering the water as a result of agricultural processes and sewage effluent. Having taken advice from Natural England, the Council was initially concerned that the proposed dwelling would, in combination with other plans and projects, have a likely significant effect on European sites.

20. Subsequent to the decision, further information was submitted about the efficiency of the proposed package treatment plant (PTP) together with an undertaking to replace the sewage system serving the existing house with the same type of PTP. The accompanying analysis applies the methodology for package treatment plants set out in Table 6 of Natural England's advice note for achieving nutrient neutrality for new developments in the Solent region (March 2020). The net overall improvement would ensure the neutrality of the development in terms of its impact on the Solent water environment.

21. Based on the evidence before me, and acting as competent authority for the purposes of Appropriate Assessment, I am satisfied that the proposal would not adversely affect the integrity of the European sites. This conclusion is subject to the imposition of conditions to require the installation of the PTPs for both existing and proposed dwellings, and measures to ensure that water consumption does not exceed 110 litres per person per day.

Planning Balance

22. The Framework makes clear that the planning system should be genuinely plan-led. Where an application conflicts with an up-to-date development plan, permission should not usually be granted. Whilst in this case there is a clear conflict with JCS Policy MTRA4, there is no conflict with its underlying purpose to protect the intrinsic character and beauty of the countryside, or the objective to ensure that the future occupiers of new housing have access to services and facilities without undue reliance on the private car.

[4] APP/L1765/W/19/3233660

23. The appeal site is within walking distance of, amongst other things, a primary school, community centre, doctors surgery, pharmacy, shop and public house. Nearby bus stops facilitate access by public transport to Winchester and other higher order settlements. This site is no less sustainable in locational terms than the Council's allocated site at Sandyfields.

24. I have given weight to the fact that the scheme would deliver a wheelchair accessible dwelling and a self-build home. Although the benefits of a single residential unit would be very modest, they are nevertheless positive in the planning balance. Having regard to the absence of character and appearance harm and the good accessibility to services and facilities, I find that there are material considerations sufficient to outweigh the policy objection arising from the site's location outside of the settlement boundary.

25. The appellant has not challenged the Council's assertion that it is able to demonstrate a 5 year supply of deliverable housing sites. The most recent annual monitoring report shows that the authority has a 6.7 year supply. The Government's Housing Delivery Test further indicates that Winchester delivered 129% of its housing requirement over the last 3 years. Whilst this is a healthy position, it does not represent a ceiling to housing delivery. The proposal would contribute to the Framework objective of significantly boosting the supply of homes and in my opinion it constitutes sustainable development. As such, I consider that there are no justifiable grounds for dismissing the appeal.

Conditions

26. In addition to the conditions referenced in my Appropriate Assessment above, I have attached a condition to specify the approved plans, in the interests of certainty. To ensure that the development does not harm nearby Sites of Importance for Nature Conservation, a condition is necessary to ensure that a Construction Environmental Management Plan is submitted and approved before any development takes place.

27. A pre-commencement condition is also needed to secure details of surface and foul water drainage, which shall include the installation of the PTPs. Further conditions are required in relation to details of sustainable construction, to meet the requirements of JCS Policy CP11.

28. In the interests of protecting and enhancing biodiversity a condition is needed to ensure compliance with the recommendations of the submitted ecological appraisal. Finally, a condition requiring the Council's approval of external materials is needed to ensure that the development respects the character and appearance of the area. For flexibility, and to minimise the number of pre-commencement conditions, I have amended the wording of this condition to enable groundworks to take place before the materials are approved.

Conclusion

29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) The development shall be in accordance with the following plans: Drawing nos. 19013-A-PL-101 rev B, 19013-A-PL-102 rev A, 19009-A-PL-110 rev A, 19009-A-PL-111 rev A, 19009-A-PL-112 rev A and 19009-A-PL-115 rev A.

3) No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall commence until detailed information (in the form of SAP design stage data) demonstrating that the dwelling meets the Code 4 standard for energy (as defined by the ENE1 and ENE2 in the Code for Sustainable Homes) and the Code 4 standard for water (in the form of a BRE water calculator with a maximum standard of 110 litres/day) has been submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved details.

5) No development shall commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the local planning authority. The details shall include the Package Treatment Plants to be installed for both the existing and proposed dwellings in accordance with the information submitted in the revised nitrates report. The foul sewage system shall thereafter be monitored and maintained in accordance with the plan prepared by The Civil Engineering Practice and dated 7th August 2020.

6) No development shall take place above ground level until details and samples of the materials to be used in the construction of the external walls and roofs of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) The dwelling hereby permitted shall not be occupied until detailed information (in the form of SAP as built stage data) demonstrating that the home meets the Code 4 standard for energy (as defined by the ENE1 and ENE2 in the Code for Sustainable Homes) has been submitted to and approved in writing by the local planning authority.

8) The dwelling hereby permitted shall not be occupied until water efficiency calculations have been submitted to and approved in writing by the local planning authority. The calculations shall demonstrate that the existing and proposed dwellings on the site will achieve a maximum consumption of no more than 110 litres of water per person per day. The approved water efficiency measures shall be implemented prior to the development being first occupied and thereafter maintained.

9) The recommendations and requirements of the Ecosupport Ecological Appraisal dated December 2019, to be updated if required, shall be adhered to throughout all phases of the development and the ecological enhancement measures shall be thereafter maintained in perpetuity.

*** END ***

The Planning Inspectorate

Appeal Decisions

Hearing held on 27 March 2023

Site visit made on 27 March 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2023

Appeal A Ref: APP/T0355/W/22/3309281
Land Adjoining Pondview, Sturt Green, Holyport, Berkshire SL6 2JH

- 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 Ms Janet Mead-Mitchell against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 21/03573, dated 2 December 2021, was refused by notice dated 19 April 2022.
- The development proposed is outline planning application (all matters reserved other than access) for 4 serviced plots for self-build and custom housebuilding.

Appeal B Ref: APP/T0355/W/23/3314990
Land Adjoining Pondview, Sturt Green, Holyport, Berkshire SL6 2JH

- 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 Ms Janet Meads-Mitchell against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 22/02789, dated 14 October 2022, was refused by notice dated 21 December 2022.
- The development proposed is outline planning application (all matters reserved other than access) for 4 serviced plots for self-build and custom housebuilding.
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Decisions

1. Appeal A is allowed and planning permission is granted for outline application for access only to be considered at this stage for four serviced plots for Self-Build and Custom Housebuilding, at Land adjoining Pondview, Sturt Green, Holyport, Berkshire SL6 2JH, in accordance with the terms of the application, Ref 21/03573, dated 2 December 2021, subject to the conditions set out in the attached schedule.

2. Appeal B is allowed and planning permission is granted for outline planning application (all matters reserved other than access) for four serviced plots for Self-Build and Custom Housebuilding, at Land adjoining Pondview, Sturt Green, Holyport Berkshire SL6 2JH, in accordance with the terms of the application, Ref 22/02789, dated 14 October 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

3. The applications were both made in outline with all matters reserved except for access. I have considered the appeals on the same basis and have treated the submitted plans as being for illustrative purposes only, apart from those specifically related to the matter of access in each proposal.

4. The appellant has submitted a unilateral undertaking (UU) in respect of each case dealing with, among other things, Self-Build and Custom Housebuilding. I have taken these into consideration later in this decision letter.

5. The Council initially included a reason for refusal in each case relating to the impact on protected species. The appellant has subsequently produced additional evidence to address this matter to the Council's satisfaction. From the evidence before me, I have no reasons to conclude otherwise. Consequently, this matter no longer forms a main issue of the appeal.

Main Issues

6. The site lies within the Metropolitan Green Belt. Therefore, the main issues in both cases are:

   - Whether the proposal amounts to inappropriate development in the Green Belt, including the effect on the openness of the Green Belt and the purposes of including land within it;
   - If the development is inappropriate within the Green Belt, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development

7. The Government attaches great importance to Green Belts. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings within the Green Belt is inappropriate development but it lists certain forms of development which are not regarded as inappropriate. These include, at criterion e), limited infilling in villages.

8. Policy QP5 of the Borough Local Plan (February 2022) (the BLP) sets out that the rural areas in the Royal Borough are defined as land within the Metropolitan Green Belt, which includes those settlements that are 'washed over' by the Green Belt. In all instances, national Green Belt policy will be applied to development in these areas. The policy adds that permission will not be granted for inappropriate development unless very special circumstances are demonstrated. This accords with the national approach set out in the Framework.

9. The site is a roughly rectangular parcel of land located on Sturt Green, a straight lane with fairly consistent linear housing on its southern side between the junction with the A330 Ascot Road and the appeal site. On the northern side, development is slightly more intermittent with a pond and wider undeveloped land directly opposite the site.

10. The Framework does not define 'limited infilling.' Paragraph 6.18.9 of the BLP states that, for the purposes of applying Policy QP5, limited infilling is considered to be the development of a small gap in an otherwise continuous frontage, or the small scale redevelopment of existing properties within such a frontage. It also includes infilling of small gaps within built development. It should be appropriate to the scale of the locality and not have an adverse impact on the character of the locality.

11. It is common ground between the main parties that the proposal for four dwellings in each case would constitute limited infilling in the context of Policy QP5 and the Framework. This is also the conclusion reached by the Inspector in a previous appeal on the site in 2018[1]. The site is enclosed by development to either side on Sturt Green and Rolls Lane, and at the rear, and having observed the site I agree that it would amount to limited infilling in this instance. The outstanding question, therefore, is whether the proposal lies within a village.

12. The Framework does not set out a methodology to be considered in determining whether a proposal would be within a village. Policy QP5 states that, within the Royal Borough, village settlement boundaries as identified on the Policies Map will be used in determining where limited infilling may be acceptable. This may occur outside of the identified village settlement boundaries where it can be demonstrated that the site can be considered as falling within the village envelope as assessed on the ground, this being based upon assessment of the concentration, scale, massing, extent and density of built form on either side of the identified village settlement boundary and the physical proximity of the proposal site to the village settlement boundary.

13. This approach reflects the Court of Appeal judgment in *Julian Wood*[2], wherein it was held that whilst settlement boundaries as set out in a development plan are a consideration in whether a proposal for limited infilling fell within a village, they are not determinative, and whether the proposal falls within a village is ultimately a matter of planning judgment for the decision maker based on the facts on the ground.

14. As worded, Policy QP5 seeks for specific factors to be taken into consideration, rather than additional criteria to be strictly met. In this respect, I do not regard Policy QP5 as being inconsistent with the Framework, but rather it sets out factors to which a decision maker might reasonably have regard in reaching a view on the question of limited infilling.

15. Sturt Green lies outside of the settlement boundary for Holyport. The Council points to the site being some 700m from the nearest point of the boundary and takes the position that development on Sturt Green lies outside of the village of Holyport. The appellant argues that various factors, including the historic development of the area and landscape assessments, point to the development being part of the village of Holyport. The Inspector in 2018 determined that Sturt Green did not fall within Holyport.

16. Holyport is centred around the village green bounded by Ascot Road, Holyport Road, and Moneyrow Green, with development extending respectively along these roads to the north, north-east and south. The appellant, through a landscape character assessment, has identified the village envelope as including Sturt Green, due to the village green extending to the south-west along Ascot Road, in doing so connecting Sturt Green with Holyport.

17. I understand that there may be historic links between Sturt Green and Holyport, that residents of Sturt Green may consider themselves part of the village, frequent its facilities and use a Holyport address. However, for the purposes of determining whether a proposal would amount to inappropriate

[1] Appeal Ref APP/T0355/W/18/3201716
[2] Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council EWCA Civ 195 - 9 February 2015

development, it is the assessment on the ground which is the most relevant consideration.

18. In that respect, I saw that the village green as it extends along Ascot Road is a narrow finger of land bisected and dominated by the main road. A line of trees surrounding a brook next to the village signs provides a distinct visual and physical separation between the main green and main road leading to the south. Beyond this point, there is a clear gap in development on both sides of the road. This absence continues on the eastern side, whilst the western side is populated by a small number of detached properties with spaces between them creating a rural character. Although there is a large property on the corner of Ascot Road and Sturt Green, it is concealed by trees which visually separate development on the two roads, adding to the impression of Sturt Green being detached. Although not decisive, I noted that the speed of traffic along Ascot Road was quite fast and did not give the impression of being part of the village, but rather a main road in the countryside.

19. The appellant points to the Council's Landscape Character Assessment (2004) (LCA), not before the previous Inspector, as acknowledging that there has been a coalescence of Holyport with Moneyrow Green, Forest Green, Stud Green, Touchen End and Paley Street along the B3024. However, whilst there is reference to 'Stud Green' I was told at the hearing that both 'Sturt' and 'Stud' have been used interchangeably over time to refer to the lane itself and the surrounding area. Having regard to the names listed, and their order, it seems to me the LCA is referring to linear development along Moneyrow Green, continuing along the B3024 and then south along Ascot Road, not north, where the gap between Holyport College and Sturt Green is largely absent development with the exception of the polo club buildings. Consequently, I am not persuaded that this assessment is firm evidence of Sturt Green being part of the village.

20. Having regard to all of the evidence before me, I conclude that Sturt Green does not lie within a village, but rather forms a separate cluster of rural residential development. Therefore, the proposal does not meet with the relevant exception at Paragraph 149(e) of the Framework or Policy QP5 and is therefore inappropriate development in the Green Belt.

Openness and Green Belt Purposes

21. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.

22. The appeal site does not contain any permanent structures. Recent works have taken place to lay hardstanding and other materials across parts of the site to create a parking area, seating area, clothesline and space for a trampoline. I understand these works are associated with the residential use of the dwelling to the rear of the site, but there was no certainty expressed at the hearing as to the planning status of these works.

23. This aside, the proposed four dwellings, under either proposal, would result in substantial and permanent built form where there presently is none. In spatial terms, this would result in a substantial loss of openness.

24. In visual terms, I note the arguments from the appellant that the site is surrounded by development on three sides and is not contiguous with the wider

expanses of the Green Belt beyond Sturt Green. However, whilst I accept that the proposals would not have the same visual impact as a development of housing in an open landscape, the absence of development on the site does continue directly opposite and beyond to the north. Consequently, I consider that the site does contribute to the openness of the Green Belt, and there would be a loss of openness in visual terms as a result of the proposals.

25. Having regard to the physical characteristics of the site, the only relevant Green Belt purpose in this case is to assist in safeguarding the countryside from encroachment. Although I accept that the proposal would not result in development extending beyond the outer edge of built form on Sturt Green and Rolls Lane, it would still represent an intensification of development along the lane and within the Green Belt. In these respects, the proposal would offend the aforementioned Green Belt purpose, albeit in a limited manner.

Other Considerations

Self-Build and Custom Housebuilding (SBCH)

26. The Self-Build and Custom Housebuilding Act 2015 introduced a duty on local authorities to keep a register of individuals, and associations of individuals, who wished to acquire serviced plots of land to bring forward for SBCH projects. Councils are required to have regard to those registers when carrying out planning functions. The Housing and Planning Act 2016 further provides that local planning authorities must give suitable planning permissions to meet the demand for SBCH. The Planning Practice Guidance adds that these registers are likely to be material considerations in decisions involving proposals for SBCH.

27. The Council's data in respect of SBCH covers 12-month base periods starting in April 2016[3]. At the end of each base period, the local planning authority has three years to permit an equivalent number of suitable permissions for SBCH, as there are entries for that base period. As of October 2022, the Council has recorded seven base periods, of which the first four have passed the three year time period for permissions to be granted. The Council's own figures show that the total number of entries on the register across the four base periods from April 2016 to October 2019 is 429. In that time, the Council has granted permission for 111 units, a shortfall of some 318 units.

28. The Council offers some pushback to these numbers, pointing to the potential for double counting in some instances. However, it concedes that the number may also underestimate the actual demand, a point made by the appellant when pointing to secondary sources of demand for SBCH. However, any minor effect these considerations would have on the figures set out are ultimately not determinative as the Council has accepted that the shortfall would still be of a similarly significant magnitude.

29. I enquired at the hearing as to the Council's intent in addressing this shortfall. The Council pointed to Policy HO2(4) of the BLP which requires proposals for 100 or more net new dwellings (on greenfield sites) to provide 5% of the market housing as fully serviced plots for custom and self-build housing, whilst on other allocated and windfall sites, the Council will encourage the provision of custom and self-build plots. However, the Council did not dispute the appellant's figures that allocated sites within the development plan would

[3] The first base period covers a seven month period from 1 April 2016 to 30 October 2016

collectively only be expected to contribute 197 plots for SBCH, some of which may take the length of the plan period to 2033 or beyond to come to fruition.

30. In short, therefore, the projected SBCH delivered on large scale sites under Policy HO2 falls significantly short of meeting the outstanding demand for SBCH plots, let alone the demand coming forward to be met at the moment from base periods 5, 6 and 7 and future base periods. It is therefore highly likely that demand for SBCH will have to be met in large part through smaller allocated and windfall sites. Given that 83% of the Royal Borough is covered by Green Belt, it seems inevitable that some of the demand for SBCH will have to be met on sites within the Green Belt.

31. In such a scenario, and against a very substantial and acknowledged shortfall, the proposals for four SBCH plots, which would be secured through the submitted UUs, must merit very significant favourable weight in the planning balance. In reaching a view, I have had regard to the weight afforded to SBCH by Inspectors in several appeal decisions put to me, and to the Council's questioning of their equivalence to the current appeals. Ultimately, differences in terms of the scale of development, the policy context, the Council's SBCH position and whether Green Belt is a material consideration mean they are not directly comparable to the proposals before me. Thus, my conclusions have been reached on the case-specific evidence put to me.

32. In addition, the submitted UU for Appeal B would further secure one of the SBCH plots as a discounted market sale plot, to be used for the construction of an affordable housing dwelling. The Council has questioned the need for this type of affordable housing, but it is nevertheless a further benefit of Appeal B, albeit one of limited weight as it would deliver only a single unit.

Fall-Back Position

33. The appellant argues that, should the appeals fail, they are likely to sell the site to the owners of the dwelling at the rear, Lovelace House, with the intention being to make use of the land as residential garden and to erect a number of outbuildings and other ancillary works under permitted development.

34. I have heard and read in evidence details of the planning and usage history of the site. Of note is a 1988[4] permission for *'two storey side extension and change of use of field to domestic garden'* at Pondview, the dwelling to the side of the appeal site. There is some dispute between the main parties as to the extent of the appeal site to which this change of use applied. However, the pertinent point is that in 2005, the appeal site was severed from Pondview when the dwelling was sold, with a later transaction in 2008 selling a further piece of land to the new owners of Pondview. On this basis, the appeal site was no longer in use after 2005 as residential garden in connection with a dwelling and, on the evidence before me, has not been used as such since that time as it has not been associated with any other dwelling.

35. As of the date of the hearing, the neighbouring owners have not acquired the appeal site, and notwithstanding that I saw some level of domestic activity on the land, no evidence has been put to me to suggest that the appeal site should be regarded as lawfully falling within the curtilage of Lovelace House. Moreover, although the neighbouring owners have sought pre-planning advice in respect of potentially erecting outbuildings on the land, this is no more than an informal request and no substantive evidence, such as a lawful development

[4] Council Ref 421558, dated 16 December 1988

certificate, has been put before me to indicate that such works could be undertaken. As such, I am not persuaded that permitted development rights to erect outbuildings[5] in fact apply at the time of writing and could be exercised.

36. Furthermore, under the rights in question, there are notable limitations on the height, position and form permitted structures can take, in particular that they are limited to a single storey in height. Therefore, even if such rights did apply, or were to be subsequently gained by the neighbouring owners, the extent of built form which could accrue under permitted development is likely to be substantially smaller in overall scale than the proposed four dwellings under either scheme.

37. In summary, the evidence does not indicate that a tangible fall-back position exists, or even if it did that it would be comparable or larger in scale than the development proposed. Therefore, the argued fall-back position does not merit positive weight towards granting either proposal, as it would not have a more harmful effect in terms of Green Belt openness.

Other Potential Benefits

38. The appellant points to potential highway safety improvements at the junction of Rolls Lane and Sturt Green. I saw there was some restricted visibility for vehicles emerging from Rolls Lane, but any improvements in this respect would be down to re-landscaping of the site and the continued maintenance of vegetation on the corner. Although no landscaping proposals are before me at this stage, the reserved matters would be prepared in accordance with the appellant's proposed design code, which includes measures to ensure landscaping is maintained.

39. However, Rolls Lane is a small lane serving a limited number of dwellings, and traffic on it and on Sturt Green is low. Therefore, despite the limitations to visibility, the risk of conflict between vehicles is low, and whilst improvements in this respect through proposed landscaping are positive, the overall benefit to highway safety would be modest at best.

40. The appellant initially argued that the proposals would be a form of community-led development. However, it was accepted at the hearing that the proposal would not fall within any of the examples of community-led housing approaches, namely co-housing, community land trusts or co-operatives, set out at Policy HO2(5). Consequently, this is not a factor attracting any additional weight in favour of the proposal.

41. There would be economic benefits associated with the construction of the dwellings and from use of local services by future occupants, though given the scale of development, and the temporary nature of construction works, such benefits would attract limited weight in favour of the proposal.

Other Matters

42. As referred to above, the Council withdrew its reasons for refusal relating to protected species following the submission of additional evidence by the appellant, and subject to a condition specifying working practices on site. From all that I have seen and read, I am satisfied that the proposal is capable of avoiding harm to protected species, in particular the great crested newt.

[5] under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

43. The signed UUs make provision for the delivery of the proposed SBCH units and, separately, would secure the assessment and delivery of required contributions towards offsetting carbon emissions in line with the Council's aims under Policy SP2 of the BLP to mitigate climate change. The UU for Appeal B further secures one discounted market sale plot. I am satisfied that each undertaking meets the three tests set out in Paragraph 57 of the Framework for planning obligations. As a result, I have taken the completed UU into account, though as the carbon reduction provisions are required to mitigate the impact of the development, they are a neutral factor in the planning balance.

44. I have had regard to other concerns raised, including those by interested parties both at the hearing and in writing, beyond those I have already addressed. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issues, and taking account of the evidence before me, I have not identified other matters of such significance as to result in further material benefits or harms to be factored into the planning balance.

Planning Balance

45. The proposal would amount to inappropriate development as set out in the Framework, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the proposal would lead to a significant loss of openness to the Green Belt. The Framework directs that substantial weight should be given to the harm to the Green Belt.

46. The benefits in respect of additional housing, economic activity and highway safety, and in the case of Appeal B, affordable housing, would each attract limited weight given the scale of the development proposed in each case. However, for the reasons set out, the provision of four SBCH dwellings in the face of a substantial shortfall in delivery of such housing against statutory requirements is a matter of overriding weight in each case.

47. Taken as a whole, therefore, the other considerations in each case clearly outweigh the totality of the harm identified to the Green Belt. Consequently, I conclude that the very special circumstances necessary to justify the proposal exist in each appeal.

48. Given this conclusion, the proposal would accord with national policy set out in the Framework and the general approach to development in the Green Belt under Policy QP5 of the BLP. There are no other material considerations which indicate that decisions should be made other than in accordance with the development plan in either appeal. Therefore, both appeals should succeed.

Conditions

49. The parties have agreed lists of conditions for each appeal. Having considered these and sought clarification at the hearing, I am satisfied that the conditions set out below are applicable to both appeals.

50. Conditions relating to the timing of reserved matters applications, implementation of the development and the relevant approved plans, are all necessary to provide certainty.

51. Conditions are further necessary in respect of external materials to ensure a satisfactory appearance. The parties agreed to a condition requiring details of hard and soft landscaping works; however, such details would fall under the

reserved matter of landscaping. Consequently, I have amended the condition to relate only to the implementation of the approved landscaping and its ongoing maintenance and/or replacement. This is to ensure a satisfactory appearance.

52. A condition requiring the approved access to be constructed prior to occupation of the development is required in the interest of highway safety. Details of measures to deliver biodiversity net gain on the site, and a timescale for their implementation, are necessary to accord with the aims of the Framework and BLP to enhance biodiversity. In a similar vein, details of external lighting are required to limit the effects of light pollution on wildlife.

53. A condition is also required for the submission, approval and implementation of a Construction Environmental Management Plan, to include in particular details of reasonable avoidance measures to be employed during the construction phase to protect great crested newts and other species.

Conclusion

54. For the reasons set out, I conclude that both Appeal A and Appeal B should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

Appeal A Ref: APP/T0355/W/22/3309281

1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: Unnumbered Site Location Plan, Unnumbered Site Plan (1:200).

5) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

    a) Risk assessment of potentially damaging construction activities.

    b) Identification of "biodiversity protection zones."

    c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) including a Reasonable Avoidance Measures (RAMs) method statement for great crested newt, reptiles, and common amphibians, measures to protect badgers and other mammals during works, a pre-commencement walkover survey to ensure that no badger setts have been created on or immediately adjacent to the site, measures to protect nesting birds and stag beetle, a wildlife-sensitive lighting strategy during works, and the procedures to follow should any protected species be encountered on the site during works.

    d) The location and timing of sensitive works to avoid harm to biodiversity features.

    e) The times during construction when specialist ecologists need to be present on site to oversee works.

    f) Responsible persons and lines of communication.

    g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

    h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

6) No development above slab level shall take place until details of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the approved details.

7) The details approved under Condition 1 for the reserved matter of landscaping shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the local planning authority gives its prior written consent to any variation.

8) Prior to the commencement of the development above slab level, details of the biodiversity net gain which will be delivered as part of this development (including a clear demonstration through the use of an appropriate biodiversity calculator such as the Defra Metric 3.0 that a net gain would be achieved) shall be submitted to and approved in writing by the local planning authority. Details of the biodiversity enhancements including the timescales to install them, to include integral bird and bat boxes, tiles, or bricks on the new building and native and wildlife friendly landscaping (including gaps at the bases of fences to allow hedgehogs to traverse through the gardens) shall also be submitted to and approved in writing by the LPA. The agreed net gain and biodiversity enhancement measures will thereafter be implemented/installed in full as agreed.

9) Prior to the installation of any external lighting, a detailed external lighting scheme shall be submitted to and approved in writing by the local planning authority. The report shall include the following figures and appendices:

- A layout plan with beam orientation
- A schedule of equipment
- Measures to avoid glare
- An isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance for commuting and foraging bats, and positions of bird and bat boxes.

The approved lighting plan shall thereafter be implemented as agreed.

***

Appeal B Ref: APP/T0355/W/23/3314990

1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: Unnumbered Site Location Plan, Proposed Plan (with Access Visibility Splays).

5) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

   i) Risk assessment of potentially damaging construction activities.

   j) Identification of "biodiversity protection zones."

   k) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) including a Reasonable Avoidance Measures (RAMs) method statement for great crested newt, reptiles, and common amphibians, measures to protect badgers and other mammals during works, a pre-commencement walkover survey to ensure that no badger setts have been created on or immediately adjacent to the site, measures to protect nesting birds and stag beetle, a wildlife-sensitive lighting strategy during works, and the procedures to follow should any protected species be encountered on the site during works.

   l) The location and timing of sensitive works to avoid harm to biodiversity features.

   m) The times during construction when specialist ecologists need to be present on site to oversee works.

   n) Responsible persons and lines of communication.

   o) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

   p) Use of protective fences, exclusion barriers and warning signs.

   The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

6) No development above slab level shall take place until details of the materials to be used on the external surfaces of the development have

been submitted to and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the approved details.

7) The details approved under Condition 1 for the reserved matter of landscaping shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity, unless the Local Planning Authority gives its prior written consent to any variation.

8) Prior to the commencement of the development above slab level, details of the biodiversity net gain which will be delivered as part of this development (including a clear demonstration through the use of an appropriate biodiversity calculator such as the Defra Metric 3.0 that a net gain would be achieved) shall be submitted to and approved in writing by the local planning authority. Details of the biodiversity enhancements including the timescales to install them, to include integral bird and bat boxes, tiles, or bricks on the new building and native and wildlife friendly landscaping (including gaps at the bases of fences to allow hedgehogs to traverse through the gardens) shall also be submitted to and approved in writing by the LPA. The agreed net gain and biodiversity enhancement measures will thereafter be implemented/installed in full as agreed.

9) Prior to the installation of any external lighting, a detailed external lighting scheme shall be submitted to and approved in writing by the local planning authority. The report shall include the following figures and appendices:

- A layout plan with beam orientation
- A schedule of equipment
- Measures to avoid glare
- An isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance for commuting and foraging bats, and positions of bird and bat boxes.

The approved lighting plan shall thereafter be implemented as agreed.

***

APPEARANCES

For the appellant

Rosie Dinnen	Director, Tetlow King
Janet Meads-Mitchell	Appellant
Clive Mitchell	Husband of Appellant

For the local planning authority

Claire Pugh	Team Leader, Development Management

Interested parties

Dave Bough	Local Resident
Lucy Pickering	Local Resident
Jago Pickering	Local Resident
Helena Chapman	Local Resident

Documents submitted after the hearing

1) Letter dated 31 March 2023 from appellant setting out ownership and usage history of the appeal site.
2) Council response dated 3 April 2023 to appellant's letter of 31 March 2023.

12 APPENDIX 3

From: Eastleigh Borough Council
To: Louise Cutts
Subject: 00619178 - Self Build Statistics : Case Closed [ref:_00D0YZLnm._5004Jial7A:ref]
Date: 21 March 2023 11:46:29
Attachments: FOI 00619178 Self Build Statistics 1.pdf

Dear Louise,

Please do not reply to this email chain as it will reopen a closed case and we will not be notified.

Thank you for your request for information made under the Freedom of Information Act 2000. I can confirm that Eastleigh Borough Council ("Council") does hold the information requested.

Request

Dear Sir/Madam

Can you please provide the following information in line with the provisions of the Freedom of Information Act:

1. The number of individuals that joined the Council's Self Build and Custom Housebuilding Register in each of the following base periods as defined under the Self-Build and Custom Housebuilding Act 2015 (as amended):
a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
b. Base Period 2 (31 October 2016 to 30 October 2017)
c. Base Period 3 (31 October 2017 to 30 October 2018)
d. Base Period 4 (31 October 2018 to 30 October 2019)
e. Base Period 5 (31 October 2019 to 30 October 2020)
f. Base Period 6 (31 October 2020 to 30 October 2021)
g. Base Period 7 (31 October 2021 to 30 October 2022)
h. Base Period 8 (31 October 2022 to present)

2. The number of associations of individuals that joined the Council's Self Build and Custom Housebuilding Register in each of the following base periods as defined under the Self-Build and Custom Housebuilding Act 2015 (as amended) together with the number of individuals within each of those associations:
a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
b. Base Period 2 (31 October 2016 to 30 October 2017)
c. Base Period 3 (31 October 2017 to 30 October 2018)
d. Base Period 4 (31 October 2018 to 30 October 2019)
e. Base Period 5 (31 October 2019 to 30 October 2020)

f. Base Period 6 (31 October 2020 to 30 October 2021)
g. Base Period 7 (31 October 2021 to 30 October 2022)
h. Base Period 7 (31 October 2022 to present)

3. The date on which the Council commenced its Self-Build and Custom Housebuilding register?

4. What are the Council's entry requirements for joining its Self-Build and Custom Housebuilding Register?

5. Whether the Council has undertaken any review(s) of its Register and when did it occur, and in the process of doing so has the Council removed any entries from its Register?

6. If yes to Q5:

a. What were the grounds for the removal of these entries?
b. When did these removals occur?
c. How many entries were removed from each Base Period (broken down on a base period by base period basis)?

7. The number of Self-Build and/or Custom Housebuilding planning permissions and/or permissions in principle the Council has granted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers.

a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
b. Base Period 2 (31 October 2016 to 30 October 2017)
c. Base Period 3 (31 October 2017 to 30 October 2018)
d. Base Period 4 (31 October 2018 to 30 October 2019)
e. Base Period 5 (31 October 2019 to 30 October 2020)
f. Base Period 6 (31 October 2020 to 30 October 2021)
g. Base Period 7 (31 October 2021 to 30 October 2022)
h. Base Period 8 (31 October 2022 to present)

8. The number of CIL Self-Build Exemption Form 7 Part 1's the Council have counted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers to which each CIL Form 7 Part 1 relates:

a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
b. Base Period 2 (31 October 2016 to 30 October 2017)
c. Base Period 3 (31 October 2017 to 30 October 2018)
d. Base Period 4 (31 October 2018 to 30 October 2019)
e. Base Period 5 (31 October 2019 to 30 October 2020)
f. Base Period 6 (31 October 2020 to 30 October 2021)
g. Base Period 7 (31 October 2021 to 30 October 2022)

h. Base Period 8 (31 October 2022 to present)

9. The number of CIL Self-Build Exemption Form 7 Part 2's the Council have counted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers to which each CIL Form 7 Part 2 relates:

a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
b. Base Period 2 (31 October 2016 to 30 October 2017)
c. Base Period 3 (31 October 2017 to 30 October 2018)
d. Base Period 4 (31 October 2018 to 30 October 2019)
e. Base Period 5 (31 October 2019 to 30 October 2020)
f. Base Period 6 (31 October 2020 to 30 October 2021)
g. Base Period 7 (31 October 2021 to 30 October 2022)
h. Base Period 8 (31 October to present)

10. A copy of the Council's CIL Form 7 Part 2 Notification of Self-Build Relief letter.

11. How does the Council monitor Self Build and Custom Housebuilding permissions and completions?

12. How does the Council alert individuals and associations of individuals on its Self-Build and Custom Housebuilding Register to any self-build and custom housebuilding permissions it grants?

13. How has the Council publicised the existence of its Self-Build and Custom Housebuilding Register?

14. If the Council has publicised the existence of its Self-Build and Custom Housebuilding register, when did this take place and by what means?

I look forward to hearing from you.

Kind regards

Louise Cutts BA (Hons) Dip TP MRTPI
Director

[cid:image001.png@01D952A9.75D69C90]
Meadowsweet Cottage, Morleys Lane, Ampfield SO51 9BJ
Tel: 0794<tel:0794>0 033645
Email:
louisecutts@wessexplanning.com<mailto:louisecutts@wessexplanning.com>
Website: http://www.wessexplanning.com/

Please see our response within the attachment.

If you would like further details on information requests please visit the Council's website at: https://www.eastleigh.gov.uk/council/general-public-information

Right to Review

If you are unhappy with the way in which your request has been handled you may request an internal review to be conducted. This internal review should be made within 40 working days from the date of this email.

If you wish to raise an internal review please send a new email to dp@eastleigh.gov.uk and reference case number 00619178.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

Freedom of Information Officer

Details

Case Number: 00619178

Subject Self Build Statistics



ref:_00D0YZLnm._5004Jial7A:ref

FOI 00619178 Self Build Statistics

1. Base period 1 = 10
Base Period 2 = 18
Base period 3 = 15
Base period 4 =18
Base period 5 = 14
Base period 6 = 20
Base period 7 = 1
Base period 8 = 0 (to date)

2. None

3. July 2015

4. Please see here for details: https://www.eastleigh.gov.uk/planning-and-building/planning-policy-and-implementation/self-build-housing

5. No review undertaken at this stage.

6. n/a

7. Base period 1 = n/a
Base Period 2 = 6
Base period 3 = 7
Base period 4 = 7
Base period 5 = 6
Base period 6 =11
Base period 7 = 2

8. n/a – the Council is not a CIL charging authority

9. n/a – the Council is not a CIL charging authority.

10. n/a – the Council is not a CIL charging authority

11. Please see the Council's Authority Monitoring Report publications for details: https://www.eastleigh.gov.uk/planning-and-building/planning-policy-and-implementation/local-plan/local-plan-monitoring

12. No applications received at this stage

13. The following webpage provides information on the Council's Self-Build and Custom Housebuilding Register: https://www.eastleigh.gov.uk/planning-and-building/planning-policy-and-implementation/self-build-housing

14. The webpage as per the link provided for Question 14 was published in 2015.

From: Eastleigh Borough Council (no reply)
To: Louise Cutts
Subject: 00757563 - FOI re Self and Custom Build dwellings : Case Closed [ref:_00D0YZLnm._5004JlkvpD:ref]
Date: 12 September 2023 10:28:50

Dear Louise,

Please do not reply to this email chain as it will reopen a closed case and we will not be notified.

Thank you for your request for information made under the Freedom of Information Act 2000. I can confirm that Eastleigh Borough Council ("Council") does hold the information requested.

Request

> Dear Sir/Madam
>
> Could you please furnish me with the application reference numbers for all the Self and Custom Build dwellings the LPA are of the opinion they have given permission for in the information below. This is a request under the FOI regulations.
> Thank you.
> Kind regards Louise Cutts BA (Hons) Dip TP MRTPI Director [cid:image001.png@01D9D9D2.F9025720<mailto:image001.png@01D9D9D2.F9025720>] Meadowsweet Cottage, Morleys Lane, Ampfield SO51 9BJ Tel: 0794tel:07940 033645 Email: louisecutts@wessexplanning.com<mailto:louisecutts@wessexplanning.com> <mailto:louisecutts@wessexplanning.com<mailto:louisecutts@wessexplanning.com>>

The application numbers for the self-build dwellings granted planning permission in the Borough are as follows:

F/17/80922 – this was permitted during Base Period 3 in December 2017
F/18/83292 – this was permitted on appeal during Base Period 4 in April 2019

Both applications can be viewed on the Council planning portal on the website: https://planning.eastleigh.gov.uk/s/public-register

Right to Review

If you are unhappy with the way in which your request has been handled you may request an internal review to be conducted. This internal review should be made within 40 working days from the date of this email.

If you wish to raise an internal review please send a new email to dp@eastleigh.gov.uk and reference case number 00757563.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

Freedom of Information Officer

Details

Case Number: 00757563

Subject FOI re Self and Custom Build dwellings



ref:_00D0YZLnm._5004JlkvpD:ref

13 APPENDIX 4

The Planning Inspectorate

Appeal Decision

Site visit made on 24 February 2020

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 6 March 2020

Appeal Ref: APP/H0738/W/19/3242788
Follyfoot Banks, Calf Fallow Lane, Norton TS20 1PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Williams against the decision of Stockton-on-Tees Borough Council.
- The application Ref 19/01752/FUL, dated 7 August 2019, was refused by notice dated 10 October 2019.
- The development proposed is a proposed new dwelling.

Decision

1. The appeal is allowed and planning permission is granted for a proposed new dwelling at Follyfoot Banks, Calf Fallow Lane, Norton TS20 1PF in accordance with the terms of the application, Ref 19/01752/FUL, dated 7 August 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. A Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal, relating to removal of existing structures and restrictions on domestic paraphernalia within the curtilage of the new dwelling. I am satisfied that the UU would accord with the tests and have had regard to their provisions in the consideration of this appeal.

Main Issues

3. The main issues are:

    - Whether the proposed development would represent a suitable replacement dwelling in the countryside having regard to local and national planning policy; and
    - The effect of the proposed development on the character and appearance of the surrounding countryside.

Reasons

Replacement Dwelling

4. The site lies in the countryside. It comprises a range of timber structures, formerly used as an animal sanctuary, and two static caravans. One of the caravans benefits from a Lawful Development Certificate (LDC) for its'

permanent siting and unrestricted residential use, granted in 2017[1]. It is proposed to erect a single storey dwelling broadly central to the site, and the remainder of the land would form its garden (domestic curtilage).

5. The Council's decision cites conflict with part 4 of Policy SD3 of Stockton-on-Tees Local Plan (LP) 2019. It restricts new dwellings in the countryside unless they meet a number of exceptions which reflect the criteria set out in paragraph 79 of the National Planning Policy Framework (the Framework). However, I do not attempt to conclude whether the site is considered to be 'isolated'. Instead, I take the view that paragraph 79 is not of relevance in this case as the proposed development is a replacement dwelling.

6. Part 8(b) of Policy SD3 is most relevant in this case. It supports replacement dwellings where the proposed dwelling is i) not materially larger than the existing dwelling, and ii) is located on the site of, or in close proximity to the existing dwelling.

7. I do not have the dimensions of the existing caravan before me, nonetheless the proposed dwelling would clearly be larger in size. I have had regard to the UU obligations which oblige the removal of all other existing structures within the site, including the second static caravan and a range of timber structures. Overall the new dwelling would have a smaller footprint than the sum of the existing structures put together.

8. As a result of the removal of the existing structures, the residential curtilage of the site would be larger in size than the garden area of the existing caravan. In my view it would be commensurate to the size of the dwelling in this rural location. Subject to its effects on the landscape (as addressed in the section below), the area of residential curtilage does not weigh heavily against the proposals.

9. The Council are concerned that the dwelling would be outside of the red line boundary of the existing caravan. Be that as it may, even though the new dwelling may not be in exactly the same position as the existing lawful caravan, it is very close to it. The UU includes an obligation that the existing caravan should be removed within 3 months of completion of the new dwelling. This represents a reasonable course of action. In terms of practicality it would not be possible to locate the new dwelling in exactly the same location as the caravan, whilst enabling continued residence on the site during construction.

10. The moveable and temporary type structure of the existing residential caravan has little bearing on my consideration. The principle of permanent residential use within the site has been established by the LDC, and its siting is not time restricted. It is essentially a permanent dwelling.

11. In view of the above I am satisfied that the proposed development would comply with Policy SD3 part 8(b) and would represent a suitable replacement dwelling in the countryside. Moreover as a replacement dwelling it does not conflict with any part of the Framework, particularly insofar as paragraph 79 is not directly applicable to these proposals.

[1] Stockton-on-Tees Borough Council planning reference 17/1865/CPE

Character and Appearance

12. The site lies within a gently sloping valley accessed via a narrow track off Calf Fallow Lane which leads into the nearby settlement of Norton. The surroundings are distinctly rural in character, with a range of scattered farmsteads and other rural enterprises in the vicinity. Associated dwellings are mainly single storey in height.

13. The open land which surrounds the site comprises open grassed hills leading down to a stream alongside the track. The immediate area is well screened from longer distance views but the site is clearly visible from neighbouring land and the track itself. The range of partly disused and dilapidated former commercial structures are very close to the track and give the site a somewhat disorderly appearance.

14. I am not aware of any public rights of way nearby and the track terminates at the neighbouring farm, therefore there are not likely to be many passers by in the area other than those associated with the few surrounding properties. There are no specific landscape designations relating to the site or the locality, and there is no indication from the parties that the landscape is valued. Nonetheless, the Framework requires the intrinsic character and beauty of the countryside to be protected for its own sake.

15. The proposed dwelling would be a bungalow of simple design, similar to others I saw in the locality on my site visit. As previously noted the dwelling would be larger than the lawful caravan which it would replace. Nonetheless, it is not of such an excessive scale that it would dominate the site nor appear out of context with its surroundings.

16. In my view the replacement of the caravans and the timber structures with a single dwelling and a suitably landscaped curtilage would improve the appearance of the site, having a positive impact on the character and appearance of the countryside. I note that there are no specific objections from the landscape and visual consultee, and that they recommend a condition requiring an appropriate rural boundary treatment. I have also had regard to the restriction of domestic paraphernalia as specified in the UU, and this would provide assurances regarding further domestication of this area of the countryside.

17. Overall the proposed development would not result in significant harm to the character and appearance of the surrounding countryside. Rather, having regard to the removal of the existing structures as obliged by the UU, it would enhance the local environment. Consequently it is in accordance with Policy SD5 which seeks to conserve and enhance the natural environment in supporting development of an appropriate scale in the countryside, and ensure proposals are responsive to the landscape. In turn, it would also be in compliance with paragraph 170 of the Framework.

Other Matters

18. I acknowledge that the site is not in an accessible location. However I have already found the scale of the replacement dwelling to be acceptable and there is no evidence that a larger dwelling would result in additional vehicular trips over and above the existing.

19. The track leading to the site is narrow however there is no evidence before me that the construction of a single dwelling would result in any adverse impact on highway safety. I note that there are no objections from the Highways Transport and Design Manager in respect of construction traffic nor impacts on the local highway network.

20. There is no evidence before me that the construction of the proposals would have a direct impact on any wildlife habitat within the hedgerows and watercourses. Any damage to adjacent hedges would be a civil matter. Overall, any effects from the construction period would be short-term and could be mitigated by careful construction management.

21. In terms of flooding and drainage I note that there are no objections from the drainage authorities, and conditions can require full detail of surface water and sewage disposal arrangements. Rights to discharge into a watercourse maintained by another landowner and any potential pollution to the watercourse relate to separate legislation. Based on the available evidence I have no reason to reach a different conclusion.

Planning Obligation

22. The completed UU contains obligations relating to removal of the existing caravans and timber structures within the site within fixed time periods, and restrictions on domestic paraphernalia within the curtilage of the new dwelling.

23. In particular, the removal of the existing structures is necessary to make the development acceptable, as I have found that their replacement with a single new dwelling would enhance the character and appearance of the area.

24. The restrictions on garden structures and hardstandings as listed in the definition would ensure that the rural setting of the site is respected. I note that the definition of domestic paraphernalia also restricts vehicles. This would normally be unreasonable, however the evidence confirms that the existing surfaced area adjacent to the site would continue to be used for vehicle parking therefore I have no concerns in this regard.

25. The obligations are fairly and reasonably related in scale and kind to the development. Therefore, they would accord with the tests set out in paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010.

Conditions

26. The Council have only specified one condition, relating to landscaping. I have had also had regard to those recommended by the relevant consultees. I have amended some of the conditions for clarity and so that they meet the tests in the Framework. I have included a standard time limit condition and specified the approved plans for certainty.

27. I have included a materials condition as they are not specified on the submitted plans, to ensure that the type and colour of materials are sympathetic to the rural character of the area. A landscaping condition would ensure that species of hedge/trees and any boundary fences are appropriate to the rural area. It is also necessary to specify that the shrubs should be replaced if they die, are removed or are damaged to ensure that the plants are retained to provide adequate growth and screening.

28. Details of a foul and surface water drainage scheme are required to ensure satisfactory drainage of the site. The Council's contaminated land officer notes the risk of ground gas. No reports in relation to this are before me, however I attach a condition in the event that any unexpected land contamination is found as recommended by the officer.

29. The condition recommended by the Environmental Health Unit restricting construction/demolition operating hours is unnecessary and unreasonable. This is because good distances exist between the site and other nearby residential properties.

Conclusion

30. For the reasons above I conclude that the appeal should be allowed.

S Hunt
Inspector

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans listed below:

L01	Location Plan
P110B	Proposed Site Plan
PERFECT 111E 02	Ground floor plan
PERFECT 111E 03	Section A-A
PERFECT 111E 04	Section B-B
PERFECT 111E 05	Elevations
PERFECT 111E 06	Elevations

3) No construction of the development above damp proof course level shall take place until details of all external facing materials have been submitted to and approved by the local planning authority in writing. The works shall be carried out in accordance with the approved details.

4) No part of the development shall be occupied until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include :

   i) planting proposals giving location, species, number, density and planting size;

   ii) boundary treatments;

   iii) hard surfacing materials; and

   iv) an implementation programme.

   The landscaping works shall be carried out in accordance with the approved details in accordance with the agreed implementation programme.

5) If any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species.

6) No occupation of any part of the development shall take place until surface water and foul drainage works have been carried out in accordance with details which shall have previously been submitted to and approved in writing by the Local Planning Authority.

7) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 1 month of the report being completed and approved in writing by the local planning authority.

End of Schedule.